

SOUTH CAROLINA CODE

Title 40 Chapter 68

**REGULATION OF PROFESSIONAL EMPLOYER ORGANIZATIONS**

**Section 40-68-10** Definitions.

As used in this chapter:

- (1) 'Applicant' means a business seeking to be licensed under this chapter or seeking the renewal of a license under this chapter.
- (2) 'Client company' means a person that contracts with a licensee and is assigned employees by the licensee under that contract.
- (3) 'Administrator' means the administrator of the Department of Consumer Affairs.
- (4) 'Controlling person' means:
  - (a) an officer or director of a corporation seeking to offer professional employer services, a shareholder holding ten percent or more of the voting stock of a corporation seeking to offer professional employer services, or a partner of a partnership seeking to offer professional employer services;
  - (b) an individual who possesses, directly or indirectly, the power to direct or cause the direction of the management or policies of a company seeking to offer professional employer services through the ownership of voting securities, by contract or otherwise, and who is actively involved in the day-to-day management of the company; or
  - (c) an individual employed, appointed, or authorized by a business seeking to offer professional employer services to enter into a contractual relationship with a client company on behalf of the business.
- (5) 'Department' means the South Carolina Department of Consumer Affairs.
- (6) 'Insured health benefit plan', for the purposes of this chapter, means a plan offered by an insurer licensed by the Department of Insurance.
- (7) 'Licensee' means a person licensed under this chapter as a professional employer organization to provide professional employer services. The term includes a professional employer services group licensed under Section 40-68-80.
- (8) 'Person' means an individual, association, corporation, partnership, or other private legal entity.
- (9) 'Professional employer services' means an arrangement by which employees of a licensee are assigned to work at a client company and in which employment responsibilities are shared by the licensee and the client company. The employee's assignment is intended to be of a long-term or continuing nature, rather than temporary or seasonal in nature, and a majority of the work force at a client company worksite or a specialized group within that work force consists of assigned employees of the licensee. Professional employer services does not include temporary employees.
- (10) 'Professional employer organization' means an individual business entity that offers professional employer services.
- (11) 'Professional employer organization group' means a combination of professional employer services companies that operates under a group license issued under Section 40-68-80.
- (12) 'Assigned employee' means a person performing services for a client company as affected by a contract between a licensee and client company in which employment responsibilities are shared.
- (13) 'Entire work force' means all persons engaged by a client company and are employees as defined in Title 42 including persons considered employees under Sections 42-1-400, 42-1-410, and 42-1-420.

**Section 40-68-20** Department to adopt regulations; Administrative Procedures Act to govern; licensee governed by chapter and regulations.

The department shall adopt regulations necessary to administer this chapter. Regulations must be adopted in compliance with the Administrative Procedures Act. A licensee is governed and controlled by this chapter and the regulations adopted by the department.

**Section 40-68-30** License required; application and fee; information required as to each member of group; ineligibility for license for year after denial or revocation of license, with exceptions.

- (A) A person may not engage in or offer professional employer services in this State without holding a license issued under this chapter. A person that desires a professional employer organization license shall file with the department a written application accompanied by an application fee of one hundred dollars for each controlling person. In addition, the application fee is two hundred dollars for each professional employer organization, and three hundred dollars for each professional employer organization group.
- (B) The department may require an applicant for a license to provide information and certifications to determine whether the applicant meets the licensing requirements of this chapter and also whether individuals affiliated with the applicant are qualified to serve as controlling persons.
- (C) A licensee or controlling person shall notify the department within thirty days of any felony conviction or civil judgment entered against the licensee or controlling person.
- (D) An application for a professional employer organization group license under Section 40-68-80 must provide the information required by this chapter for each member of the group. An applicant or licensee is ineligible for a license for one year after the date of final departmental action on the denial or revocation of a license applied for or issued under this chapter. This restriction does not apply to a denial or revocation of a license if the basis of the action was:
  - (1) an inadvertent error or omission in the application if that error or omission is promptly corrected;
  - (2) the experience documented to the department was insufficient at the time of the previous application;
  - (3) the department was unable to complete the criminal background investigation required under Section 40-68-40 because of insufficient information received from a local, state, or federal law enforcement agency; or
  - (4) that one or more of the controlling persons affiliated with the applicant or licensee was determined by the department to be unsuitable, if that unsuitable controlling person has in fact ceased to be a controlling person of the applicant or licensee.

**Section 40-68-40** Qualifications to serve as controlling person; background investigation; fingerprinting; effect of conviction of crime; designating agent for service of process; minimum net worth requirement.

