

AMENDMENTS TO LB 579

Introduced by Business and Labor.

1 1. Strike the original sections and insert the following
2 new sections:

3 Section 1. Sections 1 to 10 of this act shall be
4 known and may be cited as the Professional Employer Organization
5 Registration Act.

6 Sec. 2. For purposes of the Professional Employer
7 Organization Registration Act:

8 (1) Client means any person who enters into a
9 professional employer agreement with a professional employer
10 organization;

11 (2) Co-employer means either a professional employer
12 organization or a client;

13 (3) Co-employment relationship means a relationship
14 which is intended to be an ongoing relationship rather than a
15 temporary or project-specific one, wherein the rights, duties,
16 and obligations of an employer which arise out of an employment
17 relationship have been allocated between co-employers pursuant
18 to a professional employer agreement and the act. In such a
19 co-employment relationship:

20 (a) The professional employer organization is entitled to
21 enforce only such employer rights and is subject to only those
22 employer obligations specifically allocated to the professional
23 employer organization by the professional employer agreement or the

1 act;

2 (b) The client is entitled to enforce those rights
3 and obligated to provide and perform those employer obligations
4 allocated to such client by the professional employer agreement or
5 the act; and

6 (c) The client is entitled to enforce any right and
7 obligated to perform any obligation of an employer not specifically
8 allocated to the professional employer organization by the
9 professional employer agreement or the act.

10 (4) Covered employee means an individual having
11 a co-employment relationship with a professional employer
12 organization and a client who meets all of the following
13 criteria: (a) The individual has received written notice of
14 co-employment with the professional employer organization and
15 (b) the individual's co-employment relationship is pursuant to a
16 professional employer agreement subject to the act. Individuals who
17 are officers, directors, shareholders, partners, and managers of
18 the client are covered employees to the extent the professional
19 employer organization and the client have expressly agreed in
20 the professional employer agreement that such individuals are
21 covered employees, if such individuals meet the criteria of this
22 subdivision and act as operational managers or perform day-to-day
23 operational services for the client;

24 (5) Department means the Department of Labor;

25 (6) Master policy means a single worker's compensation
26 insurance policy issued by an insurer authorized to do business in
27 this state to a professional employer organization in the name of

1 the professional employer organization that covers more than one
2 client of the professional employer organization;

3 (7) Multiple coordinated policy means a contract of
4 insurance for worker's compensation under which an insurer
5 authorized to do business in this state issues separate worker's
6 compensation insurance policies to a professional employer
7 organization for each client of the professional employer
8 organization that is insured under the contract. The carrier may
9 issue such policies in the name of the client with the professional
10 employer organization as an additional insured, in the name of the
11 professional employer organization, or to the professional employer
12 organization as labor contractor for the client;

13 (8) Person means any individual, partnership,
14 corporation, limited liability company, association, or any
15 other form of legally recognized entity;

16 (9) Professional employer agreement means a written
17 contract by and between a client and a professional employer
18 organization that provides:

19 (a) For the co-employment of covered employees;

20 (b) For the allocation of employer rights and obligations
21 between the client and the professional employer organization with
22 respect to covered employees; and

23 (c) That the professional employer organization and the
24 client assume the responsibilities required by the act;

25 (10) Professional employer organization means any
26 person engaged in the business of providing professional
27 employer services. A person engaged in the business of providing

1 professional employer services shall be subject to registration
2 under the act regardless of its use of the term or conducting
3 business as a professional employer organization, PEO, staff
4 leasing company, registered staff leasing company, employee leasing
5 company, or any other name.

6 The following are not professional employer organizations
7 or professional employment services for purposes of the act:

8 (a) Arrangements wherein a person, whose principal
9 business activity is not entering into professional employer
10 arrangements and which does not hold itself out as a professional
11 employer organization, shares employees with a commonly owned
12 company within the meaning of section 414(b) and (c) of the
13 Internal Revenue Code;

14 (b) Independent contractor arrangements by which a
15 person assumes responsibility for the product produced or service
16 performed by such person or his or her agents and retains and
17 exercises primary direction and control over the work performed
18 by the individuals whose services are supplied under such
19 arrangements; and

20 (c) Providing temporary help services;

21 (11) Professional employer organization group means two
22 or more professional employer organizations that are majority owned
23 or commonly controlled by the same entity, parent, or controlling
24 person;

25 (12) Professional employer services means the service of
26 entering into co-employment relationships under the Professional
27 Employer Organization Registration Act in which all or a majority

1 of the employees providing services to a client or to a division or
2 work unit of client are covered employees;

3 (13) Registrant means a professional employer
4 organization registered under the act;

5 (14) Temporary help services means services consisting of
6 a person:

7 (a) Recruiting and hiring its own employees;

8 (b) Finding other organizations that need the services of
9 those employees;

10 (c) Assigning those employees (i) to perform work at
11 or services for the other organizations to support or supplement
12 the other organizations' workforces, (ii) to provide assistance
13 in special work situations, including employee absences, skill
14 shortages, or seasonal workloads, or (iii) to perform special
15 assignments or projects;

16 (d) Customarily attempting to reassign the employees to
17 other organizations when they finish each assignment; and

18 (15) Working capital means current assets less current
19 liabilities as defined by generally accepted accounting principles.

20 Sec. 3. (1) Nothing contained in the Professional
21 Employer Organization Registration Act or in any professional
22 employer agreement shall affect, modify, or amend any collective
23 bargaining agreement or the rights or obligations of any client,
24 professional employer organization, or covered employee under the
25 federal National Labor Relations Act, 29 U.S.C. 151 et seq., or the
26 federal Railway Labor Act, 45 U.S.C. 151 et seq.

27 (2) (a) Nothing contained in the Professional Employer

1 Organization Registration Act or any professional employer
2 agreement shall:

3 (i) Diminish, abolish, or remove rights of covered
4 employees to a client or obligations of such client to a covered
5 employee existing prior to the effective date of the professional
6 employer agreement;

7 (ii) Affect, modify, or amend any contractual
8 relationship or restrictive covenant between a covered employee
9 and any client in effect at the time a professional employer
10 agreement becomes effective, nor prohibit or amend any contractual
11 relationship or restrictive covenant that is entered into
12 subsequently between a client and a covered employee. A
13 professional employer organization shall have no responsibility or
14 liability in connection with, or arising out of, any such existing
15 or new contractual relationship or restrictive covenant unless
16 the professional employer organization has specifically agreed
17 otherwise in writing;

18 (iii) Create any new or additional enforceable right of a
19 covered employee against a professional employer organization that
20 is not specifically provided by the professional employer agreement
21 or the act; or

22 (iv) Diminish, abolish, or remove rights of covered
23 employees as to a client or obligations of a client to covered
24 employees, including, but not limited to, rights and obligations
25 arising from civil rights laws guaranteeing non-discrimination in
26 employment practices. For purposes of this subdivision, notice
27 served to either co-employer shall be considered notice to both

1 co-employers. Notice served to a co-employer shall be immediately
2 transmitted to the other co-employer.

3 (b) (i) Nothing contained in the act or any professional
4 employer agreement shall affect, modify, or amend any state, local,
5 or federal licensing, registration, or certification requirement
6 applicable to any client or covered employee.

7 (ii) A covered employee who is required to be licensed,
8 registered, or certified according to law or regulation is deemed
9 solely an employee of the client for purposes of any such license,
10 registration, or certification requirement.

11 (c) A professional employer agreement shall not be deemed
12 to engage in any occupation, trade, profession, or other activity
13 that is subject to licensing, registration, or certification
14 requirements, or is otherwise regulated by a governmental
15 entity solely by entering into and maintaining a co-employment
16 relationship with a covered employee who is subject to such
17 requirements or regulation.

18 (d) A client shall have the sole right to direct
19 and control the professional or licensed activities of covered
20 employees and of the client's business. Such covered employees
21 and clients shall remain subject to regulation by the regulatory
22 or governmental entity responsible for licensing, registration, or
23 certification of such covered employees or clients.

24 (3) For purposes of determination of tax credits and
25 other economic incentives provided by this state and based on
26 employment, covered employees shall be deemed employees solely of
27 the client. A client shall be entitled to the benefit of any

1 tax credit, economic incentive, or other benefit arising as the
2 result of the employment of covered employees of such client.
3 Notwithstanding that the professional employer organization is the
4 W-2 reporting employer, the client shall continue to qualify for
5 such benefit, incentive, or credit. If the grant or amount of
6 any such incentives is based on number of employees, then each
7 client shall be treated as employing only those covered employees
8 co-employed by the client. Covered employees working for other
9 clients of the professional employer organization shall not be
10 counted. Each professional employer organization shall provide,
11 upon request by a client or an agency or department of this
12 state, employment information reasonably required by any agency
13 or department of this state responsible for administration of any
14 such tax credit or economic incentive and necessary to support any
15 request, claim, application, or other action by a client seeking
16 any such tax credit or economic incentive.

17 (4) With respect to a bid, contract, purchase order, or
18 agreement entered into with the state or a political subdivision
19 of the state, a client company's status or certification as
20 a small, minority-owned, disadvantaged, or woman-owned business
21 enterprise or as a historically underutilized business is not
22 affected because the client company has entered into a professional
23 employer agreement with a professional employer organization or
24 uses the services of a professional employer organization.

