

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2001

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SENATE BILL 1281  
Judiciary I Committee Substitute Adopted 8/27/02  
Finance Committee Substitute Adopted 9/25/02

Short Title: Certain Occupational Licensing Board Changes.

(Public)

Sponsors:

Referred to:

June 10, 2002

A BILL TO BE ENTITLED

1 AN ACT TO CLARIFY TORT CLAIM AND DUTY TO DEFEND EMPLOYEES  
2 LIABILITY OF OCCUPATIONAL LICENSING BOARDS; TO MAKE  
3 VARIOUS CHANGES TO THE STATUTES GOVERNING THE REAL ESTATE  
4 COMMISSION; TO AUTHORIZE THE BOARD OF LANDSCAPE  
5 ARCHITECTS TO RETAIN PRIVATE COUNSEL; AND TO REQUIRE  
6 PROFESSIONAL EMPLOYER ORGANIZATIONS TO REGISTER WITH THE  
7 DEPARTMENT OF INSURANCE.

8  
9 The General Assembly of North Carolina enacts:

10 **SECTION 1.** Chapter 93B is amended by adding the following new section  
11 to read:

12 **"§ 93B-16. Occupational board liability for negligent acts.**

13 (a) An occupational licensing board may purchase commercial insurance of any  
14 kind to cover all risks or potential liability of the board, its members, officers,  
15 employees, and agents, including the board's liability under Articles 31 and 31A of  
16 Chapter 143 of the General Statutes.

17 (b) Occupational licensing boards shall be deemed State agencies for purposes of  
18 Articles 31 and 31A of Chapter 143 of the General Statutes, and board members and  
19 employees of occupational licensing boards shall be considered State employees for  
20 purposes of Articles 31 and 31A of Chapter 143 of the General Statutes. To the extent  
21 an occupational licensing board purchases commercial liability insurance coverage in  
22 excess of one hundred fifty thousand dollars (\$150,000) per claim for liability arising  
23 under Articles 31 or 31A of Chapter 143 of the General Statutes, the provisions of G.S.  
24 143-299.4 shall not apply. To the extent that an occupational licensing board purchases  
25 commercial insurance coverage for liability arising under Articles 31 or 31A of Chapter  
26 143 of the General Statutes, the provisions of G.S. 143-300.6(c) shall not apply.

27 (c) The purchase of insurance by an occupational licensing board under this  
28 section shall not be construed to waive sovereign immunity or any other defense

1 available to the board, its members, officers, employees, or agents in an action or  
2 contested matter in any court, agency, or tribunal. The purchase of insurance by an  
3 occupational licensing board shall not be construed to alter or expand the limitations on  
4 claims or payments established in G.S. 143-299.2 or limit the right of board members,  
5 officers, employees, or agents to defense by the State as provided by G.S. 143-300.3."

6 **SECTION 2.** G.S. 143-300.2(4) reads as rewritten:

7 "(4) "The State" includes all departments, agencies, boards, commissions,  
8 institutions, bureaus, and authorities of the State. Community ~~colleges~~  
9 ~~and colleges,~~ technical ~~colleges-colleges,~~ and occupational licensing  
10 boards regulated by Chapter 93B of the General Statutes shall be  
11 deemed State agencies for purposes of this Article."

12 **SECTION 3.** G.S. 93A-3(f) reads as rewritten:

13 "(f) The Commission is authorized to ~~expend expense reserve funds as defined in~~  
14 ~~G.S. 93A 3(b) for the purpose of conducting~~ acquire, hold, convey, rent, encumber,  
15 alienate, and otherwise deal with real property in the same manner as a private person or  
16 corporation, subject only to the approval of the Governor and Council of State. The  
17 rents, proceeds, and other revenues and benefits of the ownership of real property shall  
18 inure to the Commission. Collateral pledged by the Commission for any encumbrance  
19 of real property shall be limited to the assets, income, and revenues of the Commission.  
20 Leases, deeds, and other instruments relating to the Commission's interest in real  
21 property shall be valid when executed by the executive director of the Commission. The  
22 Commission may create and conduct education and information programs relating to the  
23 real estate ~~brokerage~~ business for the information, education, guidance and protection of  
24 the general public, licensees, and applicants for license. The education and information  
25 programs may include preparation, printing and distribution of publications and articles  
26 and the conduct of conferences, seminars, and lectures. The Commission may claim the  
27 copyright to written materials it creates and may charge fees for publications and  
28 programs."