- (A) To be qualified to serve as a controlling person of a licensee under this chapter, a person must be at least eighteen years of age, be of good moral character, and have educational, managerial, or business experience relevant to:
- (1) operation of a business entity offering professional employer services; or
  - (2) services as a controlling person of a professional employer organization.

For the purposes of this subsection, 'good moral character' means a personal history of honesty, trustworthiness, fairness, a good reputation for fair dealing, and respect for the rights of others and for the laws of this State and nation.

- (B) The department shall conduct a background investigation of each individual applicant and of each controlling person of each applicant and require fingerprinting of each applicant and each controlling person to determine whether the applicant or controlling person is qualified under this chapter. The department may deny an application for the issuance or renewal of a license if it finds that a controlling person is not qualified under this chapter. The investigation shall include:
- (1) the submission of fingerprints for processing through appropriate local, state, and federal law enforcement agencies; and
  - (2) examination by the department, if necessary, of police or other law enforcement records maintained by local, state, or federal law enforcement agencies.
- (C) Conviction of a crime does not automatically disqualify a controlling person, require the revocation of a license, or require the denial of an application for a new or renewed license.
- (D) A licensee shall maintain a registered agent for the service of process in this State.
- (E) An applicant for an original or renewal license must demonstrate a net worth of at least fifty thousand dollars. The applicant shall demonstrate the net worth to the department by providing the department with the applicant's audited financial statement. The net worth requirement also may be satisfied through guarantees, letters of credit, or other security acceptable to the department in a combined total amount of at least fifty thousand dollars. A guaranty is not acceptable to satisfy this subsection unless the applicant submits sufficient evidence to satisfy the department that the guarantor has adequate resources to satisfy the obligations of the guaranty. For applicants operating a professional employer organization or professional employer organization group on or before January 1, 1991, the net worth requirement will be satisfied by the documentation of a positive net worth.
- (F) A document submitted to establish net worth must reflect the net worth as of a date not earlier than six months before the date on which the application is submitted, and must be prepared by a certified public accountant. Information supplied regarding net worth is proprietary and confidential and is exempt from disclosure to third parties.
- (G)
- (1) An applicant and any controlling person must have at least two years of other related industry experience as approved by the department before the initial license is issued.
  - (2) Notwithstanding subsection (G)(1), an applicant for a nonresident restricted license under Section 40-68-90 may be issued a license without the necessary two years' experience.
  - (3) However, all licensees filed before September 30, 2005, may act as professional employment organizations after that date without regard to the experience requirement of this subsection if they maintain compliance with the continuing professional education requirements of Section 40-68-45 and otherwise comply with this chapter.

**Section 40-68-45** Continuing education requirements.

- (A)
  - (1) Effective for license years beginning after September 30, 2005, key management personnel of all licensees must complete at least eight hours of continuing professional education annually.
  - (2) For purposes of this subsection:
    - (a) if the licensee is a sole proprietorship or partnership, key personnel means any controlling person, as defined in this chapter, of that licensee.
    - (b) if the licensee is a corporation, key personnel means any person who both:
      - (i) possesses the power to direct or cause the direction of the management of a company seeking to offer professional employment services in this State; and
      - (ii) is directly responsible for the day-to-day management of the company's operations in this State.
  - (3) The holder of a nonresident restricted license under Section 40-68-90 is not required to complete the continuing education required by this subsection.
  - (4) Up to eight hours of continuing professional education may be carried forward from one year to the next year; for the license year beginning September 30, 2005, up to eight hours of continuing professional education taken in the preceding twelve months may be carried forward.
- (B)
  - (1) Continuing professional education must be reported to the department annually on a form approved by the department showing the date and title of the courses taken, the teacher or sponsor of the course, and the hours of continuing professional education claimed for the course. If the course is taught in a classroom setting, fifty minutes of classroom contact equals one hour of continuing professional education. Course sponsors shall maintain records of attendees for two years after the course.
  - (2) Documentation of attendance at the courses or correspondence courses must be maintained by the licensee and must consist of a certificate of completion issued by the teacher or sponsor of the course showing the number of hours of continuing professional education completed. This documentation is subject to inspection by the department for up to two years after the date of the course. Courses offered by the National Association of Professional Employer Organizations, the Carolina Chapter of Professional Employer Organizations, the department, or other approved courses related to employment, are considered qualified courses for continuing professional education. The department shall offer continuing professional education courses to assist licensees and controlling persons in obtaining the continuing professional education required by this chapter.
  - (3) The department shall appoint four licensees or controlling persons and one representative of the department to a panel for two-year terms to approve any courses questioned as to their qualifications as continuing professional education. The panel may conduct its meetings via conference call. The department shall develop a questionnaire to ascertain the interest and background of potential members of this panel.
  - (4) If a licensee fails to complete his continuing professional education in a timely manner, his license expires and the licensee shall pay a penalty not in excess of one hundred dollars in order to renew the license. If a controlling person, who is not an owner or officer, of a licensee fails to complete his continuing professional education in a timely manner, he may not continue as a controlling person. However, the licensee or controlling person may request an administrative hearing to appeal the expiration of his license, or controlling person status, respectively, for failure to complete continuing professional education requirements. A license may be renewed without penalty within thirty days after its expiration if the licensee completes his professional education