25 Sec. 4. (1) Except as otherwise provided in the
26 Professional Employer Organization Registration Act, no person
27 shall provide, advertise, or otherwise hold itself out as providing

1 professional employer services in this state, unless such person is
2 registered under the act.

3 (2) Each applicant for registration under the act shall
4 provide the department with the following information:

5 (a) The name or names under which the professional
6 employer organization conducts business;

7 (b) The address of the principal place of business of the
8 professional employer organization and the address of each office
9 it maintains in this state;

10 (c) The professional employer organization's taxpayer or
11 employer identification number;

12 (d) A list by jurisdiction of each name under which the
13 professional employer organization has operated in the preceding
14 five years, including any alternative names, names of predecessors
15 and, if known, successor business entities;

16 (e) A statement of ownership, which shall include the
17 name and evidence of the business experience of any person that,
18 individually or acting in concert with one or more other persons,
19 owns or controls, directly or indirectly, twenty-five percent
20 or more of the equity interest of the professional employer
21 organization;

22 (f) A statement of management, which shall include the
23 name and evidence of the business experience of any individual who
24 serves as president, chief executive officer, or otherwise has the
25 authority to act as senior executive officer of the professional
26 employer organization; and

27 (g) A financial statement setting forth the financial

1 condition of the professional employer organization or professional
2 employer organization group. At the time of initial registration,
3 the applicant shall submit the most recent audit of the applicant,
4 which audit may not be older than thirteen months. Thereafter,
5 a professional employer organization or professional employer
6 organization group shall file on an annual basis, within one
7 hundred eighty days after the end of the professional employer
8 organization's or professional employer organization group's fiscal
9 year, a succeeding audit. An applicant may apply for an extension
10 with the department, but any such request shall be accompanied by a
11 letter from the auditor stating the reasons for the delay and the
12 anticipated audit completion date.

13 The financial statement shall be prepared in accordance
14 with generally accepted accounting principles and audited by an
15 independent certified public accountant licensed to practice in
16 the jurisdiction in which such accountant is located and shall
17 be without qualification as to the going concern status of
18 the professional employer organization. A professional employer
19 organization group may submit combined or consolidated audited
20 financial statements to meet the requirements of this section.
21 A professional employer organization that has not had sufficient
22 operating history to have audited financials based upon at least
23 twelve months of operating history shall meet the financial
24 capacity requirements of subsection (5) of this section and present
25 financial statements reviewed by a certified public accountant.

26 (3) (a) Each professional employer organization operating
27 within this state as of the operative date of this act shall

1 complete its initial registration not later than one hundred
2 eighty days after the operative date of this act. Such initial
3 registration shall be valid until one hundred eighty days from the
4 end of the professional employer organization's first fiscal year
5 that is more than one year after the operative date of this act.

6 (b) Each professional employer organization not operating
7 within this state as of the operative date of this act shall
8 complete its initial registration prior to initiating operations
9 within this state. If a professional employer organization not
10 registered in this state becomes aware that an existing client
11 not based in this state has employees and operations in this
12 state, the professional employer organization shall either decline
13 to provide professional employer organization services for those
14 employees or notify the department within five business days of its
15 knowledge of this fact and file a limited registration application
16 under subsection (6) of this section or a full registration if
17 there are more than fifty covered employees. The department may
18 issue an interim operating permit for the period the registration
19 application is pending if the professional employer organization
20 is currently registered or licensed by another state and the
21 department determines it to be in the best interests of the
22 potential covered employees.

23 (4) Within one hundred eighty days after the end of
24 a registrant's fiscal year, such registrant shall renew its
25 registration by notifying the department of any changes in the
26 information provided in such registrant's most recent registration
27 or renewal. A registrant's existing registration shall remain in

1 effect during the pendency of a renewal application.

2 (5) Professional employer organizations in a professional
3 employer organization group may satisfy any reporting and financial
4 requirements of the act on a combined or consolidated basis
5 if each member of the professional employer organization group
6 guarantees the financial capacity obligations under the act of
7 each other member of the professional employer organization group.
8 In the case of a professional employer organization group that
9 submits a combined or consolidated audited financial statement
10 including entities that are not professional employer organizations
11 or that are not in the professional employer organization group,
12 the controlling entity of the professional employer organization
13 group under the consolidated or combined statement must guarantee
14 the obligations of the professional employer organizations in the
15 professional employer organization group.

16 (6) (a) A professional employer organization is eligible
17 for a limited registration under the act if such professional
18 employer organization:

19 (i) Submits a properly executed request for limited
20 registration on a form provided by the department;

21 (ii) Is domiciled outside this state and is licensed
22 or registered as a professional employer organization in another
23 state;

24 (iii) Does not maintain an office in this state or
25 directly solicit clients located or domiciled within this state;
26 and

27 (iv) Does not have more than fifty covered employees

1 employed or domiciled in this state on any given day.

2 (b) A limited registration is valid for one year, and may
3 be renewed.

4 (c) A professional employer organization seeking limited
5 registration under this section shall provide the department
6 with information and documentation necessary to show that the
7 professional employer organization qualifies for a limited
8 registration.

9 (d) Section 5 of this act does not apply to applicants
10 for limited registration.

11 (7) The department shall maintain a list of professional
12 employer organizations registered under the act that is readily
13 available to the public by electronic or other means.

14 (8) The department may prescribe forms necessary to
15 promote the efficient administration of this section.

16 (9) The department shall, to the extent practical,
17 permit by rule the acceptance of electronic filings, including
18 applications, documents, reports, and other filings required by the
19 act. Such rule may provide for the acceptance of electronic filings
20 and other assurance by an independent and qualified assurance
21 organization approved by the department that provides satisfactory
22 assurance of compliance acceptable to the department consistent
23 with or in lieu of the requirements of this section and section
24 5 of this act and other requirements of the act or the rules and
25 regulations adopted and promulgated pursuant to the act. Such rule
26 shall permit a professional employer organization to authorize an
27 assurance organization approved by the department to act on the

1 professional employer organization's behalf in complying with the
2 registration requirements of the act, including electronic filings
3 of information and payment of registration fees. Use of such an
4 approved assurance organization shall be optional and not mandatory
5 for a registrant. Nothing in this subsection shall limit or change
6 the department's authority to register or terminate registration of
7 a professional employer organization or to investigate or enforce
8 any provision of the act.

9 (10) All records, reports, and other information obtained
10 from a professional employer organization under the act, except to
11 the extent necessary for the proper administration of the act by
12 the department, shall be confidential and shall not be published
13 or open to public inspection other than to public employees in the
14 performance of their public duties.

15 Sec. 5. Except as provided in subsections (6) and (9) of
16 section 4 of this act, each professional employer organization or
17 professional employer organization group shall either:

18 (1) Maintain positive working capital at registration as
19 reflected in the financial statements submitted to the department
20 with the initial registration and each annual renewal; or

21 (2) For a professional employer organization or
22 professional employer organization group that does not have
23 positive working capital, provide a bond, irrevocable letter of
24 credit, or securities with a minimum market value equaling the
25 deficiency plus one hundred thousand dollars to the department.
26 Such bond shall be held by a depository designated by the
27 department and shall secure payment by the professional employer

1 organization of all taxes, wages, benefits, or other entitlement
2 due to or with respect to covered employees, if the professional
3 employer organization or professional employer organization group
4 does not make such payments when due.

5 Sec. 6. (1) Except as specifically provided in the
6 Professional Employer Organization Registration Act or in
7 the professional employer agreement, in each co-employment
8 relationship:

9 (a) The client shall be entitled to exercise all rights
10 and shall be obligated to perform all duties and responsibilities
11 otherwise applicable to an employer in an employment relationship;

12 (b) The professional employer organization shall be
13 entitled to exercise only those rights and obligated to perform
14 only those duties and responsibilities specifically required by
15 the act or in the professional employer agreement. The rights,
16 duties, and obligations of the professional employer organization
17 as co-employer with respect to any covered employee shall be
18 limited to those arising pursuant to the professional employer
19 agreement and the act during the term of co-employment by the
20 professional employer organization of such covered employee; and

21 (c) Unless otherwise expressly agreed by the professional
22 employer organization and the client in a professional employer
23 agreement, the client retains the exclusive right to direct and
24 control the covered employees as is necessary to conduct the
25 client's business, to discharge any of the client's fiduciary
26 responsibilities, or to comply with any licensure requirements
27 applicable to the client or to the covered employees.

1 (2) Except as specifically provided in the Professional
2 Employer Organization Registration Act, the co-employment
3 relationship between the client and the professional employer
4 organization, and between each co-employer and each covered
5 employee, shall be governed by the professional employer agreement.