29 **SECTION 4.** G.S. 93A-4 reads as rewritten:

30 "**§ 93A-4. Applications for licenses; fees; qualifications; examinations; privilege**  
31 **licenses; renewal or reinstatement of license; power to enforce**  
32 **provisions.**

33 (a) Any person, partnership, corporation, limited liability company, association,  
34 or other business entity hereafter desiring to enter into business of and obtain a license  
35 as a real estate broker or real estate salesperson shall make written application for such  
36 license to the Commission in the form and manner prescribed by the Commission. Each  
37 applicant for a license as a real estate broker or real estate salesperson shall be at least  
38 18 years of age. Each applicant for a license as a real estate salesperson shall, within  
39 three years preceding the date application is made, have satisfactorily completed, at a  
40 school approved by the Commission, a real estate fundamentals course consisting of at  
41 least 67 hours of classroom instruction in subjects determined by the Commission, or  
42 shall possess real estate education or experience in real estate transactions which the  
43 Commission shall find equivalent to the course. Each applicant for a license as a real  
44 estate broker shall, within three years preceding the date the application is made, have

1 satisfactorily completed, at a school approved by the Commission, an education  
2 program consisting of at least 60 hours of classroom instruction in subjects determined  
3 by the Commission, which shall be in addition to the course required for a real estate  
4 salesperson license, or shall possess real estate education or experience in real estate  
5 transactions which the Commission shall find equivalent to the education program. Each  
6 applicant for a license as a real estate broker or real estate salesperson shall be required  
7 to pay a fee, fixed by the Commission but not to exceed thirty dollars (\$30.00).

8 (b) Except as otherwise provided in this Chapter, any person who submits an  
9 application to the Commission in proper manner for a license as real estate broker or a  
10 license as real estate salesperson shall be required to take an oral or written  
11 examination. The Commission may allow an applicant to elect to take the examination  
12 by computer as an alternative to the written or oral examination and may require the  
13 applicant to pay the Commission or a provider contracted by the Commission the actual  
14 cost of administering the computerized examination. The cost of the computerized  
15 examination shall be in addition to any other fees the applicant is required to pay under  
16 subsection (a) of this section. The examination shall determine the applicant's  
17 qualifications with due regard to the paramount interests of the public as to the  
18 applicant's competency. A person holding a real estate salesperson license in this State  
19 and applying for a real estate broker license shall not be required to take an additional  
20 examination under this subsection. A person who fails the license examination shall be  
21 entitled to know the result and score. A person who passes the exam shall be notified  
22 only that the person passed the examination. Whether a person passed or failed the  
23 examination shall be a matter of public record; however, the scores for license  
24 examinations shall not be considered public records. Nothing in this subsection shall  
25 limit the rights granted to any person under G.S. 93B-8.

26 An applicant for licensure under this Chapter shall satisfy the Commission that he or  
27 she possesses the competency, honesty, truthfulness, integrity, and general moral  
28 character necessary to protect the public interest and promote public confidence in the  
29 real estate brokerage business. If the results of any required competency examination  
30 and investigation of the applicant's moral character shall be satisfactory to the  
31 Commission, then the Commission shall issue to the applicant a license, authorizing the  
32 applicant to act as a real estate broker or real estate salesperson in the State of North  
33 Carolina, upon the payment of privilege taxes now required by law or that may hereafter  
34 be required by law.