requirement. If a licensee fails to complete his professional education requirement within thirty days after the expiration of his license, he shall, in addition to paying the penalty provided for in this subsection, complete his professional education requirements prior to filing a new initial application for a license.

**Section 40-68-50** License fees; biennial assessment fee; submission of financial data to ensure compliance.

(A) An applicant for an original or renewal license shall pay a fee to the department on the issuance of the license or license renewal. License fees are assessed as follows:

(1) in the first year of the biennium:

- (a) two thousand dollars for a resident professional employer organization;
- (b) four thousand dollars for a resident professional employer organization group;
- (c) two thousand dollars for a nonresident professional employer organization. However, if the state of residency of the nonresident professional employer organization imposes a greater fee for licensing nonresident applicants, the greater fee must be assessed. The maximum fee that may be charged is five thousand dollars for a nonresident professional employer organization;
- (d) four thousand dollars for each nonresident professional employer organization group. However, if the state of residency of the nonresident professional employer organization group imposes a greater fee for licensing nonresident applicants, the greater fee must be assessed. The maximum fee that may be charged is ten thousand dollars for each nonresident professional employer organization group;

(2) in the second year of the biennium:

- (a) one thousand dollars for each resident professional employer organization;
- (b) three thousand five hundred dollars for each resident professional employer organization group;
- (c) one thousand dollars for a nonresident professional employer organization. However, if the state of residency of the nonresident professional employer organization imposes a greater fee for licensing nonresident applicants, the greater fee must be assessed. The maximum fee that may be charged is two thousand five hundred dollars for a nonresident professional employer organization;
- (d) three thousand five hundred dollars for each nonresident professional employer organization group. However, if the state of residency of the nonresident professional employer organization group imposes a greater fee for licensing nonresident applicants, the greater fee must be assessed. The maximum fee that may be charged is five thousand dollars for each nonresident professional employer organization group;

(3) for renewal licenses:

- (a) fifteen hundred dollars for a professional employer organization;
- (b) three thousand dollars for a professional employer organization group;
- (c) fifteen hundred dollars for a nonresident professional employer organization. However, if the state of residency of the nonresident leasing company imposes a greater fee for licensing nonresident applicants, the greater fee must be assessed. The maximum fee that may be charged is three thousand seven hundred fifty dollars for a nonresident professional employer organization;

(d) three thousand dollars for each nonresident professional employer organization group. However, if the state of residency of the nonresident professional employer organization group imposes a greater fee for licensing nonresident applicants, the greater fee must be assessed. The maximum fee that may be charged is seven thousand five hundred dollars for each nonresident professional employer organization group.

(B) In addition to the license fee, the department may levy a biennial assessment for each professional employer organization and each professional employer organization group sufficient to cover all costs for regulation of the profession pursuant to this chapter and other applicable provisions of law. The biennial assessment fee is:

- (1) due and payable upon initial licensure and subsequent renewals and one year before the expiration of any licensure period; and
- (2) based on the gross South Carolina payroll, excluding tips and gratuities, of a professional employer organization's or professional employer organization group's clients during the period beginning nine quarters before and ending one quarter before each assessment;
- (3) calculated in accordance with the following table:

Amount of Gross South Carolina Payroll	Assessment Fee Due
less than \$500,000	\$ 500
\$500,001-\$1,000,000	\$ 750
\$1,000,001-\$2,500,000	\$1,000
\$2,500,001-\$5,000,000	\$1,250
\$5,000,001-\$10,000,000	\$1,750
\$10,000,001-\$15,000,000	\$2,250
\$15,000,001-\$25,000,000	\$3,000
\$25,000,001-\$50,000,000	\$3,750
over \$50,000,000	\$4,000

(C) In order to ensure compliance with the requirements of subsection (B), each licensee annually shall submit a statement of total gross South Carolina payroll, excluding tips and gratuities, along with copies of all South Carolina Unemployment Compensation tax returns for the preceding calendar year.

(D) The total licensure fee and biennial assessments during a licensure period must not exceed:

- (1) eight thousand seven hundred fifty dollars for a professional employer organization license; or
- (2) ten thousand dollars for a professional employer organization group license issued under Section 40-68-90.