6 Each professional employer agreement shall include the following:

7 (a) The allocation of rights, duties, and obligations as
8 described in section 6 of this act;

9 (b) That the professional employer organization shall
10 have responsibility to pay wages to covered employees; to withhold,
11 collect, report, and remit payroll-related and unemployment taxes;
12 and, to the extent the professional employer organization has
13 assumed responsibility in the professional employer agreement, to
14 make payments for employee benefits for covered employees. For
15 purposes of this section, wages does not include any obligation
16 between a client and a covered employee for payments beyond or
17 in addition to the covered employee's salary, draw or regular
18 rate of pay, such as bonuses, commissions, severance pay, deferred
19 compensation, profit sharing or vacation, sick or other paid
20 time off pay, unless the professional employer organization has
21 expressly agreed to assume liability for such payments in the
22 professional employer agreement;

23 (c) That the professional employer organization shall
24 have a right to hire, discipline, and terminate a covered
25 employee as may be necessary to fulfill the professional employer
26 organization's responsibilities under the act and the professional
27 employer agreement. The client shall have a right to hire,

1 discipline, and terminate a covered employee; and

2 (d) That the responsibility to obtain workers'
3 compensation coverage for covered employees, from a carrier
4 licensed to do business in this state and otherwise in compliance
5 with all applicable requirements, shall be specifically allocated
6 to either the client or the professional employer organization.

7 (3) With respect to each professional employer agreement
8 entered into by a professional employer organization, such
9 professional employer organization shall provide written notice to
10 each covered employee affected by such agreement and require the
11 client to post in a conspicuous place at the client's worksite
12 notice of the general nature of the co-employment relationship
13 between and among the professional employer organization, the
14 client, and such covered employees.

15 (4) Except to the extent otherwise expressly provided by
16 the applicable professional employer agreement:

17 (a) A client shall be solely responsible for the quality,
18 adequacy, or safety of the goods or services produced or sold in
19 the client's business;

20 (b) A client shall be solely responsible for directing,
21 supervising, training, and controlling the work of the covered
22 employees with respect to the business activities of the client
23 and solely responsible for the acts, errors, or omissions of the
24 covered employees with regard to such activities or when otherwise
25 acting under the express direction and control of the client;

26 (c) A client shall not be liable for the acts, errors, or
27 omissions of a professional employer organization or of any covered

1 employee of the client and a professional employer organization
2 when such covered employee is acting under the express direction
3 and control of the professional employer organization;

4 (d) Nothing in this subsection shall limit any
5 contractual liability or obligation specifically provided in a
6 professional employer agreement;

7 (e) A covered employee is not, solely as the result of
8 being a covered employee of a professional employer organization,
9 an employee of the professional employer organization for purposes
10 of general liability insurance, fidelity bonds, surety bonds,
11 employer's liability which is not covered by workers' compensation,
12 or liquor liability insurance carried by the professional employer
13 organization unless the covered employee is included by specific
14 reference in the professional employer agreement and applicable
15 prearranged employment contract, insurance contract, or bond.

16 (5) A registrant under the Professional Employer
17 Organization Registration Act is not engaged in the sale of
18 insurance by offering, marketing, selling, administering, or
19 providing professional employer organization services or employee
20 benefit plans for covered employees.

21 (6) Nothing in the act shall exempt a professional
22 employer organization or professional employer organization group
23 from compliance with the insurance laws of this state if its
24 activities go beyond subsection (5) of this section and fall within
25 the scope of such laws or any rule or regulation promulgated
26 pursuant to such laws.

27 (7) For purposes of this state or any county,

1 municipality, or other political subdivision thereof:

2 (a) Covered employees whose services are subject to sales
3 tax shall be deemed the employees of the client for purposes of
4 collecting and levying sales tax on the services performed by the
5 covered employee. Nothing contained in the act shall relieve a
6 client of any sales tax liability with respect to its goods or
7 services;

8 (b) Any tax or assessment imposed upon professional
9 employer services or any business license or other fee which
10 is based upon gross receipts shall allow a deduction from the
11 gross income or receipts of the business derived from performing
12 professional employer services that is equal to that portion of
13 the fee charged to a client that represents the actual cost of
14 wages and salaries, benefits, workers' compensation, payroll taxes,
15 withholding, or other assessments paid to or on behalf of a
16 covered employee by the professional employer organization under a
17 professional employer agreement;

18 (c) Any tax assessed or assessment or mandated
19 expenditure on a per capita or per employee basis shall be
20 assessed against the client for covered employees and against the
21 professional employer organization for its employees who are not
22 covered employees co-employed with a client. Benefits or monetary
23 consideration that meet the requirements of mandates imposed on
24 a client and that are received by covered employees through
25 the professional employer organization either through payroll
26 or through benefit plans sponsored by the professional employer
27 organization shall be credited against the client's obligation to

1 fulfill such mandates; and

2 (d) In the case of a tax or an assessment imposed
3 or calculated upon the basis of total payroll, the professional
4 employer organization shall be eligible to apply any small business
5 allowance or exemption available to the client for the covered
6 employees for the purpose of computing the tax.

7 Sec. 7. (1) A client and a professional employer
8 organization shall each be deemed an employer under the laws
9 of this state for purposes of sponsoring retirement and employee
10 welfare benefit plans for its covered employees.

11 (2) A fully insured employee welfare benefit plan offered
12 to the covered employees of a single professional employer
13 organization shall be for purposes of state law a single employee
14 welfare benefit plan and shall not be considered a multiple
15 employer welfare arrangement, as defined in section 44-7603, and
16 shall be exempt from the registration requirements of the Multiple
17 Employer Welfare Arrangement Act.

18 (3) For purposes of the Small Employer Health Insurance
19 Availability Act, a professional employer organization shall be
20 considered the employer of all of its covered employees and
21 all covered employees of one or more clients participating in a
22 health benefit plan sponsored by a single professional employer
23 organization shall be considered employees of the professional
24 employer organization.

25 (4) A professional employer organization that is not
26 acting on its own behalf as employer to secure coverage for covered
27 employees but is acting on behalf of a client shall be subject to

1 the Producer-Controlled Property and Casualty Insurer Act.

2 Sec. 8. (1) The responsibility to obtain workers'
3 compensation coverage for covered employees in compliance with the
4 Nebraska Workers' Compensation Act shall be specifically allocated
5 in the professional employer agreement to either the client or
6 the professional employer organization. If such responsibility
7 is allocated to the professional employer organization, the
8 professional employer organization shall advise the client of the
9 provisions of subdivisions (9) and (10) of section 48-115.

10 (2)(a) If the professional employer agreement is not
11 a full workforce professional employer agreement, the policy or
12 certificate may exclude coverage for direct hire employees and may
13 specify that only those covered employees acknowledged in writing
14 by the professional employer organization as professional employer
15 organization co-employees shall be covered. Arrangements under this
16 subsection shall be subject to the conditions and requirements
17 imposed by rule or regulation of the Department of Insurance.

18 (b) Prior to the effective date of a professional
19 employer agreement that is not a full workforce professional
20 employer agreement, the professional employer organization shall
21 notify the compensation court of that intent on a form prescribed
22 by the compensation court that includes all of the following:

23 (i) The names and mailing addresses of the client and
24 professional employer organization, the effective date of the
25 professional employer agreement, a description of the covered
26 employees, and such other information as the compensation court may
27 require;

1 (ii) Evidence that the non-covered employees of the
2 client are covered and any other liability arising out of the
3 Nebraska Workers' Compensation Act is covered. That evidence
4 shall be in the form of a copy of the information page or
5 declaration page of a workers' compensation insurance policy or
6 binder evidencing placement of coverage of those employees or other
7 liability arising out of the Nebraska Workers' Compensation Act;
8 and

9 (iii) An agreement by the client to assume full
10 responsibility to immediately pay all compensation and other
11 payments payable under the Nebraska Workers' Compensation Act as
12 may be required by the compensation court should a dispute arise
13 between two or more insurers as to liability under the Nebraska
14 Workers' Compensation Act for an injury sustained while a divided
15 workforce is in effect, pending final resolution of that dispute.
16 This subdivision does not preclude a client from insuring that
17 responsibility with an insurer authorized to do business in this
18 state.

19 (c) The Department of Insurance may adopt and promulgate
20 rules and regulations for the purposes of data collection under
21 this subsection.

22 (3) A divided workforce satisfying the requirements of
23 this section shall be deemed approved, unless the compensation
24 court determines otherwise, subject to appeal.

25 (4) Coverage for both the directly employed workers of a
26 client and the covered employees of that client shall be all in the
27 residual or all in the voluntary market and:

1 (a) Workers' compensation coverage for covered employees
2 in the voluntary market may be obtained by either (i) the client
3 through a standard workers' compensation policy or (ii) by the
4 professional employer organization through a master policy issued
5 to the professional employer organization by a carrier authorized
6 to do business in this state, or through a multiple coordinated
7 policy issued by a carrier authorized to do business in this
8 state in the name of the professional employer organization or the
9 client. The carrier may issue such policies in the name of the
10 client with the professional employer organization as an additional
11 insured, in the name of the professional employer organization, or
12 to the professional employer organization as the labor contractor
13 for the client. No workers' compensation insurer may write a policy
14 in the name of the professional employer organization unless the
15 insurer is capable of reporting client-based information;

16 (b) Workers' compensation for covered employees in the
17 residual market may be obtained (i) by the client through a
18 residual market policy or (ii) by the professional employer
19 organization through a multiple coordinated policy in either the
20 name of the professional employer organization or the client.
21 A carrier providing coverage through the professional employer
22 organization shall report to the appropriate state and rating
23 authorities such client-based information as is necessary to
24 maintain the client's experience rating, and as is necessary to
25 satisfy coverage reporting requirements under the Nebraska Workers'
26 Compensation Act. No workers' compensation insurer may write a
27 policy in the name of the professional employer organization unless

1 the insurer is capable of reporting client-based information as
2 required by the applicable state and rating authorities; and

3 (c) If a policy is issued in the name of the
4 professional employer organization, at the request of the client
5 the professional employer organization shall notify the client of
6 the name of the carrier providing coverage, the policy number, and
7 the effective and expiration dates of the policy.