35 (c) All licenses issued by the Commission under the provisions of this Chapter  
36 shall expire on the 30th day of June following issuance or on any other date that the  
37 Commission may determine and shall become invalid after that date unless reinstated. A  
38 license may be renewed 45 days prior to the expiration date by filing an application with  
39 and paying to the Executive Director of the Commission the license renewal fee. The  
40 license renewal fee is thirty dollars (\$30.00) unless the Commission sets the fee at a  
41 higher amount. The Commission may set the license renewal fee at an amount that does  
42 not exceed fifty dollars (\$50.00). The license renewal fee may not increase by more than  
43 five dollars (\$5.00) during a 12-month period. The Commission may adopt rules  
44 establishing a system of license renewal in which the licenses expire annually with

1 varying expiration dates. These rules shall provide for prorating the annual fee to cover  
2 the initial renewal period so that no licensee shall be charged an amount greater than the  
3 annual fee for any 12-month period. ~~All licenses reinstated after the expiration date~~  
4 ~~thereof shall be subject to a late filing fee of five dollars (\$5.00) in addition to the~~  
5 ~~required renewal fee.~~ The fee for reinstatement of an expired license shall be fifty-five  
6 dollars (\$55.00). In the event a licensee fails to obtain a reinstatement of such license  
7 within ~~12~~ six months after the expiration date thereof, the Commission may, in its  
8 discretion, consider such person as not having been previously licensed, and thereby  
9 subject to the provisions of this Chapter relating to the issuance of an original license,  
10 including the examination requirements set forth herein. Duplicate licenses may be  
11 issued by the Commission upon payment of a fee of five dollars (\$5.00) by the licensee.  
12 Commission certification of a licensee's license history shall be made only after the  
13 payment of a fee of ten dollars (\$10.00).

14 (d) The Commission is expressly vested with the power and authority to make  
15 and enforce any and all reasonable rules and regulations connected with license  
16 application, examination, renewal, and reinstatement as shall be deemed necessary to  
17 administer and enforce the provisions of this Chapter. The Commission is further  
18 authorized to adopt reasonable rules and regulations necessary for the approval of real  
19 estate schools, instructors, and textbooks and rules that prescribe specific requirements  
20 pertaining to instruction, administration, and content of required education courses and  
21 programs.

22 (e) Nothing contained in this Chapter shall be construed as giving any authority  
23 to the Commission nor any licensee of the Commission as authorizing any licensee to  
24 engage in the practice of law or to render any legal service as specifically set out in G.S.  
25 84-2.1 or any other legal service not specifically referred to in said section."

26 **SECTION 5.** Subsection 93A-6 is amended by adding a new subsection to  
27 read:

28 "(f) In any contested case in which the Commission takes disciplinary action  
29 authorized by any provision of this Chapter, the Commission may also impose  
30 reasonable conditions, restrictions, and limitations upon the license, registration, or  
31 approval issued to the disciplined person or entity. In any contested case concerning an  
32 application for licensure, time share project registration, or school, sponsor, instructor,  
33 or course approval, the Commission may impose reasonable conditions, restrictions, and  
34 limitations on any license, registration, or approval it may issue as a part of its final  
35 decision."

36 **SECTION 6.** G.S. 114-4.2G is repealed.

37 **SECTION 7.** G.S. 89A-3.1 reads as rewritten:

38 "**§ 89A-3.1. Board's powers and duties.**

39 The Board shall have the following powers and duties:

- 40 (1) Administer and enforce the provisions of this Chapter.
- 41 (2) Adopt rules to administer and enforce the provisions of this Chapter.
- 42 (3) Examine and determine the qualifications and fitness of applicants for  
43 registration and renewal of registration.

- 1 (4) Determine the qualifications of firms, partnerships, or corporations  
2 applying for a certificate of registration.
- 3 (5) Issue, renew, deny, suspend, or revoke certificates of registration and  
4 conduct any disciplinary actions authorized by this Chapter.
- 5 (6) Establish and approve continuing education requirements for persons  
6 registered under this Chapter.
- 7 (7) Receive and investigate complaints from members of the public.
- 8 (8) Conduct investigations for the purpose of determining whether  
9 violations of this Chapter or grounds for disciplining registrants exist.
- 10 (9) Conduct administrative hearings in accordance with Article 3 of  
11 Chapter 150B of the General Statutes.
- 12 (10) Maintain a record of all proceedings conducted by the Board and make  
13 available to registrants and other concerned parties an annual report of  
14 all Board action.
- 15 (11) Employ and fix the compensation of personnel that the Board  
16 determines is necessary to carry out the provisions of this Chapter and  
17 incur other expenses necessary to perform the duties of the Board.
- 18 (12) Adopt and publish a code of professional conduct for all registrants.
- 19 (13) Adopt a seal containing the name of the Board for use on all  
20 certificates of registration and official reports issued by the Board.
- 21 (14) Retain private counsel subject to G.S. 114-2.3."

