

AMENDMENTS TO LB 579

Introduced by Cornett, 45.

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

3           Section 1. Sections 1 to 11 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 the client employer and  
18 a professional employer organization as co-employers pursuant  
19 to a professional employer agreement and the act. In such a  
20 co-employment relationship:

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

1 employer organization by the professional employer agreement or the  
2 act;

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

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

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

26 (5) Department means the Department of Labor;

27 (6) Direct-hire employee means an individual who is

1 an employee of the professional employer organization within the  
2 meaning of the Nebraska Workers' Compensation Act and who is not an  
3 employee of a client and who is not a covered employee;

4 (7) Master policy means a workers' compensation insurance  
5 policy issued to a professional employer organization that provides  
6 coverage for more than one client and may provide coverage to the  
7 professional employer organization with respect to its direct-hire  
8 employees or that provides coverage for one client in addition  
9 to the professional employer organization's direct-hire employees.  
10 Two or more clients insured under the same policy solely because  
11 they are under common ownership are considered a single client for  
12 purposes of this subdivision;

13 (8) Multiple coordinated policy means a workers'  
14 compensation insurance policy that provides coverage for only a  
15 single client or group of clients under common ownership but with  
16 payment obligations and certain policy communications coordinated  
17 through the professional employer organization;

18 (9) Person means any individual, partnership,  
19 corporation, limited liability company, association, or any  
20 other form of legally recognized entity;

21 (10) Professional employer agreement means a written  
22 contract by and between a client and a professional employer  
23 organization that provides:

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

25 (b) For the allocation of employer rights and obligations  
26 between the client and the professional employer organization with  
27 respect to covered employees; and

1           (c) That the professional employer organization and the  
2 client assume the responsibilities required by the Professional  
3 Employer Organization Registration Act;

4           (11) Professional employer organization means any person  
5 engaged in the business of providing professional employer  
6 services. The applicability of the act to a person engaged in  
7 the business of providing professional employer services shall be  
8 unaffected by the person's use of the term staff leasing company,  
9 administrative employer, employee leasing company, or any name  
10 other than professional employer organization or PEO.

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

13           (a) Arrangements wherein a person, whose principal  
14 business activity is not entering into professional employer  
15 arrangements and which does not hold itself out as a professional  
16 employer organization, shares employees with a commonly owned  
17 company within the meaning of sections 414(b) and (c) of the  
18 Internal Revenue Code;

19           (b) Independent contractor arrangements by which a  
20 person assumes responsibility for the product produced or service  
21 performed by such person or his or her agents and retains and  
22 exercises primary direction and control over the work performed  
23 by the individuals whose services are supplied under such  
24 arrangements; and

25           (c) Providing temporary help services;

26           (12) Professional employer organization group means two  
27 or more professional employer organizations that are majority-owned

1 or commonly controlled by the same entity, parent company, or  
2 controlling person;

3 (13) Professional employer services means the service of  
4 entering into co-employment relationships;

5 (14) Registrant means a professional employer  
6 organization registered under the act;

7 (15) Temporary help services means services consisting of  
8 a person:

9 (a) Recruiting and hiring its own employees;

10 (b) Finding other organizations that need the services of  
11 those employees;

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

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

20 (16) Working capital means current assets less current  
21 liabilities as defined by generally accepted accounting principles.

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

1 151 et seq., or the federal Railway Labor Act, 45 U.S.C. 151 et  
2 seq.

3 (2) (a) Nothing contained in the Professional Employer  
4 Organization Registration Act or any professional employer  
5 agreement shall:

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

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

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

25 (iv) Diminish, abolish, or remove rights of covered  
26 employees as to a client or obligations of a client to covered  
27 employees, including, but not limited to, rights and obligations

1 arising from civil rights laws guaranteeing nondiscrimination in  
2 employment practices. For purposes of this subdivision, notice  
3 served to either co-employer shall be considered notice to both  
4 co-employers. A co-employer shall, immediately after receipt of  
5 such notice, notify the other co-employer of such receipt and shall  
6 transmit a copy of the notice to the other co-employer within two  
7 business days after such receipt.

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

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

16 (c) A professional employer organization shall not  
17 be deemed to engage in any occupation, trade, profession, or  
18 other activity that is subject to licensing, registration,  
19 or certification requirements, or is otherwise regulated by a  
20 governmental entity, solely by entering into and maintaining a  
21 co-employment relationship with a covered employee who is subject  
22 to such licensing, registration, or certification requirements.

23 (d) A client shall have the sole right to direct  
24 and control the professional or licensed activities of covered  
25 employees and of the client's business. Such covered employees  
26 and clients shall remain subject to regulation by the regulatory  
27 or governmental entity responsible for licensing, registration, or

1 certification of such covered employees or clients.

