

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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HOUSE BILL 48

Short Title: Employee Leasing Act.

(Public)

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Sponsors: Representative Ives.

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Referred to: Business and Labor.

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January 30, 1995

1 A BILL TO BE ENTITLED  
2 AN ACT TO REQUIRE THE LICENSURE OF EMPLOYEE LEASING FIRMS.

3 The General Assembly of North Carolina enacts:

4 Section 1. Effective January 1, 1996, Chapter 95 of the General Statutes is  
5 amended by adding the following new Article to read:

6 **"ARTICLE 23.**

7 **"EMPLOYEE LEASING ACT.**

8 **"§ 95-260. Short title; findings.**

9 (a) This act shall be known and may be cited as the North Carolina Employee  
10 Leasing Act.

11 (b) The General Assembly finds that it is in the public interest to establish  
12 standards for the licensing and operation of firms engaged in the business of leasing  
13 employees.

14 **"§ 95-261. Definitions.**

15 As used in this Article, unless the context clearly requires otherwise, the term:

16 (1) 'Applicant' means an individual, person, corporation, partnership, or  
17 other entity seeking the granting or renewal of a license under this  
18 Article.

19 (2) 'Client' means a person who obtains all or any part of its workforce from  
20 another person through an employee leasing arrangement.

- 1           (3) 'Commissioner' means the Commissioner of Labor or the  
2           Commissioner's designee.
- 3           (4) 'Controlling person' means the person having a majority ownership  
4           interest in each and every one of the employee leasing firms within an  
5           employee leasing firm group.
- 6           (5) 'Employee leasing arrangement' means an arrangement, by contract or  
7           otherwise, whereby:
- 8           a. An employee leasing firm assigns employees to perform services  
9           for a client;
- 10          b. The arrangement is intended to be, or is, ongoing rather than  
11          temporary in nature; and
- 12          c. Employer responsibilities, including the right of direction and  
13          control of the employees, are borne solely by the employee  
14          leasing firm or are shared by the employee leasing firm and the  
15          client.
- 16          The term 'employee leasing arrangement' shall not include arrangements  
17          for services to be performed by temporary employees or by persons  
18          determined to be independent contractors with respect to the user of  
19          such services.
- 20          (6) 'Employee leasing firm' means any person engaged in providing  
21          services of employees pursuant to one or more employee leasing  
22          arrangements.
- 23          (7) 'Employee leasing firm group' means two or more employee leasing  
24          firms, the majority ownership of which is held, directly or indirectly, by  
25          the same person.
- 26          (8) 'Licensee' means a person licensed under this Article as an employee  
27          leasing firm or employee leasing firm group.
- 28          (9) 'Person' means an individual, association, partnership, corporation, or  
29          other entity.
- 30          (10) 'Temporary employee' means a person employed either through another  
31          person or directly by an employer to support or supplement an  
32          employer's existing workforce in special situations such as employee  
33          absences, temporary skill shortages, seasonal workloads, and special  
34          assignments and projects with the expectation that the temporary  
35          position will be terminated upon the completion of the task, function, or  
36          purpose for which the temporary employee's services were engaged.

37 **"§ 95-262. Rules.**

38       The Commissioner shall, in accordance with Chapter 150B of the General Statutes,  
39       adopt rules to carry out the purposes of this Article.

40 **"§ 95-263. Exemptions.**

41       This Article shall not apply to labor organizations or to any political subdivision of  
42       this State or the United States, or to any programs or agencies thereof.

43 **"§ 95-264. License required.**

1 No employee leasing firm or employee leasing firm group shall conduct business in  
2 this State or enter into a contractual relationship with a client relating to business  
3 conducted in this State by the client without first obtaining a license therefor from the  
4 Commissioner. Licenses shall be renewed annually.

5 **"§ 95-265. Application and requirements for license; licensure of nonresident**  
6 **persons.**

7 (a) Every applicant for an initial license and every applicant for renewal of a  
8 license shall file with the Commissioner a completed application on a form prescribed by  
9 the Commissioner.