22 **SECTION 8.** Chapter 58 of the General Statutes is amended by adding the  
23 following new Article to read:

24 "Article 89.

25 "North Carolina Professional Employer Organization Act.

26 **"§ 58-89-1. Title.**

27 This Article shall be known and may be cited as the "North Carolina Professional  
28 Employer Organization Act".

29 **"§ 58-89-5. Definitions.**

30 In this Article:

- 31 (1) "Applicant" means a person applying for a registration under this  
32 Article.
- 33 (2) "Control", including the terms "controlling", "controlled by", and  
34 "under common control with" have the same meanings as in G.S.  
35 58-19-5(2).
- 36 (3) "Employee leasing services" means an arrangement by which  
37 employees of a registrant are assigned to work at a client company and  
38 in which employment responsibilities are in fact shared by the  
39 registrant and the client company, the employee's assignment is  
40 intended to be of a long-term or continuing nature, rather than  
41 temporary or seasonal in nature, and a majority of the workforce at a  
42 client company work site or a majority of the personnel of a  
43 specialized group within that workforce consists of assigned  
44 employees of the registrant. "Employee leasing services" does not

1 include services that provide temporary employees or independent  
2 contractors, personnel placement services, managed services, payroll  
3 services that do not involve employee staffing or leasing, or similar  
4 groups that do not meet the requirements of this subdivision.

5 (4) "Managed services" means services provided by an organization that is  
6 the sole employer of employees whom it supplies to staff and manage  
7 a specific portion of a company's workforce or a specific facility  
8 within a company on an ongoing basis. The managed services  
9 organization has responsibility for ensuring the capabilities and skills  
10 of the employees it supplies or provides, for all employer functions, for  
11 supervisory responsibility over the employees, and for management  
12 accountability of the facility or function.

13 (5) "Person" has the same meaning as in G.S. 58-1-5(9).

14 (6) "Personnel placement services" means a service that offers job  
15 placement services in which the personnel placement service  
16 organization assists persons interested in finding a job with companies  
17 that are seeking employees. Companies that hire persons through a  
18 personnel placement service are the sole employers of the persons  
19 hired and the personnel placement service does not have any  
20 responsibility as an employer.

21 (7) "Professional employer organization" means a person that offers  
22 employee leasing services and includes "staff leasing services  
23 companies", "employee leasing companies", "staff leasing companies",  
24 and "administrative employers" who offer or propose to offer  
25 employee leasing services in this State.

26 (8) "Professional employer organization group" means a combination of  
27 professional employer organizations that operates under a group  
28 registration issued under this Article.

29 (9) "Temporary employees" means persons employed under an  
30 arrangement by which an organization hires its own employees and  
31 assigns them to a client company to support or supplement the client's  
32 workforce in a special work situation, including:

33 a. An employee absence;

34 b. A temporary skill shortage;

35 c. A seasonal workload; or

36 d. A special assignment or project.

37 **§ 58-89-10. Rules.**

38 (a) The Commissioner may adopt rules necessary to implement, administer, and  
39 enforce the provisions of this Article.

40 (b) Each registrant is subject to this Article and to the rules adopted by the  
41 Commissioner.

42 (c) Nothing in this Article preempts the existing statutory or rule-making  
43 authority of any other State agency or entity to regulate employee leasing services in a  
44 manner consistent with the statutory authority of that State agency or entity.

1 **§ 58-89-15. Registration required; professional employer organization groups.**

2 (a) No person shall engage in or offer employee leasing services in this State  
3 unless the person is registered with the Department of Insurance under this Article.

4 (b) Two or more professional employer organizations that are controlled by the  
5 same ultimate parent, entity, or persons may be registered as a professional employer  
6 organization group. A professional employer organization group may satisfy the  
7 requirements of this Article on a consolidated basis.

8 (c) An applicant for an initial professional employer organization registration  
9 shall file with the Commissioner the information required by subsection (d) of this  
10 section on a form prescribed by the Commissioner accompanied by the registration fee.  
11 No application is complete until the Commissioner has received all required  
12 information.