8 (4) Both the client and the professional employer
9 organization shall be considered the employer for purposes
10 of coverage under the Nebraska Workers' Compensation Act. The
11 protection of the exclusive remedy provision of the act shall apply
12 to the professional employer organization, the client, and to all
13 covered employees and other employees of the client regardless of
14 which co-employer obtains such workers' compensation coverage.

15 (5) A safety committee shall be established pursuant to
16 section 48-443.

17 (6) If a client receives notice of the termination
18 or nonrenewal of workers' compensation coverage sponsored by
19 the professional employer organization, the client may withdraw
20 from the professional employer agreement without penalty unless
21 otherwise agreed to by the client and the professional employer
22 organization.

23 (7) A professional employer organization shall not impose
24 any fee increase on a client based on the actual or anticipated
25 cost of workers' compensation coverage without giving the client at
26 least thirty days' advance notice and an opportunity to withdraw
27 from the professional employer agreement without penalty.

1 (8) Cancellation or nonrenewal of a professional employer
2 organization or client's coverage at the initiative of the insurer
3 without the written consent of that party is not effective as
4 to that party unless the insurer has given at least thirty days'
5 advance notice to that party and the compensation court.

6 (9) Cancellation or nonrenewal of client coverage under a
7 master policy or multicoordinated policy at the initiative of the
8 professional employer organization or client shall be governed by
9 the applicable contractual provisions, except as otherwise provided
10 in the Professional Employer Organization Registration Act.

11 (10) Cancellation or nonrenewal of a client's coverage at
12 the initiative of the professional employer organization without
13 the written consent of the client is not effective as to the client
14 unless either:

15 (a) The insurer has given at least ten days' advance
16 notice to the client and the compensation court;

17 (b) The professional employer organization has given at
18 least ten days' advance notice by certified mail to the insurer,
19 the client, and the compensation court; or

20 (c) Coverage for all covered clients has been replaced
21 with no break in coverage, and the professional employer
22 organization has given advance notice to the insurer, the clients,
23 and the compensation court.

24 (11) The name and address of the workers' compensation
25 carrier and to whom claims shall be directed shall be conspicuously
26 posted at the client's workplace.

27 Sec. 9. (1) Upon filing an initial registration

1 statement under the Professional Employer Organization Registration
2 Act, a professional employer organization shall pay an initial
3 registration fee not to exceed five hundred dollars.

4 (2) Upon each annual renewal of a registration statement
5 filed under the act, a professional employer organization shall pay
6 a renewal fee not to exceed two hundred fifty dollars.

7 (3) The department shall determine by rule and regulation
8 any fee to be charged for a group registration.

9 (4) Each professional employer organization seeking
10 limited registration shall pay a fee in the amount not to
11 exceed two hundred fifty dollars upon initial application for
12 limited registration and upon each annual renewal of such limited
13 registration.

14 (5) A professional employer organization seeking
15 registration pursuant to subsection (9) of section 4 of this act
16 shall pay an initial and annual fee not to exceed two hundred fifty
17 dollars.

18 (6) The department shall adopt and promulgate rules and
19 regulations which fix the registration fees and determine any other
20 fee to be charged under the act. Such fees shall not exceed those
21 reasonably necessary for the administration of the registration
22 process.

23 Sec. 10. (1) A person shall not knowingly:

24 (a) Offer or provide professional employer services
25 or use the names PEO, Professional Employer Organization, staff
26 leasing, employee leasing, administrative employer or other title
27 representing professional employer services without first becoming

1 registered under the Professional Employer Organization Act; or

2 (b) Provide false or fraudulent information to the
3 department in conjunction with any registration, renewal, or in
4 any report required under the act.

5 (2) Disciplinary action may be taken by the department
6 for violation of subsection (1) of this section for:

7 (a) The conviction of a professional employer
8 organization or a controlling person of a professional employer
9 organization of a crime that relates to the operation of a
10 professional employer organization or the ability of the registrant
11 or a controlling person of a registrant to operate a professional
12 employer organization;

13 (b) Knowingly making a material misrepresentation to the
14 department or other governmental agency; or

15 (c) A willful violation of the act or any order or
16 regulation issued by the department under the act.

17 (3) Upon finding, after notice and opportunity for
18 hearing, that a professional employer organization, a controlling
19 person of a professional employer organization, or a person
20 offering professional employer organization services has violated
21 one or more provisions of this section and subject to any appeal
22 required, the department may:

23 (a) Deny an application for registration;

24 (b) Revoke, restrict, or refuse to renew a registration;

25 (c) Impose an administrative penalty in an amount not to
26 exceed one thousand dollars for each material violation;

27 (d) Place the registrant on probation for the period and

1 subject to conditions that the department specifies; or

2 (e) Issue a cease and desist order.

3 Sec. 11. Section 44-7515, Reissue Revised Statutes of
4 Nebraska, is amended to read:

5 44-7515 (1) The director shall adopt and promulgate rules
6 and regulations to modify or eliminate requirements for insurers to
7 use filed rates and policy forms for commercial policyholders under
8 common ownership identified through the application of subsection
9 (4) of this section.

10 (2) The rules and regulations adopted and promulgated
11 pursuant to this section may establish requirements and thresholds
12 that differ by line or type of insurance or that differ for rates
13 and policy forms.

14 (3) The rules and regulations adopted and promulgated
15 pursuant to this section shall require insurers to inform exempt
16 commercial policyholders at the earliest practical date, but no
17 later than thirty days after the inception of coverage, of those
18 policy forms applying to them that have not been approved by the
19 director.

20 (4) The director shall consider the following factors in
21 determining those commercial policyholders to which the rules and
22 regulations adopted and promulgated pursuant to this section shall
23 apply:

24 (a) For modification or elimination of the applicability
25 of filed rates, characteristics of insureds that are likely to
26 avail themselves of regular price comparisons between competing
27 insurers and are likely to study and understand the differences and

1 details of pricing proposals that they receive;

2 (b) For modification or elimination of the applicability
3 of filed rates, characteristics of insureds for which filed rates
4 and rating plans are less likely to provide the lowest premiums
5 otherwise consistent with the provisions of the Property and
6 Casualty Insurance Rate and Form Act;

7 (c) Modification or elimination of the applicability of
8 filed rates for commercial insureds that are primarily located in
9 another jurisdiction where they are subject to similar exemptions
10 or waivers in that jurisdiction;

11 (d) For modification or elimination of the applicability
12 of filed policy forms, characteristics of insureds that are likely
13 to study and understand the details of their business risks and
14 insurance coverages and exclusions;

15 (e) For modification or elimination of the applicability
16 of filed policy forms, characteristics of insureds that are likely
17 to require individually written policies, as contrasted to insureds
18 that can customarily have their coverage needs met using policy
19 forms that could also be used for other insureds;

20 (f) For both rates and policy forms, favorable or adverse
21 experiences with the modification or elimination of regulatory
22 requirements, especially the experience in this state; and

23 (g) Any other relevant factor.

24 (5) For exempt commercial policyholders to which rating
25 system regulation is made otherwise inapplicable, insurers shall
26 allocate premiums between policies, exposures, and states in
27 proportion to the expected losses and expenses for those policies,

1 exposures, and states.

2 (6) The following restrictions apply to rules and
3 regulations adopted and promulgated pursuant to this section:

4 (a) The rules and regulations may not allow any reduction
5 of the benefits payable under workers' compensation or excess
6 workers' compensation policies or any alteration of provisions for
7 the handling and settlement of claims under such policies, but
8 the rules and regulations may allow exempt commercial policyholders
9 to negotiate workers' compensation or excess workers' compensation
10 premiums and premium payment provisions;

11 (b) The rules and regulations may not allow any reduction
12 of automobile insurance coverage limits to less than those required
13 by Nebraska law, but the rules and regulations may allow exempt
14 commercial policyholders to negotiate automobile insurance premiums
15 and premium payment provisions;

16 (c) The rules and regulations may not allow any
17 limitation of the coverage provisions necessary for health care
18 providers to qualify under the Nebraska Hospital-Medical Liability
19 Act, but the rules and regulations may allow exempt commercial
20 policyholders to negotiate medical professional liability insurance
21 premiums and premium payment provisions;

22 (d) The rules and regulations may not reduce the rate
23 regulatory requirements applying to any policyholder with total
24 premiums of less than twenty-five thousand dollars for lines of
25 insurance subject to the Property and Casualty Insurance Rate and
26 Form Act; and

27 (e) The rules and regulations may not reduce the form

1 regulatory requirements applying to any policyholder with total
2 premiums of less than fifty thousand dollars for lines of insurance
3 subject to the Property and Casualty Insurance Rate and Form Act.