10 (b) An applicant who is not a resident of this State or not incorporated or otherwise  
11 organized in this State must, prior to applying for a license under this Article, be licensed  
12 as an employee leasing firm or as an employee leasing firm group in the state in which it  
13 is a resident or in which it is incorporated or otherwise organized, if the resident state  
14 requires licensure. The Commissioner may adopt rules allowing employee leasing firms  
15 organized in other states to obtain a license for operations within this State and providing  
16 for the grant of licenses by reciprocity. The Commissioner may issue a restricted license  
17 to an employee leasing firm or employee leasing firm group resident or domiciled in  
18 another state for limited operation within this State under the following conditions:

19 (1) If the applicant's state of domicile or residence provides for licensing of  
20 employee leasing companies, then the applicant must be licensed and in  
21 good standing in its state of domicile or residence, and the applicant's  
22 state of domicile or residence must provide for granting a privilege for  
23 restricted licensing to employee leasing companies or groups resident or  
24 domiciled in this State similar to that provided under this act; and

25 (2) The applicant does not maintain an office in this State, does not  
26 maintain a sales force or have a sales representative in this State, and  
27 that does not in any way solicit clients resident or domiciled in this  
28 State; and

29 (3) The applicant does not have more than 100 leased employees working  
30 in this State.

31 (c) Applicants shall meet the following standards:

32 (1) If an individual, the applicant shall have reached the age of majority.

33 (2) The applicant and every person named in the application as an officer,  
34 director, shareholder, or partner of the applicant shall be of good moral  
35 character and show evidence of business integrity and financial  
36 responsibility.

37 (d) The application shall include the following information:

38 (1) The name of the applicant and its principal place of business in this  
39 State, together with the addresses of all other offices within this State  
40 through which the applicant intends to conduct business. If the  
41 applicant's principal place of business is located in another state, the  
42 address of this business shall be provided.

- 1           (2) If the applicant is a corporation, the names and home addresses of each  
2 officer, director, and shareholder who owns a five percent (5%) or  
3 greater interest in the corporation.
- 4           (3) If the application is a partnership, the names and home addresses of  
5 each of the partners, indicating whether the partner is a general or  
6 limited partner.
- 7           (4) If the applicant is a controlling person of an employee leasing firm  
8 group, the applicant shall include for each employee leasing firm within  
9 the group the information required in subdivisions (2) and (3) of this  
10 subsection. The applicant shall also include a guarantee, on a form  
11 approved by the Commissioner, executed by each employee leasing  
12 firm within the group guaranteeing payment of all financial obligations  
13 with respect to wages, employment taxes, insurance premiums, and  
14 employee benefits of each other employee leasing firm within the group.
- 15           (5) The trade names under which the applicant conducts business in this  
16 State and a list, by jurisdiction, of each trade name under which the  
17 applicant conducts or has conducted business at any time in the  
18 preceding five years in this State or any other state.
- 19           (6) The applicant's taxpayer identification number.
- 20           (7) A list of the names and addresses of clients with whom the applicant has  
21 entered into an employee leasing arrangement as of the date of the  
22 application and to whom the applicant provides leased employees within  
23 this State. This list of clients shall be treated as the confidential  
24 property of the applicant and shall not be distributed or disclosed to  
25 anyone other than authorized employees of this State.
- 26           (8) Any other information that the Commissioner may require.
- 27       (e) Licenses issued under this Article are at all times the property of the  
28 Commissioner. A licensee shall immediately return the license to the Commissioner  
29 upon the Commissioner's demand made in accordance with this Article.

30 **"§ 95-266. Fees.**

31       (a) The fee for an initial license shall be five hundred dollars (\$500.00) for  
32 employee leasing firms and one thousand dollars (\$1,000) for employee leasing firm  
33 groups. The fee for annual renewal of a license shall be two hundred fifty dollars  
34 (\$250.00) for employee leasing firms and one thousand dollars (\$1,000) for employee  
35 leasing firm groups.

36       (b) Fees for an initial license or renewal license shall be submitted with the  
37 application and shall be made payable to the State of North Carolina. Fees are  
38 nonrefundable except in cases where the Commissioner has denied application for the  
39 license or renewal thereof. Fees collected by the Commissioner in accordance with this  
40 section shall be deposited to the General Fund.

41 **"§ 95-267. Grounds for denial of licensure; appeals.**

42       (a) The Commissioner shall deny an application for licensure and a license shall  
43 not be issued:

1           (1) Where the applicant, or any person named in the application, has made a  
2 material misrepresentation in the application; or

3           (2) Upon finding that any person named in the application is not of good  
4 moral character or has not shown evidence of business integrity or  
5 financial responsibility, or that the applicant has not complied with the  
6 provisions of this Article.

7           (b) The Commissioner shall find facts to substantiate denial of the issuance of a  
8 license. An applicant may appeal the denial in accordance with Chapter 150B of the  
9 General Statutes.