(E) The department may change the anniversary date of the first biennium, as established in regulation 28-910(3)(d), so that approximately one-half of the applications for renewal licenses will be due on or before September 30 of the biennium and the other half on or before March 30 of the following year.

**Section 40-68-55** Department may provide for alternative licensing procedure by regulation.

The department may by regulation provide for the acceptance of an affidavit or certification of a bonded, independent, and qualified assurance organization that has been approved by the department for certifying qualifications of a professional employer organization or professional employer organization group in lieu of those requirements of Sections 40-68-30 and 40-68-40 or any other requirements of a licensee under this chapter as determined by the department. In the regulation the department may establish a fee structure for the acceptance not to exceed the fees in Section 40-68-50. Professional employer organizations or professional employer organization groups are subject to any assessment under Section 40-68-50(B). This section does not relieve a professional employer organization or professional employer organization group of any notice or disclosure obligations under this chapter to an insurer, client, or employee, or of any other requirement of this chapter not expressly waived by regulation of the department.

**Section 40-68-60** Terms of agreement to be established and in writing; notice and delivery of notice to assigned employees; posting of notice by client company; notice or knowledge of injury.

- (A) A licensee shall establish the terms of a professional employer organization services agreement by a written contract between the licensee and the client company. The licensee shall give written notice of the agreement as it affects assigned employees to each employee assigned to a client company in the manner provided in this section.
- (B) A written explanation of the agreement must be provided to each assigned employee by delivering it to the employee personally within ten days after executing the agreement. The explanation must state, substantially, the terms of the agreement between the licensee and client company and include the same notice that is required to be posted in the client company's place of business.
- (C) The client company shall post in each of its places of business in a conspicuous place that is in clear and unobstructed view of the assigned employees a notice stating, substantially, the following:

'We are operating under and subject to the Workers' Compensation Act of South Carolina. In case of accidental injury or death to an employee, the injured employee, or someone acting on his or her behalf, shall notify immediately (insert name of professional employer organization, address, and telephone number) or (name of client company, address, and telephone number). Failure to give immediate notice may be the cause of serious delay in the payment of compensation to you or your beneficiaries and may result in failure to receive any compensation benefits'.
- (D) As between the client company, the professional employer organization, and the employee, the notice to or acknowledgment of the occurrence of an injury on the part of the client company or the professional employer organization is notice to or knowledge on the part of the professional employer organization and its workers' compensation insurer or the client company and its workers' compensation insurer, or both.

**Section 40-68-70** Requirements of contract between licensee and client company; investigation of client company's work force; securing workers' compensation insurance coverage; licensee is employer of assigned employees.

- (A) A contract between a licensee and a client company must provide that the licensee:
- (1) reserves the right of direction and control over employees assigned to a client company;
  - (2) assumes responsibility for the payment of wages to the assigned employees without regard to payments by the client to the licensee;
  - (3) assumes responsibility for the payment of payroll taxes and collection of taxes from payroll on assigned employees;
  - (4) retains the right to hire, fire, discipline, and reassign the assigned employees;
  - (5) retains the right of direction and control over the adoption of employment and safety policies and the management of workers' compensation claims, claim filings, and related procedures on joint agreement by the client company and the licensee; and
  - (6) agrees that:
    - (a) notice to or acknowledgment of the occurrence of an injury on the part of the client company is notice to or knowledge on the part of the licensee and its workers' compensation insurer;
    - (b) for the purposes of Title 42, the jurisdiction of the client company is the jurisdiction of the licensee and its workers' compensation insurer;
    - (c) the licensee and its workers' compensation insurer is bound by and subject to the awards, judgments, or decrees rendered against them under the provisions of Title 42; and
    - (d) insolvency, bankruptcy, or discharge in bankruptcy of the licensee or client company does not relieve the licensee, client company, their respective workers' compensation insurers from payment of compensation for disability or death sustained by an employee during the life of a workers' compensation insurance policy; and
  - (7) with a client company, in the contract, shall specify whether the licensee, the client company, or both, are securing workers' compensation liability.
- (B) A licensee, who secures workers' compensation insurance for a client company before the execution of the contract and on an annual basis, shall conduct a good faith investigation of the client company's business. The investigation must determine if the client company engages any nonassigned employees, including those considered employees under Title 42, in any part of the client company's trade, business, or occupation. Upon a determination that a client company's entire work force includes nonassigned employees, the contract must require the client company to secure and maintain workers' compensation insurance.
- (C) Upon the failure or neglect of a client company to secure and maintain workers' compensation insurance, the licensee and its workers' compensation carrier agree and are liable to pay to a worker employed in the work of the client company compensation under Title 42 which the licensee would have been liable to pay if the worker had been employed by the licensee as provided in Section 40-68-120.
- (D) A licensee's workers' compensation insurer providing coverage to a client company's assigned employees must be provided the information derived from the licensee's investigation of the client company's business.
- (E) The licensee is the employer of the employees assigned to a client company. The rights and remedies granted by Title 42 to an employee when he and the licensee have accepted the provisions of Title 42 to pay and accept compensation exclude all other rights as provided in Section 42-1-540. This chapter does not affect the rights, duties, or liabilities of licensees, client companies, or employees under federal law.