4 (7) Policy forms for commercial risks exempted by the
5 rules and regulations adopted and promulgated pursuant to this
6 section may include language that conflicts with section 44-501. If
7 a conflict results between a policy form and the requirements of
8 section 44-501, the language in the policy form shall apply to the
9 extent that it is inconsistent with such section.

10 (8) A professional employer organization and insurer may
11 negotiate premiums based on the total premiums of master policies
12 and multicoordinated policies issued.

13 Sec. 12. Section 48-144.03, Revised Statutes Cumulative
14 Supplement, 2008, is amended to read:

15 48-144.03 (1) Notwithstanding policy provisions that
16 stipulate a workers' compensation insurance policy to be a contract
17 with a fixed term of coverage that expires at the end of the
18 term, coverage under a workers' compensation insurance policy
19 shall continue in full force and effect until notice is given in
20 accordance with this section.

21 (2) No cancellation of a workers' compensation insurance
22 policy within the policy period shall be effective unless notice
23 of the cancellation is given by the workers' compensation insurer
24 to the Nebraska Workers' Compensation Court and to the employer.
25 No such cancellation shall be effective until thirty days after
26 the giving of such notices, except that the cancellation may
27 be effective ten days after the giving of such notices if such

1 cancellation is based on (a) notice from the employer to the
2 insurer to cancel the policy, (b) nonpayment of premium due the
3 insurer under any policy written by the insurer for the employer,
4 (c) failure of the employer to reimburse deductible losses as
5 required under any policy written by the insurer for the employer,
6 or (d) failure of the employer, if covered pursuant to section
7 44-3,158, to comply with sections 48-443 to 48-445.

8 (3) No workers' compensation insurance policy shall
9 expire or lapse at the end of the policy period unless notice
10 of nonrenewal is given by the workers' compensation insurer to the
11 compensation court and to the employer. No workers' compensation
12 insurance policy shall expire or lapse until thirty days after the
13 giving of such notices, except that a policy may expire or lapse
14 ten days after the giving of such notices if the nonrenewal is
15 based on (a) notice from the employer to the insurer to not renew
16 the policy, (b) nonpayment of premium due the insurer under any
17 policy written by the insurer for the employer, (c) failure of
18 the employer to reimburse deductible losses as required under any
19 policy written by the insurer for the employer, or (d) failure of
20 the employer, if covered pursuant to section 44-3,158, to comply
21 with sections 48-443 to 48-445.

22 (4) Notwithstanding other provisions of this section, if
23 the employer has secured workers' compensation insurance coverage
24 with another workers' compensation insurer, then the cancellation
25 or nonrenewal shall be effective as of the effective date of such
26 other insurance coverage.

27 (5) The notices required by this section shall state the

1 reason for the cancellation or nonrenewal of the policy.

2 (6) The notices required by this section shall be
3 provided in writing and shall be deemed given upon the mailing
4 of such notices by certified mail, except that notices from
5 insurers to the compensation court may be provided by electronic
6 means if such electronic means is approved by the administrator of
7 the compensation court. If notice is provided by electronic means
8 pursuant to such an approval, it shall be deemed given upon receipt
9 by the compensation court.

10 (7) If a workers' compensation insurance policy written
11 in the name of a professional employer organization as defined in
12 section 2 of this act is canceled within the policy period or not
13 renewed at the end of the policy period, and such policy covers
14 any client as defined in section 2 of this act, then the notices
15 required by this section shall be given directly to the client, the
16 professional employer organization, and the compensation court.

17 Sec. 13. Section 48-602, Revised Statutes Cumulative
18 Supplement, 2008, is amended to read:

19 48-602 For purposes of the Employment Security Law,
20 unless the context otherwise requires:

21 (1) Base period means the last four completed calendar
22 quarters immediately preceding the first day of an individual's
23 benefit year, except that the commissioner may prescribe by rule
24 and regulation that base period means the first four of the last
25 five completed calendar quarters immediately preceding the first
26 day of an individual's benefit year;

27 (2) Benefits means the money payments payable to an

1 individual with respect to his or her unemployment;

2 (3) Benefit year, with respect to any individual, means
3 the one-year period beginning with the first day of the first week
4 with respect to which the individual first files a valid claim
5 for benefits, and thereafter the one-year period beginning with the
6 first day of the first week with respect to which the individual
7 next files a valid claim for benefits after the termination of his
8 or her last preceding benefit year. Any claim for benefits made in
9 accordance with section 48-629 shall be deemed to be a valid claim
10 for the purpose of this subdivision if the individual has been
11 paid the wages for insured work required under section 48-627. For
12 the purposes of this subdivision a week with respect to which an
13 individual files a valid claim shall be deemed to be in, within,
14 or during that benefit year which includes the greater part of such
15 week;

16 (4) Calendar quarter means the period of three
17 consecutive calendar months ending on March 31, June 30, September
18 30, or December 31, or the equivalent thereof as the Commissioner
19 of Labor may by rule and regulation prescribe;

20 (5) Client has the same meaning as in section 2 of
21 this act; means any individual, partnership, limited liability
22 company, corporation, or other legally recognized entity that
23 contracts with a professional employer organization to obtain
24 professional employer services relating to worksite employees
25 through a professional employer agreement;

26 (6) Combined tax means the employer liability consisting
27 of contributions and the state unemployment insurance tax;

1 (7) Combined tax rate means the rate which is applied to
2 wages to determine the combined taxes due;

3 (8) Commissioner means the Commissioner of Labor;

4 (9) Contribution rate means the percentage of the
5 combined tax rate used to determine the contribution portion of
6 the combined tax;

7 (10) Contributions means that portion of the combined tax
8 based upon the contribution rate portion of the combined tax rate
9 which is deposited in the state Unemployment Compensation Fund as
10 required by sections 48-648 and 48-649;

11 (11) Department means the Department of Labor;

12 (12) Employment office means a free public employment
13 office or branch thereof, operated by this state or maintained as
14 a part of a state-controlled system of public employment offices,
15 including public employment offices operated by an agency of a
16 foreign government;

17 (13) Fund means the Unemployment Compensation Fund
18 established by section 48-617 to which all contributions and
19 payments in lieu of contributions required and from which all
20 benefits provided shall be paid;

21 (14) Hospital means an institution which has been
22 licensed, certified, or approved by the Department of Health and
23 Human Services as a hospital;

24 (15) Institution of higher education means an institution
25 which: (a) Admits as regular students only individuals having a
26 certificate of graduation from a high school or the recognized
27 equivalent of such a certificate; (b) is legally authorized in this

1 state to provide a program of education beyond high school; (c)
2 provides an educational program for which it awards a bachelor's
3 degree or higher or provides a program which is acceptable for
4 full credit toward such a degree, a program of postgraduate or
5 postdoctoral studies, or a program of training to prepare students
6 for gainful employment in a recognized occupation; and (d) is
7 a public or other nonprofit institution; notwithstanding any of
8 the foregoing provisions of this subdivision, all colleges and
9 universities in this state are institutions of higher education for
10 purposes of this section;

11 (16) Insured work means employment for employers;

12 (17) Leave of absence means any absence from work:

13 (a) Mutually and voluntarily agreed to by the employer and the
14 employee; (b) mutually and voluntarily agreed to between the
15 employer and the employee's bargaining agent; or (c) to which the
16 employee is entitled to as a matter of state or federal law;

17 (18) Paid vacation leave means a period of time while
18 employed or following separation from employment in which the
19 individual renders no services to the employer but is entitled to
20 receive vacation pay equal to or exceeding his or her base weekly
21 wage;

22 (19) Payments in lieu of contributions means the money
23 payments to the Unemployment Compensation Fund required by sections
24 48-649, 48-652, 48-660.01, and 48-661;

25 (20) Professional employer agreement means a written
26 ~~professional employer services contract whereby~~ has the same
27 meaning as in section 2 of this act;

1 (a) A professional employer organization agrees to
2 provide payroll services, employee benefit administration, or
3 personnel services for a majority of the employees providing
4 services to the client at a client worksite;

5 (b) The agreement is intended to be ongoing rather than
6 temporary in nature, and

7 (c) Employer responsibilities for worksite employees,
8 including those of hiring, firing, and disciplining, are shared
9 between the professional employer organization and the client
10 by contract. The term professional employer agreement shall not
11 include a contract between a parent corporation, company, or other
12 entity and a wholly owned subsidiary;

13 (21) Professional employer organization means any
14 individual, partnership, limited liability company, corporation, or
15 other legally recognized entity that enters into a professional
16 employer agreement with a client or clients for a majority of a
17 client's workforce at a client worksite. The term professional
18 employer organization does not include an insurer as defined in
19 section 44-103 or a temporary help firm; has the same meaning as
20 in section 2 of this act;

21 (22) State includes, in addition to the states of the
22 United States of America, any dependency of the United States, the
23 Commonwealth of Puerto Rico, the Virgin Islands, and the District
24 of Columbia;

25 (23) State unemployment insurance tax means that portion
26 of the combined tax which is based upon the state unemployment
27 insurance tax rate portion of the combined tax rate and which