10 **"§ 95-268. Suspension or revocation of license.**

11           (a) The Commissioner may suspend for up to 12 months, or may revoke or refuse  
12 to renew, any license issued under this Article if the Commissioner finds one or more of  
13 the following causes exist:

14               (1) Any cause for which issuance of the license could have been refused  
15 had it existed at the time of issuance and been known to the  
16 Commissioner;

17               (2) Violation of or noncompliance with any applicable provision of this  
18 Article or of any order of the Commissioner under this Article;

19               (3) Obtaining or attempting to obtain a license through misrepresentation or  
20 fraud;

21               (4) The licensee or any individual named in the license is convicted of a  
22 felony; or

23               (5) Failure to provide a written response to a written inquiry from the  
24 Commissioner within 30 days after receipt of the inquiry.

25           (b) The license of a partnership, corporation, or controlling person may be  
26 suspended, revoked, or may not be renewed, if cause, as provided in subsection (a) of this  
27 section, is attributed to any individual named in the application.

28           (c) Upon suspension or revocation of a license, the Commissioner shall  
29 immediately notify the licensee by first-class mail addressed to the licensee at its last  
30 address of record with the Commissioner. The licensee may appeal the suspension or  
31 revocation in accordance with Chapter 150B of the General Statutes.

32           (d) When the suspension or revocation of a license becomes final, the  
33 Commissioner shall immediately notify the following persons of the suspension or  
34 revocation:

35               (1) Each client of the licensee, by mail;

36               (2) The Employment Security Commission;

37               (3) The office of the Attorney General of North Carolina;

38               (4) The North Carolina Industrial Commission; and

39               (5) The Secretary of State of North Carolina.

40           (e) When a license has been revoked under this Article, the Commissioner shall  
41 not issue another license to the same person earlier than three years from the date of the  
42 revocation.

43 **"§ 95-269. Rights and responsibilities of licensees.**

1       (a) A licensed employee leasing firm or employee leasing firm group shall  
2 perform the following general responsibilities as a licensee:

3           (1) Have a written contract between the client and the employee leasing  
4 firm setting forth the responsibilities and duties of each party. The  
5 contract shall disclose to the client the services to be rendered including  
6 costs and the respective rights and obligations of the parties. The  
7 contract shall also provide that the employee leasing firm, at a  
8 minimum:

9           a. Reserves a right of direction and control over leased employees  
10 assigned to the client;

11           b. Sets the rate of pay for leased employees, whether or not through  
12 negotiation with the client;

13           c. Assumes responsibility for the payment of payroll taxes from its  
14 own accounts and for collection and payment of withholding  
15 taxes from wages of leased employees; and

16           d. Retains authority to hire, fire, and reassign leased employees.

17           (2) Give written notice of the general nature of the relationship between the  
18 employee leasing firm and the client to each leased employee assigned  
19 to the client.

20           (3) Maintain and make available for the Commissioner's inspection all  
21 records concerning the licensee's conduct of business under its license.  
22 All of these records shall be maintained for a period of three years after  
23 termination of the employment relationship or employee leasing  
24 arrangement, or for a longer period as may be required by any other  
25 federal, State, or local law.

26       (b) A licensed employee leasing firm shall be deemed to be an employer of its  
27 leased employees and, as such, shall perform the following responsibilities in  
28 conformance with all applicable federal, State, and local laws:

29           (1) Pay wages and collect, report, and pay employment taxes from its own  
30 account;

31           (2) Pay unemployment taxes as required by North Carolina law. During the  
32 term of the leasing arrangement, the employee leasing firm is liable for  
33 the payment of unemployment tax contributions, penalties, and interest  
34 on wages paid to leased employees who are assigned to a client. The  
35 employee leasing firms shall report and pay all contributions under its  
36 State employer identification number, using its contribution rate; and

37           (3) Ensure that all of its employees are covered by workers' compensation  
38 insurance provided in conformance with the laws of this State through a  
39 policy or plan maintained by either the employee leasing firm or the  
40 client; provided, however, for purposes of risks insured pursuant to this  
41 State's assigned risk plan, the Commissioner may adopt rules necessary  
42 to regulate the workers' compensation coverage provided through the  
43 assigned risk plan.

1 (c) An employee leasing firm may sponsor and maintain employee benefit and  
2 welfare plans for its leased employees, provided that such plans, if limited to the  
3 employees of the employee leasing firm, shall not be deemed to be multiple employer  
4 welfare arrangements within the meaning of applicable law. All employee benefit and  
5 welfare plans maintained by the employee leasing firm shall be organized and operated in  
6 accordance with applicable federal and State laws. Nothing in this Article requires an  
7 employee leasing firm to provide particular benefits to its leased employees under an  
8 employee benefit or welfare plan, or to provide comparable benefits to leased employees  
9 located at different work sites.