13 (d) The registration application shall, at a minimum, be comprised of all of the  
14 following information:

15 (1) The name, organizational structure, and date of organization of the  
16 applicant, the addresses of the principal office and all offices in this  
17 State, the name of the contact person, the type of operations within this  
18 State, and the taxpayer or employer identification number.

19 (2) A list by jurisdiction of each name under which the applicant has  
20 operated in the preceding five years, including any alternative names,  
21 names of predecessors and, if known, successor business entities. The  
22 list required by this subdivision shall include the parent company name  
23 and any trade name, trademark, or service mark of the applicant.

24 (3) A list of all officers and controlling persons of the applicant, their  
25 biographical information, including their management background,  
26 and an affidavit from each attesting to his or her good moral character  
27 and management competence.

28 (4) The location of the business records of the applicant.

29 (5) Evidence that the applicant has paid all of its obligations for payroll,  
30 payroll-related taxes, workers' compensation insurance, and employee  
31 benefits. All disputed amounts shall be disclosed in the application.

32 (6) Any other information the Commissioner deems necessary and  
33 requires by rule to establish that the applicant and the officers and  
34 controlling persons are of good moral character, business integrity, and  
35 financial responsibility.

36 (e) An application for registration of a professional employer organization group  
37 shall contain the information required by this section for each member of the group.

38 (f) If the Commissioner finds that the applicant has not fully met the  
39 requirements for registration, the Commissioner shall refuse to register the applicant and  
40 shall notify the applicant in writing of the denial, stating the grounds for the denial.  
41 Within 30 days after service of the notification, the applicant may make a written  
42 demand upon the Commissioner for a review to determine the reasonableness of the  
43 Commissioner's action. The review shall be completed without undue delay, and the  
44 applicant shall be notified promptly in writing as to the outcome of the review. Within

1 30 days after service of the notification as to the outcome, the applicant may make a  
2 written demand upon the Commissioner for a hearing under Article 3A of Chapter 150B  
3 of the General Statutes if the applicant disagrees with the outcome.

4 **"§ 58-89-20. Fees.**

5 (a) Each applicant for registration shall pay to the Commissioner, before the  
6 issuance of the registration, a nonrefundable application fee of five hundred dollars  
7 (\$500.00).

8 (b) Fees collected by the Commissioner under this Article shall be credited to the  
9 Department of Insurance Fund created under G.S. 58-6-25.

10 **"§ 58-89-25. Prohibited acts.**

11 No person shall do any of the following:

- 12 (1) Engage in or offer employee leasing services without being registered  
13 under this Article as a professional employer organization.
- 14 (2) Use the name or title "staff leasing company", "employee leasing  
15 company", "registered staff leasing company", "staff leasing services  
16 company", "professional employer organization", or "administrative  
17 employer" or otherwise represent that the person is registered under  
18 this Article unless the person is registered under this Article.
- 19 (3) Represent as the person's own the license of another person or  
20 represent that a person is registered if the person is not registered.
- 21 (4) Give materially false or forged evidence to the Commissioner in  
22 connection with obtaining a registration.

23 **"§ 58-89-30. Criminal penalty.**

24 A person who violates G.S. 58-89-25 commits a Class H felony. Any officer or  
25 controlling person who willfully violates any provision of this Article may be subject to  
26 any and all criminal penalties available under State law."

27 **SECTION 9.** The Department of Insurance shall report to the 2005 General  
28 Assembly on the implementation, administration, and enforcement of Article 89 of  
29 Chapter 58 of the General Statutes, as enacted in Section 8 of this act. In its report, the  
30 Department shall recommend any statutory changes required to regulate professional  
31 employer organizations and enforce Article 89 of Chapter 58 of the General Statutes.

32 **SECTION 10.** Each professional employer organization operating within  
33 this State as of January 1, 2003, shall complete its initial registration not later than 180  
34 days after January 1, 2003. Each professional employer organization not operating  
35 within this State as of January 1, 2003, shall complete its initial registration prior to  
36 commencement of operations within this State.

37 **SECTION 11.** Sections 8 through 10 of this act become effective January 1,  
38 2003, and apply to any contracts entered into, any business conducted, and any actions  
39 taken on or after that date. The remainder of this act becomes effective October 1,  
40 2002.