1 is deposited in the State Unemployment Insurance Trust Fund as
2 required by sections 48-648 and 48-649;

3 (24) State unemployment insurance tax rate means the
4 percentage of the combined tax rate used to determine the state
5 unemployment insurance tax portion of the combined tax;

6 (25) Temporary employee means an employee of a temporary
7 help firm assigned to work for the clients of such temporary help
8 firm;

9 (26) Temporary help firm means a firm that hires
10 its own employees and assigns them to clients to support or
11 supplement the client's work force in work situations such as
12 employee absences, temporary skill shortages, seasonal workloads,
13 and special assignments and projects;

14 (27) Unemployed means an individual during any week in
15 which the individual performs no service and with respect to which
16 no wages are payable to the individual or any week of less than
17 full-time work if the wages payable with respect to such week are
18 less than the individual's weekly benefit amount, but does not
19 include any individual on a leave of absence or on paid vacation
20 leave. When an agreement between the employer and a bargaining unit
21 representative does not allocate vacation pay allowance or pay in
22 lieu of vacation to a specified period of time during a period of
23 temporary layoff or plant shutdown, the payment by the employer or
24 his or her designated representative will be deemed to be wages
25 as defined in this section in the week or weeks the vacation is
26 actually taken;

27 (28) Unemployment Trust Fund means the trust fund in the

1 Treasury of the United States of America established under section
2 904 of the federal Social Security Act, 42 U.S.C. 1104, as such
3 section existed on March 2, 2001, which receives credit from the
4 state Unemployment Compensation Fund;

5 (29) Wages, except with respect to services performed in
6 employment as provided in subdivisions (4)(c) and (d) of section
7 48-604, means all remuneration for personal services, including
8 commissions and bonuses, remuneration for personal services paid
9 under a contract of hire, and the cash value of all remunerations
10 in any medium other than cash. The reasonable cash value of
11 remuneration in any medium other than cash shall be estimated and
12 determined in accordance with rules and regulations prescribed by
13 the commissioner. After December 31, 1985, wages includes tips
14 which are received while performing services which constitute
15 employment and which are included in a written statement furnished
16 to the employer pursuant to section 6053(a) of the Internal Revenue
17 Code as defined in section 49-801.01.

18 With respect to services performed in employment in
19 agricultural labor as is provided in subdivision (4)(c) of section
20 48-604, wages means cash remuneration and the cash value of
21 commodities not intended for personal consumption by the worker
22 and his or her immediate family for such services. With respect
23 to services performed in employment in domestic service as is
24 provided in subdivision (4)(d) of section 48-604, wages means cash
25 remuneration for such services.

26 The term wages does not include:

27 (a) The amount of any payment, including any amount paid

1 by an employer for insurance or annuities or into a fund to
2 provide for such payment, made to, or on behalf of, an individual
3 in employment or any of his or her dependents under a plan
4 or system established by an employer which makes provision for
5 such individuals generally or for a class or classes of such
6 individuals, including any amount paid by an employer for insurance
7 or annuities or into a fund to provide for any such payment, on
8 account of (i) sickness or accident disability, except, in the case
9 of payments made to an employee or any of his or her dependents,
10 this subdivision (i) shall exclude from wages only payments which
11 are received under a workers' compensation law, (ii) medical and
12 hospitalization expenses in connection with sickness or accident
13 disability, or (iii) death;

14 (b) The payment by an employer, without deduction from
15 the remuneration of the employee, of the tax imposed upon an
16 employee under section 3101 of the Internal Revenue Code as defined
17 in section 49-801.01;

18 (c) Any payment on account of sickness or accident
19 disability, or medical or hospitalization expenses in connection
20 with sickness or accident disability, made by an employer to, or
21 on behalf of, an individual after the expiration of six calendar
22 months following the last calendar month in which such individual
23 worked for such employer;

24 (d) Any payment made to, or on behalf of, an individual
25 or his or her beneficiary (i) from or to a trust described in
26 section 401(a) of the Internal Revenue Code as defined in section
27 49-801.01 which is exempt from tax under section 501(a) of the

1 Internal Revenue Code as defined in section 49-801.01 at the time
2 of such payment unless such payment is made to an employee of the
3 trust as remuneration for services rendered as such employee and
4 not as a beneficiary of the trust or (ii) under or to an annuity
5 plan which, at the time of such payment, meets the requirements
6 of section 401 of the Internal Revenue Code as defined in section
7 49-801.01;

8 (e) Any payment made to, or on behalf of, an employee
9 or his or her beneficiary (i) under a simplified employee pension
10 as defined by the commissioner, (ii) under or to an annuity
11 contract as defined by the commissioner, other than a payment
12 for the purchase of such contract which is made by reason of
13 a salary reduction agreement, whether evidenced by a written
14 instrument or otherwise, (iii) under or to an exempt governmental
15 deferred compensation plan as defined by the commissioner, (iv)
16 to supplement pension benefits under a plan or trust, as defined
17 by the commissioner, to take into account some portion or all of
18 the increase in the cost of living since retirement, but only if
19 such supplemental payments are under a plan which is treated as a
20 welfare plan, or (v) under a cafeteria benefits plan;

21 (f) Remuneration paid in any medium other than cash to an
22 individual for service not in the course of the employer's trade or
23 business;

24 (g) Benefits paid under a supplemental unemployment
25 benefit plan which satisfies the eight points set forth in Internal
26 Revenue Service Revenue Ruling 56-249 as the ruling existed on
27 March 2, 2001, and is in compliance with the standards set forth in

1 Internal Revenue Service Revenue Rulings 58-128 and 60-330 as the
2 rulings existed on March 2, 2001; and

3 (h) Remuneration for service performed in the employ of
4 any state in the exercise of his or her duties as a member of the
5 Army National Guard or Air National Guard or in the employ of the
6 United States of America as a member of any military reserve unit;

7 (30) Week means such period of seven consecutive days as
8 the commissioner may by rule and regulation prescribe;

9 (31) Week of unemployment with respect to any individual
10 means any week during which he or she performs less than full-time
11 work and the wages payable to him or her with respect to such week
12 are less than his or her weekly benefit amount;

13 (32) Wholly owned subsidiary means a corporation,
14 company, or other entity which has eighty percent or more of
15 its outstanding voting stock or membership owned or controlled,
16 directly or indirectly, by the parent entity; and

17 (33) ~~Worksite Covered~~ employee means a person receiving
18 wages or benefits from a professional employer organization
19 pursuant to the terms of a professional employer agreement for
20 work performed at a client's worksite. has the same meaning as in
21 section 2 of this act.

22 Sec. 14. Section 48-648, Revised Statutes Cumulative
23 Supplement, 2008, is amended to read:

24 48-648 (1) Combined tax shall accrue and become payable
25 by each employer not otherwise entitled to make payments in lieu
26 of contributions for each calendar year in which he or she is
27 subject to the Employment Security Law, with respect to wages

1 for employment. Such combined tax shall become due and be paid
2 by each employer to the commissioner for the State Unemployment
3 Insurance Trust Fund and the Unemployment Trust Fund in such
4 manner and at such times as the commissioner may, by rule and
5 regulation, prescribe and shall not be deducted, in whole or in
6 part, from the wages of individuals in such employer's employ. The
7 commissioner may require that any employer whose annual payroll
8 for either of the two preceding calendar years has equaled or
9 exceeded five hundred thousand dollars to file combined tax returns
10 and pay combined taxes owed by an electronic method approved by
11 the commissioner, except when the employer establishes to the
12 satisfaction of the commissioner that filing the combined tax
13 return or payment of the tax by an electronic method would work a
14 hardship on the employer. In the payment of any combined tax, a
15 fractional part of a cent shall be disregarded unless it amounts to
16 one-half cent or more, in which case it shall be increased to one
17 cent. If the combined tax due for any reporting period is less than
18 five dollars, the employer need not remit the combined tax.

19 (2) If two or more related corporations or limited
20 liability companies concurrently employ the same individual and
21 compensate such individual through a common paymaster which is
22 one of such corporations or limited liability companies, each such
23 corporation or limited liability company shall be considered to
24 have paid as remuneration to such individual only the amounts
25 actually disbursed by it to such individual and shall not
26 be considered to have paid as remuneration to such individual
27 amounts actually disbursed to such individual by another of such

1 corporations or limited liability companies. An employee of a
2 wholly owned subsidiary shall be considered to be concurrently
3 employed by the parent corporation, company, or other entity
4 and the wholly owned subsidiary whether or not both companies
5 separately provide remuneration.

6 (3) The professional employer organization shall report
7 and pay combined tax, penalties, and interest owed upon wages
8 earned by ~~worksite~~ covered employees under the client's employer
9 account number using the client's combined tax rate. The client
10 is liable for the payment of unpaid combined tax, penalties, and
11 interest owed upon wages paid to ~~worksite~~ covered employees, and
12 the ~~worksite~~ covered employees shall be considered employees of the
13 client for purposes of the Employment Security Law.

