

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
Finance Committee Substitute #2 Adopted 9/26/02

Short Title: Certain Occupational Licensing Board Changes.

(Public)

Sponsors:

Referred to:

June 10, 2002

A BILL TO BE ENTITLED

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

The General Assembly of North Carolina enacts:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 (e) Nothing contained in this Chapter shall be construed as giving any authority
25 to the Commission nor any licensee of the Commission as authorizing any licensee to
26 engage in the practice of law or to render any legal service as specifically set out in G.S.
27 84-2.1 or any other legal service not specifically referred to in said section."

28 **SECTION 5.** G.S. 93A-6 is amended by adding a new subsection to read:

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

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

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

39 **"§ 89A-3.1. Board's powers and duties.**

40 The Board shall have the following powers and duties:

- 41 (1) Administer and enforce the provisions of this Chapter.
- 42 (2) Adopt rules to administer and enforce the provisions of this Chapter.
- 43 (3) Examine and determine the qualifications and fitness of applicants for
44 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", has the same meaning as in G.S.
35 58-19-5(2).
- 36 (3) "Managed services" means services provided by an organization that is
37 the sole employer of employees whom it supplies to staff and to
38 manage a specific portion of a company's workforce or a specific
39 facility within a company on an ongoing basis. The managed services
40 organization has responsibility for ensuring the capabilities and skills
41 of the employees it supplies or provides, for all employer functions, for
42 supervisory responsibility over the employees, and for management
43 accountability of the facility or function.
- 44 (4) "Person" has the same meaning as in G.S. 58-1-5(9).

- 1 (5) "Personnel placement services" means a service that offers job
2 placement services in which the personnel placement service
3 organization assists persons interested in finding a job with companies
4 that are seeking employees. Companies that hire persons through a
5 personnel placement service are the sole employers of the persons
6 hired, and the personnel placement service does not have any
7 responsibility as an employer.
- 8 (6) "Professional employer organization" means a person that offers
9 professional employer services and includes "staff leasing services
10 companies", "employee leasing companies", "staff leasing companies",
11 and "administrative employers" who offer or propose to offer
12 professional employer services in this State.
- 13 (7) "Professional employer organization group" means a combination of
14 professional employer organizations that operates under a group
15 registration issued under this Article.
- 16 (8) "Professional employer services" means an arrangement by which
17 employees of a registrant are assigned to work at a client company and
18 in which employment responsibilities are in fact shared by the
19 registrant and the client company, the employee's assignment is
20 intended to be of a long-term or continuing nature, rather than
21 temporary or seasonal in nature, and a majority of the workforce at a
22 client company work site or a majority of the personnel of a
23 specialized group within that workforce consists of assigned
24 employees of the registrant. "Professional employer services" does not
25 include services that provide temporary employees or independent
26 contractors, personnel placement services, managed services, payroll
27 services that do not involve employee staffing or leasing, or similar
28 groups that do not meet the requirements of this subdivision.
- 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 professional employer services
44 in a 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 professional employer 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, and the taxpayer or employer
18 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 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.

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

35 (f) If the Commissioner finds that the applicant has not fully met the
36 requirements for registration, the Commissioner shall refuse to register the applicant and
37 shall notify the applicant in writing of the denial, stating the grounds for the denial.
38 Within 30 days after service of the notification, the applicant may make a written
39 demand upon the Commissioner for a review to determine the reasonableness of the
40 Commissioner's action. The review shall be completed without undue delay, and the
41 applicant shall be notified promptly in writing as to the outcome of the review. Within
42 30 days after service of the notification as to the outcome, the applicant may make a
43 written demand upon the Commissioner for a hearing under Article 3A of Chapter 150B
44 of the General Statutes if the applicant disagrees with the outcome.

1 **"§ 58-89-20. Fees.**

2 (a) Each applicant for registration shall pay to the Commissioner, before the
3 issuance of the registration, a nonrefundable application fee of two hundred fifty dollars
4 (\$250.00).

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

7 **"§ 58-89-25. Prohibited acts.**

8 No person shall do any of the following:

9 (1) Engage in or offer professional employer services without being
10 registered under this Article as a professional employer organization.

11 (2) Use the name or title "staff leasing company", "employee leasing
12 company", "registered staff leasing company", "staff leasing services
13 company", "professional employer organization", or "administrative
14 employer" or otherwise represent that the person is registered under
15 this Article unless the person is registered under this Article.

16 (3) Represent as the person's own the license of another person or
17 represent that a person is registered if the person is not registered.

18 (4) Give materially false or forged evidence to the Commissioner in
19 connection with obtaining a registration.

20 **"§ 58-89-30. Criminal penalty.**

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

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

29 **SECTION 10.** Notwithstanding G.S. 58-89-30, each professional employer
30 organization operating within this State as of January 1, 2003, shall complete its initial
31 registration not later than 180 days after January 1, 2003. Each professional employer
32 organization not operating within this State as of January 1, 2003, shall complete its
33 initial registration prior to commencement of operations within this State.

34 **SECTION 11.** Sections 8 through 10 of this act become effective January 1,
35 2003, and apply to any contracts entered into, any business conducted, and any actions
36 taken on or after that date. The remainder of this act becomes effective October 1,
37 2002.