**Section 40-68-75** Responsibilities of client company with respect to workers' compensation insurance; penalties and liabilities for violation

- (A) An employer subject to the provisions of Title 42 who contracts with a professional employer organization or professional employer organization group continues to be subject to the provisions of Title 42 and shall comply with Title 42 with regard to procuring and maintaining workers' compensation insurance for nonassigned employees. For purposes of construction, the term 'employees' in Section 42-1-360 includes both assigned and nonassigned employees.
- (B) A client company who refuses or neglects to provide workers' compensation insurance coverage to its nonassigned employees must be fined one thousand dollars a day for each nonassigned employee for each day the client company refuses or neglects to provide workers' compensation insurance. In this event, the client company is liable during the continuance of the refusal or neglect to an employee either for compensation under Title 42 or in an action at law instituted by the employee or his personal representative against the client company to recover damages for personal injury or death by accident. In the action at law, the client company may not be permitted to defend upon any of the grounds mentioned in Section 42-1-510 and Section 42-1-540 does not apply. The fine provided in this section must be assessed by the Workers' Compensation Commission in an open hearing with the right of review and appeal as in other cases.

**Section 40-68-80** Several companies majority-owned by same entity may constitute professional employer organization group; effect of status as group.

A group of at least two but not more than five professional employer organizations that are majority-owned by the same entity may be licensed as a professional employer organization group. A professional employer organization group may satisfy the reporting and financial requirements of the chapter on a consolidated basis. As a condition of the issuance of a professional employer organization group license, each person that is a member of the group must guarantee payment of all financial obligations of other members of the group.

**Section 40-68-90** Nonresident company or group; restricted license; appointment of entity for receipt of legal process.

- (A) The department may issue a restricted license to a nonresident professional employer organization or professional employer organization group for limited operation within this State under the following conditions if the:
  - (1) applicant's state of residence provides for licensing of professional employer organizations, the applicant is licensed and in good standing in its state of residence, and the applicant's state of residence grants a similar privilege for restricted licensing to professional employer organizations or professional employer organization groups that are residents in South Carolina;
  - (2) applicant does not maintain an office, sales force, or representatives in this State, and it does not solicit clients that are residents in this State; and
  - (3) applicant does not have more than forty leased employees working in this State.
- (B) An applicant for a restricted license is exempt from the requirements of Section 40-68-40(F).
- (C) An applicant for a nonresident or restricted license shall file on a form approved by the department an appointment of a recognized and approved entity as its attorney to receive service of legal process issued against it in this State.

**Section 40-68-100** Duty to issue license to qualified applicants; issuance within prescribed time; time license is valid; renewal

The department shall issue a license to an applicant that meets the requirements of this chapter. The license must be issued not later than the ninetieth day after the date on which the completed application is filed with the department. A license issued by the department under this chapter is valid for two years. The department shall renew a license on receipt of a renewal application approved by the department and payment of the required renewal fees.

**Section 40-68-110** Disclosure by licensee of information as to insurance or benefit plans for benefit of assigned employees; other reports may be required by regulation.

- (A) A licensee shall disclose to the department, each client company, and its assigned employees information relating to any insurance or benefit plan provided for the benefit of its assigned employees. Benefit plan information must be provided to the assigned employees and the assigned employees shall sign a statement disclosing they have read and understand the benefit plan information prior to enrollment of assigned employees into the plan. The information must, at a minimum, include:
- (1) the type of coverage;
  - (2) the identity of each insurer for each type of coverage;
  - (3) the amount of benefits provided for each type of coverage and to whom or on whose behalf benefits are to be paid;
  - (4) the policy limits on each insurance policy;
  - (5) whether the coverage is fully insured, partially insured, or fully self-funded; and
  - (6) other information, such as full disclosure of deductibles or co-payments.
- (B) With respect to any insurance or benefit plan provided by a licensee for the benefit of its assigned employees, the licensee shall provide to the assigned employees the name and address of the insurance agent or broker responsible for securing the policy of insurance on behalf of the licensee.
- (C) The licensee shall disclose to the department whether the coverage is fully insured, partially insured, or fully self-funded. This provision does not in any way endorse or approve the sponsoring of partially insured or self-funded benefit plans by a licensee, as these plans may not be sponsored, offered, endorsed, or otherwise proffered by a licensee.
- (D) The licensee shall notify the client company and the department in writing about a discontinuance and replacement, if any, of any health plan or workers' compensation insurance coverage no later than ten business days after the discontinuance and before offering any replacement policy.
- (E) The administrator by regulation may require the filing by licensees of other reports necessary to the implementation of this chapter.