14 Sec. 15. Section 77-27,187.01, Revised Statutes
15 Cumulative Supplement, 2008, is amended to read:

16 77-27,187.01 For purposes of the Nebraska Advantage Rural
17 Development Act, unless the context otherwise requires:

18 (1) Any term has the same meaning as used in the Nebraska
19 Revenue Act of 1967;

20 (2) Equivalent employees means the number of employees
21 computed by dividing the total hours paid in a year to employees by
22 the product of forty times the number of weeks in a year;

23 (3) Livestock means all animals, including cattle,
24 horses, sheep, goats, hogs, chickens, turkeys, and other species
25 of game birds and animals raised and produced subject to permit
26 and regulation by the Game and Parks Commission or the Department
27 of Agriculture;

1 (4) Livestock modernization or expansion means the
2 construction, improvement, or acquisition of buildings, facilities,
3 or equipment for livestock housing, confinement, feeding,
4 production, and waste management. Livestock modernization or
5 expansion does not include any improvements made to correct a
6 violation of the Environmental Protection Act, the Integrated Solid
7 Waste Management Act, the Livestock Waste Management Act, a rule
8 or regulation adopted and promulgated pursuant to such acts, or
9 any order of the Department of Environmental Quality undertaken
10 within five years after a complaint issued from the Director of
11 Environmental Quality under section 81-1507;

12 (5) Livestock production means the active use,
13 management, and operation of real and personal property for the
14 commercial production of livestock, for the commercial breeding,
15 training, showing, or racing of horses, or for the use of horses
16 in a recreational or tourism enterprise. The activity will be
17 considered commercial if the gross income derived from an activity
18 for two or more of the taxable years in the period of seven
19 consecutive taxable years which ends with the taxable year exceeds
20 the deductions attributable to such activity or, if the operation
21 has been in existence for less than seven years, if the activity is
22 engaged in for the purpose of generating a profit;

23 (6) Qualified employee leasing company means (a) a
24 company which places all employees of a client-lessee on its
25 payroll and leases such employees to the client-lessee on an
26 ongoing basis for a fee and, by written agreement between the
27 employee leasing company and a client-lessee, grants to the

1 client-lessee input into the hiring and firing of the employees
2 leased to the client-lessee or (b) a professional employer
3 organization as defined in section 2 of this act;

4 (7) Related taxpayers includes any corporations that are
5 part of a unitary business under the Nebraska Revenue Act of 1967
6 but are not part of the same corporate taxpayer, any business
7 entities that are not corporations but which would be a part of
8 the unitary business if they were corporations, and any business
9 entities if at least fifty percent of such entities are owned by
10 the same persons or related taxpayers and family members as defined
11 in the ownership attribution rules of the Internal Revenue Code of
12 1986, as amended;

13 (8) Taxpayer means a corporate taxpayer or other person
14 subject to either an income tax imposed by the Nebraska Revenue
15 Act of 1967 or a franchise tax under Chapter 77, article 38, or a
16 partnership, limited liability company, subchapter S corporation,
17 cooperative, including a cooperative exempt under section 521 of
18 the Internal Revenue Code of 1986, as amended, limited cooperative
19 association, or joint venture that is or would otherwise be a
20 member of the same unitary group if incorporated, which is,
21 or whose partners, members, or owners representing an ownership
22 interest of at least ninety percent of the control of such
23 entity are, subject to or exempt from such taxes, and any other
24 partnership, limited liability company, subchapter S corporation,
25 cooperative, including a cooperative exempt under section 521 of
26 the Internal Revenue Code of 1986, as amended, limited cooperative
27 association, or joint venture when the partners, members, or owners

1 representing an ownership interest of at least ninety percent of
2 the control of such entity are subject to or exempt from such
3 taxes; and

4 (9) Year means the taxable year of the taxpayer.

5 Sec. 16. Section 77-4103, Revised Statutes Cumulative
6 Supplement, 2008, is amended to read:

7 77-4103 For purposes of the Employment and Investment
8 Growth Act, unless the context otherwise requires:

9 (1) Any term shall have the same meaning as used in
10 Chapter 77, article 27;

11 (2) Base year shall mean the year immediately preceding
12 the year during which the application was submitted;

13 (3) Base-year employee shall mean any individual who was
14 employed in Nebraska and subject to the Nebraska income tax on
15 compensation received from the taxpayer or its predecessors during
16 the base year and who is employed at the project;

17 (4) Compensation shall mean the wages and other payments
18 subject to withholding for federal income tax purposes;

19 (5) Entitlement period shall mean the year during which
20 the required increases in employment and investment were met or
21 exceeded, and the next six years;

22 (6) Equivalent employees shall mean the number of
23 employees computed by dividing the total hours paid in a year by
24 the product of forty times the number of weeks in a year;

25 (7) Investment shall mean the value of qualified property
26 incorporated into or used at the project. For qualified property
27 owned by the taxpayer, the value shall be the original cost of

1 the property. For qualified property rented by the taxpayer, the
2 average net annual rent shall be multiplied by the number of years
3 of the lease for which the taxpayer was originally bound, not to
4 exceed ten years or the end of the third year after the entitlement
5 period, whichever is earlier. The rental of land included in and
6 incidental to the leasing of a building shall not be excluded from
7 the computation;

8 (8) Motor vehicle shall mean any motor vehicle,
9 semitrailer, or trailer as defined in the Motor Vehicle
10 Registration Act and subject to licensing for operation on the
11 highways;

12 (9) Nebraska employee shall mean an individual who is
13 either a resident or partial-year resident of Nebraska;

14 (10) Number of new employees shall mean the excess of the
15 number of equivalent employees employed at the project during a
16 year over the number of equivalent employees during the base year;

17 (11) Qualified business shall mean any business engaged
18 in the activities listed in subdivisions (b)(i) through (v) of
19 this subdivision or in the storage, warehousing, distribution,
20 transportation, or sale of tangible personal property. Qualified
21 business shall not include any business activity in which eighty
22 percent or more of the total sales are sales to the ultimate
23 consumer of food prepared for immediate consumption or are sales
24 to the ultimate consumer of tangible personal property which is
25 not (a) assembled, fabricated, manufactured, or processed by the
26 taxpayer or (b) used by the purchaser in any of the following
27 activities:

1 (ii) The conducting of research, development, or testing
2 for scientific, agricultural, animal husbandry, food product, or
3 industrial purposes;

4 (ii) The performance of data processing,
5 telecommunication, insurance, or financial services. Financial
6 services for purposes of this subdivision shall only include
7 financial services provided by any financial institution subject
8 to tax under Chapter 77, article 38, or any person or entity
9 licensed by the Department of Banking and Finance or the Securities
10 and Exchange Commission;

11 (iii) The assembly, fabrication, manufacture, or
12 processing of tangible personal property;

13 (iv) The administrative management of any activities,
14 including headquarter facilities relating to such activities; or

15 (v) Any combination of the activities listed in this
16 subdivision;

17 (12) Qualified employee leasing company shall mean (a)
18 a company which places all employees of a client-lessee on
19 its payroll and leases such employees to the client-lessee on
20 an ongoing basis for a fee and, by written agreement between
21 the employee leasing company and a client-lessee, grants to the
22 client-lessee input into the hiring and firing of the employees
23 leased to the client-lessee or (b) a professional employer
24 organization as defined in section 2 of this act;

25 (13) Qualified property shall mean any tangible property
26 of a type subject to depreciation, amortization, or other recovery
27 under the Internal Revenue Code of 1986, or the components of

1 such property, that will be located and used at the project.
2 Qualified property shall not include (a) aircraft, barges, motor
3 vehicles, railroad rolling stock, or watercraft or (b) property
4 that is rented by the taxpayer qualifying under the Employment and
5 Investment Growth Act to another person;

6 (14) Related persons shall mean any corporations,
7 partnerships, limited liability companies, or joint ventures which
8 are or would otherwise be members of the same unitary group, if
9 incorporated, or any persons who are considered to be related
10 persons under either section 267(b) and (c) or section 707(b) of
11 the Internal Revenue Code of 1986;

12 (15) Taxpayer shall mean any person subject to the sales
13 and use taxes and either an income tax imposed by the Nebraska
14 Revenue Act of 1967 or a franchise tax under sections 77-3801 to
15 77-3807, any corporation, partnership, limited liability company,
16 or joint venture that is or would otherwise be a member of the
17 same unitary group, if incorporated, which is, or whose partners,
18 members, or owners representing an ownership interest of at least
19 ninety percent of such entity are, subject to such taxes, and
20 any other partnership, limited liability company, S corporation,
21 or joint venture when the partners, shareholders, or members
22 representing an ownership interest of at least ninety percent of
23 such entity are subject to such taxes; and

24 (16) Year shall mean the taxable year of the taxpayer.

25 The changes made in this section by Laws 1997, LB 264,
26 apply to investments made or employment on or after January 1,
27 1997, and for all agreements in effect on or after January 1, 1997.