10 **"§ 95-270. Employee leasing firm advisory council established; membership, terms,**  
11 **meetings.**

12 (a) There is established the North Carolina Employee Leasing Firm Advisory  
13 Council. The Council shall be composed of five members appointed by the  
14 Commissioner. Each member shall be of good moral character and shall be domiciled in  
15 this State for at least three years immediately preceding appointment to the Council. At  
16 least three of the persons appointed to the Council shall have occupied for not less than  
17 three years immediately preceding appointment, and shall occupy at the time of  
18 appointment, executive or managerial positions in the employee leasing industry in this  
19 State. Members of the Council shall receive no salary for their service, but shall receive  
20 per diem and necessary travel and subsistence expenses in accordance with G.S. 138-5.

21 (b) Two of the persons initially appointed to the Council shall serve three-year  
22 initial terms, two shall serve two-year initial terms, and one shall serve a one-year initial  
23 term. Thereafter, all terms shall be for three years. Each Council member shall serve  
24 until the appointment and qualification of the member's successor. Vacancies occurring  
25 for any cause shall be filled by appointment for the balance of the unexpired term. The  
26 Commissioner may remove any member of the Council for misconduct, incompetence,  
27 neglect of duty, or other good cause.

28 (c) The Council shall meet at least once in each calendar quarter of each year.  
29 Council meetings shall be open and subject to Article 33C of Chapter 143 of the General  
30 Statutes. Three members of the Council shall constitute a quorum to conduct business.  
31 The Council shall elect from its members, each for a term of one year, a chair and vice-  
32 chair. The Council may appoint committees necessary to carry out its duties. The  
33 Commissioner or a designee thereof shall serve ex officio as the secretary of the Council,  
34 but shall not be a member of the Council.

35 **"§ 95-271. Duties of Council.**

36 (a) The Council shall do the following:

37 (1) Inquire into the nature of the employee leasing industry, and make  
38 recommendations that are important and necessary to maintain the  
39 welfare of the citizens of this State, the public health, and the progress  
40 of the employee leasing industry.

41 (2) Assist the Commissioner in the formulation, adoption, amendment, or  
42 repeal of rules authorized under this Article. The Commissioner and a

1 majority of a properly constituted quorum of the Council shall review  
2 rules adopted, amended, or repealed, before they become effective.

3 (3) Collect information and data necessary for the proper administration of  
4 this Article.

5 (4) Consider and make recommendations to the Commissioner with respect  
6 to all matters relating to the employee leasing industry in this State,  
7 including, but not limited to, license applications and complaints against  
8 employee leasing firms.

9 (5) Publish findings and make necessary recommendations to the  
10 Commissioner, and take other actions necessary to implement its  
11 responsibilities under this Article.

12 **"§ 95-272. Penalties.**

13 (a) Any person who engages in the business of or acts as an employee leasing firm  
14 or an employee leasing firm group without first obtaining a license from the  
15 Commissioner, or who otherwise violates this Article, shall be liable for a civil penalty  
16 for each offense of not less than two hundred fifty dollars (\$250.00) nor more than five  
17 thousand dollars (\$5,000).

18 (b) The Commissioner may bring an action in the superior courts of this State to  
19 enjoin from doing business any person who engages in the business of or acts as an  
20 employee leasing firm or an employee leasing firm group without having first obtained a  
21 license therefor.

22 **"§ 95-273. Other law applies.**

23 (a) Nothing in this Article exempts a client of an employee leasing firm, or an  
24 employee leased to a client by an employee leasing firm, from any other State, local, or  
25 federal license, certification, or registration requirements. If an individual who is a leased  
26 employee is required by law to be licensed, certified, or registered in order to perform the  
27 job to which the employee is assigned by the client, it shall be the client's responsibility  
28 to ensure that the leased employee is properly licensed, certified, or registered, and the  
29 leased employee shall be an employee of the client for purposes of the license,  
30 certification, or registration.

31 (b) Nothing in this Article shall impose liability on an employee leasing firm or  
32 employee leasing firm group for the general debts, obligations, loss of profits, business  
33 goodwill, or other consequential, special, or incidental damages sustained by its client,  
34 for which the employee leasing firm or employee leasing firm group would not otherwise  
35 be liable."

36 Sec. 2. This act is effective upon ratification.