**Section 40-68-120** Licensee's obtaining of workers' compensation coverage; licensee-sponsored and client-sponsored benefit plans for assigned employees; unemployment taxes; notification of start and end of relationship with client company.

- (A) A licensee may elect to obtain workers' compensation insurance coverage in the same manner as any other employer as provided for in this subsection:
- (1) An insurer issuing the policy must be licensed in this State to write such policies.
  - (2) An insurer issuing a policy of workers' compensation insurance to a licensee may not plead as a defense:
    - (a) that the client company is not subject to Title 42. The insurer is estopped to deny coverage;
    - (b) lack of an employment relationship between a person engaged in an employment as defined in Title 42 and the client company;
    - (c) breach of contract by the licensee or client company. The insurer is not entitled to plead as a defense to an employee's claim for benefits any defects in the performance of a contract between the licensee and client company.

- (3) No policy of insurance against liability arising under Title 42 may be issued to a licensee unless the policy contains the agreement of the insurer that the insurer will promptly pay to the persons entitled to them all benefits conferred by Title 42 and all installments of the compensation that may be awarded or agreed upon and that the obligation is not affected by default of the licensee or client company or by default in giving notice required by the policy or otherwise.
  - (4) A policy of insurance issued to a licensee is, and must be construed as, a direct promise by the insurer to the person entitled to compensation enforceable in his name.
  - (5) The insurer agrees that:
    - (a) notice to or acknowledgment of the occurrence of an injury on the part of the client company is notice to or knowledge on the part of the licensee and its workers' compensation insurer;
    - (b) for purposes of Title 42, the jurisdiction of the client company is the jurisdiction of the licensee and its workers' compensation insurer;
    - (c) the licensee and its workers' compensation insurer, in all things, are bound by and subject to the awards, judgments, or decrees rendered against them under the provisions of Title 42; and
    - (d) insolvency, bankruptcy, or discharge in bankruptcy of the licensee or client company does not relieve the workers' compensation insurer from the payment of compensation for disability or death sustained by an employee during the life of a workers' compensation insurance policy issued to the licensee.
  - (6) No agreement by an employee to pay a portion of a premium paid by the licensee or client company to an insurer or to contribute to a benefit fund or department maintained by a licensee or client company for the purpose of providing insurance under Title 42 is valid, and any licensee or client company who makes a deduction for the purpose from the pay of an employee entitled to benefits under Title 42 is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars plus reimbursement to the employee of the deductions.
  - (7) When a person referred to as a licensee undertakes to provide assigned employees to a client company, the licensee is liable to pay a worker employed by the client company compensation under Title 42 which the licensee would have been liable to pay if the worker had been immediately employed by the licensee. When the licensee is liable to pay compensation under this section, it is entitled to indemnity from a client company who would have been liable to pay compensation to the worker independently of this section and have a cause of action for indemnity. This section must be construed to require that a licensee's workers' compensation carrier is liable to pay compensation to the client company's entire work force with the licensee and carrier's right to indemnity from the client company.
- (B) If workers' compensation coverage is obtained, that insurance must comply with the applicable provisions of the insurance laws of this State.
- (C) A licensee is entitled to the same rights to obtain all types of insurance coverage, including endorsements obtained by other business entities doing business in this State.
- (D) For companies who have obtained workers' compensation insurance coverage in the residual (assigned risk) market, the first three years that a client company has a contract with a licensee, the licensee shall pay workers' compensation insurance premiums based on the experience modification rate of the client company. The South Carolina Department of Insurance shall adopt regulations to implement this subsection. This subsection applies only to the residual (assigned risk) market.
- (E) The licensee must categorize leased employees according to their classification within a client company.
- (F) A licensee and client company both are deemed an employer and may sponsor and maintain benefit plans for assigned workers. An employee health benefit plan sponsored by a licensee for the benefit of assigned employees must be an insured health benefit plan offered by an insurer licensed under Title 38. The employee health benefit plans provided by a licensed insurance

provider, including the use of third party administrators, must comply with the applicable provisions of the insurance laws of this State and other federal law, including The Employment Retirement Income Security Act (ERISA), 29 USC Section 101, et seq. No licensee may maintain, sponsor, offer, endorse, or otherwise proffer self-insured, self-funded, or other plans for health benefits, that are not licensed with the Department of Insurance.