1 Sec. 17. Section 77-5403, Revised Statutes Cumulative
2 Supplement, 2008, is amended to read:

3 77-5403 For purposes of the Rural Economic Opportunities
4 Act:

5 (1) Any term defined in the Nebraska Revenue Act of 1967
6 and used in the Rural Economic Opportunities Act has the same
7 meaning as in the Nebraska Revenue Act of 1967;

8 (2) Average annual total employment means the average
9 total employment reported for the county of employment for the most
10 recent calendar year reported as of July 1 by the Department of
11 Labor;

12 (3) Base year means the year immediately before the year
13 in which the application was submitted;

14 (4) Base-year employee means any individual who was
15 employed in Nebraska and subject to the Nebraska income tax on
16 compensation received from the taxpayer or its predecessors during
17 the base year and who is employed at the project;

18 (5) Compensation means the wages and other payments
19 subject to withholding for federal income tax purposes;

20 (6) County average annual wage means the most recent
21 average annual wage paid by all employers in a county or in
22 the state, whichever is lower, for the most recent calendar year
23 reported as of July 1 by the Department of Labor. County average
24 annual wage for a project located in more than one county means the
25 county average annual wages for each county in which the project
26 is located, multiplied by the total of the average annual total
27 employment for each county in which the project is located, summing

1 the products for all counties in which the project is located, then
2 dividing the result by the average annual total employment for all
3 counties in which the project is located;

4 (7) Entitlement period means the year during which the
5 required increases in employment, wages, and investment were met or
6 exceeded and the next six years;

7 (8) Equivalent employees means the number computed by
8 dividing the total hours paid in a year by the product of forty
9 times the number of weeks in a year;

10 (9) Investment, for qualified property owned by the
11 taxpayer, means the original cost of the property. Investment, for
12 qualified property rented by the taxpayer, means the average net
13 annual rent multiplied by the number of years of the lease for
14 which the taxpayer was originally bound, not to exceed ten years or
15 the end of the third year after the entitlement period, whichever
16 is earlier. The rental of land included in and incidental to the
17 leasing of a building is included in the computation;

18 (10) Labor force means the total annual average county
19 labor force for the most recent calendar year reported as of July 1
20 by the Department of Labor;

21 (11) Motor vehicle means any motor vehicle, trailer, or
22 semitrailer as defined in the Motor Vehicle Registration Act and
23 subject to registration for operation on the highways;

24 (12) Number of new employees means the number of
25 equivalent employees at the project during the year minus the
26 number of equivalent employees during the base year;

27 (13) (a) Qualified business means any business engaged

1 in the storage, warehousing, distribution, transportation, or sale
2 of tangible personal property. Qualified business also means any
3 business engaged in any of the following activities:

4 (i) The conducting of research, development, or testing
5 for scientific, agricultural, animal husbandry, food product, or
6 industrial purposes;

7 (ii) The performance of data processing,
8 telecommunication, insurance, or financial services. Financial
9 services for purposes of this subdivision only includes services
10 provided by any person or entity licensed by the Department of
11 Banking and Finance or the Securities and Exchange Commission;

12 (iii) The assembly, fabrication, manufacture, or
13 processing of tangible personal property;

14 (iv) The administrative management of any activities,
15 including headquarter facilities relating to such activities; or

16 (v) Any combination of the activities listed in
17 subdivisions (13)(a)(i) through (iv) of this section;

18 (b) Qualified business does not include (i) any business
19 activity in which eighty percent or more of the total sales are
20 (A) sales to the ultimate consumer of food prepared for immediate
21 consumption or (B) sales to the ultimate consumer of tangible
22 personal property which is not assembled, fabricated, manufactured,
23 or processed by the taxpayer or which is not used by the purchaser
24 in any of the activities listed in subdivisions (13)(a)(i) through
25 (v) of this section or (ii) a livestock operation. For purposes of
26 this subdivision, livestock operation means the feeding or holding
27 of beef cattle, dairy cattle, horses, swine, sheep, poultry, or

1 other livestock in buildings, lots, or pens;

2 (14) Qualified employee leasing company means (a) a
3 company which places all employees of a client-lessee on its
4 payroll and leases such employees to the client-lessee on an
5 ongoing basis for a fee and, by written agreement between
6 the employee leasing company and client-lessee, grants to the
7 client-lessee input into the hiring and firing of the employees
8 leased to the client-lessee or (b) a professional employer
9 organization as defined in section 2 of this act;

10 (15) Qualified property means any tangible property of a
11 type subject to depreciation, amortization, or other recovery under
12 the Internal Revenue Code, or the components of such property, that
13 will be located and used at the project. Qualified property does
14 not include (a) aircraft, barges, motor vehicles, railroad rolling
15 stock, or watercraft or (b) property that is rented by the taxpayer
16 qualifying under the Rural Economic Opportunities Act to another
17 person;

18 (16) Qualifying wage means the greater of one hundred
19 twenty-five percent of the county average annual wage in the county
20 or counties in which the project is located or one hundred percent
21 of the regional average annual wage in the region or regions in
22 which the project is located;

23 (17) Region means the following regions:

24 (a) Panhandle region, composed of the counties of Banner,
25 Box Butte, Cheyenne, Dawes, Deuel, Garden, Kimball, Morrill, Scotts
26 Bluff, Sheridan, and Sioux;

27 (b) Mid-plains region, composed of the counties of

1 Arthur, Chase, Cherry, Dawson, Dundy, Frontier, Furnas, Gosper,
2 Grant, Hayes, Hitchcock, Hooker, Keith, Lincoln, Logan, McPherson,
3 Perkins, Red Willow, and Thomas;

4 (c) Central region, composed of the counties of Adams,
5 Blaine, Buffalo, Clay, Custer, Franklin, Garfield, Greeley, Hall,
6 Hamilton, Harlan, Howard, Kearney, Loup, Merrick, Nance, Nuckolls,
7 Phelps, Sherman, Valley, Webster, and Wheeler;

8 (d) Northeast region, composed of the counties of
9 Antelope, Boone, Boyd, Brown, Burt, Cedar, Colfax, Cuming, Dakota,
10 Dixon, Dodge, Holt, Keya Paha, Knox, Madison, Pierce, Platte, Rock,
11 Stanton, Thurston, and Wayne;

12 (e) Southeast region, composed of the counties of Butler,
13 Fillmore, Gage, Jefferson, Johnson, Nemaha, Otoe, Pawnee, Polk,
14 Richardson, Saline, Saunders, Seward, Thayer, and York;

15 (f) Omaha region, composed of the counties of Douglas,
16 Sarpy, Cass, and Washington; and

17 (g) Lincoln region, composed of the county of Lancaster;

18 (18) Regional average annual wage, for a project located
19 in one region, means the most recent average annual wage paid
20 by all employers in the region for the most recent calendar year
21 calculated by multiplying the average annual wage for each county
22 in the region for the most recent calendar year reported as of July
23 1 by the Department of Labor by the corresponding average annual
24 total employment in each county, summing the products for all
25 counties in the region, and then dividing the result by the average
26 annual total employment of all counties in the region. Regional
27 average annual wage, for a project located in more than one region,

1 means the regional average annual wage for each region in which the
2 project is located, multiplied by the total of the average annual
3 total employment for each region in which the project is located,
4 the product then divided by the sum of the average annual total
5 employment for the regions;

6 (19) Related persons means any corporations,
7 partnerships, limited liability companies, or joint ventures
8 which are or would otherwise be members of the same unitary group,
9 if incorporated, or any persons who are considered to be related
10 persons under section 267(b) or (c) or 707(b) of the Internal
11 Revenue Code;

12 (20) Taxpayer means any person subject to the sales and
13 use taxes and an income tax imposed by the Nebraska Revenue Act
14 of 1967; any corporation, partnership, limited liability company,
15 or joint venture that is or would otherwise be a member of the
16 same unitary group, if incorporated, which is, or whose partners,
17 members, or owners are, subject to such tax; and any other
18 partnership, limited liability company, subchapter S corporation,
19 subchapter T cooperative, or joint venture when the partners,
20 shareholders, or members are subject to such tax; and

21 (21) Year means the taxable year of the taxpayer.

22 Sec. 18. Section 77-5526, Reissue Revised Statutes of
23 Nebraska, is amended to read:

24 77-5526 Qualified employee leasing company means (a)
25 a company which places all employees of a client-lessee on
26 its payroll and leases such employees to the client-lessee on
27 an ongoing basis for a fee and, by written agreement between

1 the employee leasing company and a client-lessee, grants to the
2 client-lessee input into the hiring and firing of the employees or
3 (b) a professional employer organization as defined in section 2 of
4 this act.

5 Sec. 19. Section 77-5716, Revised Statutes Cumulative
6 Supplement, 2008, is amended to read:

7 77-5716 Qualified employee leasing company means (a)
8 a company which places all employees of a client-lessee on
9 its payroll and leases such employees to the client-lessee on
10 an ongoing basis for a fee and, by written agreement between
11 the employee leasing company and a client-lessee, grants to the
12 client-lessee input into the hiring and firing of the employees
13 leased to the client-lessee or (b) a professional employer
14 organization as defined in section 2 of this act.

15 Sec. 20. This act becomes operative on January 1, 2010.

16 Sec. 21. If any section in this act or any part of any
17 section is declared invalid or unconstitutional, the declaration
18 shall not affect the validity or constitutionality of the remaining
19 portions.

20 Sec. 22. Original sections 44-7515 and 77-5526, Reissue
21 Revised Statutes of Nebraska, and sections 48-144.03, 48-602,
22 48-648, 77-27,187.01, 77-4103, 77-5403, and 77-5716, Revised
23 Statutes Cumulative Supplement, 2008, are repealed.