- (G) Notwithstanding subsection (F), a client company may include assigned employees in a benefit plan sponsored and maintained solely by the client company for its own employees, as long as the benefit plan complies with Title 38 and federal law including ERISA.
- (H) A professional employer organization or professional employer organization group is responsible for the payment of unemployment taxes pursuant to law.
- (I) Licensees, within thirty days, shall notify the South Carolina Employment Security Commission and the department of the start and termination of the licensee's relationship with a client company.

**Section 40-68-130** Form and content of licenses and notices; display.

- (A) The department by regulation shall determine the form and content of:
  - (1) the licenses issued under this chapter; and
  - (2) notices required to be posted under this section.
- (B) The license issued under this chapter must be posted in a conspicuous place in the principal place of business in this State of the licensee. The licensee shall display, in a place that is in clear and unobstructed public view, a notice stating that the business operated at the location is licensed and regulated by the department and that any questions or complaints should be directed to the department.

**Section 40-68-140** Name under which business may be conducted; change of name or of location of primary office or records; addition of business offices; license not assignable.

- (A) A licensee may not conduct business under a name other than that specified in the license. A license issued under this chapter is not assignable. A licensee may not conduct business under any fictitious or assumed name without prior written authorization from the department. The department may not authorize the use of a name that is so similar to that of a public office or agency or to that of another licensee that the public may be confused or misled by its use. A licensee may not conduct business under more than one name unless it has obtained a separate license for each name.
- (B) A licensee may change its licensed name at any time by notifying the department and paying a fee for each change of name. The department by regulation shall set the fee for each name change in an amount not to exceed fifty dollars. A licensee may change its name on renewal of the license without the payment of the name change fee.
- (C) A licensee must notify the department in writing of:
  - (1) a change in the location of its primary business office;
  - (2) the addition of more business offices; or
  - (3) a change in the location of business records maintained by the licensee.

**Section 40-68-150** Prohibited acts; operation without license; wrongful use of title or representation of being licensed; use of forged or false information to obtain license or in disciplinary proceeding; use of expired or revoked license; penalties.

- (A) A person may not:
- (1) engage in professional employer services without holding a license under this chapter as a professional employer organization or a professional employer organization group;
  - (2) use the name or title 'staff leasing services company', 'licensed staff leasing services company', 'licensed staff leasing services group', or 'professional employer organization', 'licensed professional employer organization', 'licensed professional employer organization group', 'professional employer organization group', 'staff leasing services group', or otherwise represent that it is licensed under this chapter, unless the entity holds a license issued under this chapter;
  - (3) represent as the person's own the license of another person or represent that a person is licensed if the person does not hold a license;
  - (4) give false or forged evidence to the department in connection with obtaining or renewing a license or in connection with disciplinary proceeding under this chapter;
  - (5) use or attempt to use a license that has expired or been revoked;
  - (6) offer an employee a self-funded, self-insured, or other employee benefit plan not licensed under Title 38, unless the program is maintained by the client company individually for the sole benefit of participating co-employees of the client company; or
  - (7) misrepresent that any self-funded, self-insured, or unlicensed benefit plans are licensed under Title 38 or otherwise in compliance with ERISA.
- (B) A person who voluntarily violates the provisions of this section is guilty of a misdemeanor and, upon conviction, must be imprisoned not more than one year or fined not more than fifty thousand dollars, or both.

**Section 40-68-155** Insurance complaints to be investigated by Department of Insurance

When a complaint is filed against a licensee with the department regarding any insurance issue, the Department of Insurance shall investigate the complaint.

**Section 40-68-160** Disciplinary action; grounds; sanctions; notice, hearing, and other provisions of Administrative Procedures Act applicable; reinstatement

- (A) For the purposes of this section, 'conviction' includes a plea of guilty or nolo contendere or a finding of guilt.
- (B) The department may take disciplinary action against a licensee, or a person engaging in professional employer services without a license, on any of the following grounds:
- (1) the conviction of a licensee or a controlling person of a licensee of bribery, fraud, or intentional or material misrepresentation in obtaining, attempting to obtain, or renewing a license;
  - (2) the conviction of a licensee or a controlling person of a licensee of a crime that relates to the operation of a professional employer organization or the ability of the licensee or a controlling person of a licensee to operate a professional employer organization;
  - (3) the conviction of a licensee or a controlling person of a licensee of a crime that relates to the classification, misclassification, or under-reporting of employees under the South Carolina Workers' Compensation Act;
  - (4) the conviction of a licensee or a controlling person of a licensee of a crime that relates to the establishment or maintenance of a self-insurance program, whether health insurance, workers' compensation insurance, or other insurance;
  - (5) the conviction of a licensee or a controlling person of a licensee of a crime that relates to fraud, deceit, or misconduct in the operation of a professional employer organization;
  - (6) engaging in professional employer services without a license;
  - (7) transferring or attempting to transfer a license issued pursuant to this chapter;
  - (8) violating this chapter or an order or regulation issued by the department pursuant to this chapter;

- (9) failing to notify the department, in writing, of the civil judgment or felony conviction of a controlling person not later than the thirtieth day after the date on which the judgment or conviction is entered;
  - (10) failing to cooperate with an investigation, examination, or audit of the licensee's records conducted by the licensee's insurance company or its designee, as provided by the insurance contract or as authorized by law by the South Carolina Department of Insurance;
  - (11) failing to notify the department and the South Carolina Department of Insurance not later than the thirtieth day after the effective date of a change in ownership, principal business address, or the address of accounts and records;
  - (12) failing to correct a tax filing or payment deficiencies within a reasonable time as determined by the department;
  - (13) refusing, after reasonable notice, to meet reasonable health and safety requirements within the licensee's control and made known to the licensee by a federal or state agency;
  - (14) failing to correct a delinquency in the payment of the licensee's insurance premiums within a reasonable time;
  - (15) failing to correct a delinquency in the payment of an employee benefit plan premiums or contributions within a reasonable time;
  - (16) knowingly or without sufficient inquiry, maintain, sponsor, offer, endorse, or otherwise proffer self-insured, self-funded, or other employee benefit plans that are not licensed by the Department of Insurance;
  - (17) knowingly making a material misrepresentation to an insurance company, to the department, or other governmental agency;
  - (18) adverse final action by a state or federal regulatory agency for violations within the scope or control of the licensee;
  - (19) failure to inform the department in writing within thirty days of an adverse final action by a state or federal regulatory agency; or
  - (20) in case of a professional employer organization or group that has qualified for licensing pursuant to Section 40-68-55, the failure to notify the department within thirty days of any change in the status of its certification with the independent and qualified assurance organization.
- (C) Upon finding that a licensee has violated one or more provisions of this section, the department may:
- (1) deny an application for a license;
  - (2) revoke, restrict, suspend, or refuse to renew a license;
  - (3) impose an administrative penalty in an amount not less than one thousand dollars for each violation, but not more than fifty thousand dollars;
  - (4) issue a reprimand;
  - (5) issue a cease and desist order; or
  - (6) place the licensee on probation for a period and subject to conditions and restrictions that the department specifies.
- (D) On revocation, or suspension of a license, the licensee immediately shall return the license to the department and may not:
- (1) solicit any new clients; or
  - (2) enter into or execute any additional contracts for professional employer services.
- (E) Disciplinary action, a denial of an application for a new or renewal license, a revocation or suspension of a license, or a determination that a controlling person is unqualified may occur subject to the Administrative Procedures Act, with notice to, and an opportunity for a hearing by, the affected applicant, licensee, or controlling person. All contested hearings pursuant to this section are before the Administrative Law Court.
- (F) If a license is revoked or renewal is denied, the affected licensee may request a reinstatement hearing after a minimum of one year. The department may reinstate or renew the license only if the cause of the nonrenewal or revocation has been corrected.
- (G) A licensee who is found to be engaged in unlawful conduct may be assessed the reasonable costs necessary to the investigation, disciplinary proceedings, court proceedings, or other actions to enforce the provisions of this chapter.

**Section 40-68-165** Actions in circuit court to enforce provisions of chapter.

The department or the Attorney General may file an action in circuit court to enforce the provisions of this chapter.

**Section 40-68-170** Fees used to implement provisions of chapter.

All fees collected by the department under this chapter must be used to implement the provisions of this chapter.

**Section 40-68-180** Other applicable license requirements still apply; when licensed, registered, or certified employee is considered employee of client company or of licensee; Employment Security Law unaffected.

This chapter does not exempt a client of a licensee or an assigned employee from any other license requirements imposed under local, state, or federal law. An employee who is licensed, registered, or certified under law and who is assigned to a client company is an employee of the client company for the purpose of that license, registration, or certification, but otherwise remains the employee of the licensee as provided in this chapter. Nothing in this chapter affects the South Carolina Employment Security Law (Sections 41-27-10 through 41-41-50).