2 (3) With respect to a bid, contract, purchase order, or  
3 agreement entered into with the state or a political subdivision  
4 of the state, a client company's status or certification as  
5 a small, minority-owned, disadvantaged, or woman-owned business  
6 enterprise or as a historically underutilized business is not  
7 affected because the client company has entered into a professional  
8 employer agreement with a professional employer organization or  
9 uses the services of a professional employer organization.

10 Sec. 4. (1) A person engaged in the business of  
11 providing professional employer services pursuant to co-employment  
12 relationships in which all or a majority of the employees of  
13 a client are covered employees shall be registered under the  
14 Professional Employer Organization Registration Act.

15 (2) A person who is not registered under the Professional  
16 Employer Organization Registration Act shall not offer or provide  
17 professional employer services in this state and shall not use  
18 the names PEO, professional employer organization, staff leasing  
19 company, employee leasing company, administrative employer, or any  
20 other name or title representing professional employer services.

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

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

25 (b) The address of the principal place of business of the  
26 professional employer organization and the address of each office  
27 it maintains in this state;



1           (c) The professional employer organization's taxpayer or  
2 employer identification number;

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

7           (e) A statement of ownership, which shall include the  
8 name and evidence of the business experience of any person that,  
9 individually or acting in concert with one or more other persons,  
10 owns or controls, directly or indirectly, twenty-five percent  
11 or more of the equity interest of the professional employer  
12 organization;

13           (f) A statement of management, which shall include the  
14 name and evidence of the business experience of any individual who  
15 serves as president or chief executive officer or otherwise has the  
16 authority to act as senior executive officer of the professional  
17 employer organization; and

18           (g) A financial statement setting forth the financial  
19 condition of the professional employer organization or professional  
20 employer organization group. At the time of initial registration,  
21 the applicant shall submit the most recent audit of the applicant,  
22 which audit may not be older than thirteen months. Thereafter,  
23 a professional employer organization or professional employer  
24 organization group shall file on an annual basis, within one  
25 hundred eighty days after the end of the professional employer  
26 organization's fiscal year, a succeeding audit. An applicant may  
27 apply for an extension with the department, but any such request

1 shall be accompanied by a letter from the auditor stating the  
2 reasons for the delay and the anticipated audit completion date.

3 The financial statement shall be prepared in accordance  
4 with generally accepted accounting principles and audited by an  
5 independent certified public accountant licensed to practice in  
6 the jurisdiction in which such accountant is located and shall  
7 be without qualification as to the going concern status of  
8 the professional employer organization. A professional employer  
9 organization group may submit combined or consolidated financial  
10 statements to meet the requirements of this section. A professional  
11 employer organization that has not had sufficient operating history  
12 to have audited financials based upon at least twelve months  
13 of operating history shall meet the financial responsibility  
14 requirements of section 5 of this act and present financial  
15 statements reviewed by a certified public accountant.

16 (4) (a) Each professional employer organization operating  
17 within this state as of the operative date of this act shall  
18 complete its initial registration not later than one hundred  
19 eighty days after the operative date of this act. Such initial  
20 registration shall be valid until one hundred eighty days from the  
21 end of the professional employer organization's first fiscal year  
22 that is more than one year after the operative date of this act.

23 (b) Each professional employer organization not operating  
24 within this state as of the operative date of this act shall  
25 complete its initial registration prior to initiating operations  
26 within this state. If a professional employer organization not  
27 registered in this state becomes aware that an existing client

1 not based in this state has employees and operations in this  
2 state, the professional employer shall either decline to provide  
3 professional employer services for those employees or notify the  
4 department within five business days of its knowledge of this fact  
5 and file a limited registration application under subsection (7) of  
6 this section or a full registration if there are more than fifty  
7 covered employees. The department may issue an interim operating  
8 permit for the period the registration application is pending if  
9 the professional employer organization is currently registered or  
10 licensed by another state and the department determines it to be in  
11 the best interests of the potential covered employees.

12 (5) Within one hundred eighty days after the end of  
13 a registrant's fiscal year, such registrant shall renew its  
14 registration by notifying the department of any changes in the  
15 information provided in such registrant's most recent registration  
16 or renewal. A registrant's existing registration shall remain in  
17 effect during the pendency of a renewal application.

18 (6) Professional employer organizations in a professional  
19 employer organization group may satisfy any reporting and financial  
20 requirements of the Professional Employer Organization Registration  
21 Act on a combined or consolidated basis if each member of the  
22 professional employer organization group guarantees the financial  
23 capacity obligations under the act of each other member of  
24 the professional employer organization group. If a professional  
25 employer organization group submits a combined or consolidated  
26 audited financial statement including entities that are not  
27 professional employer organizations or that are not in the

1 professional employer organization group, the controlling entity of  
2 the professional employer organization group under the consolidated  
3 or combined statement shall guarantee the obligations of the  
4 professional employer organizations in the professional employer  
5 organization group.

6 (7) (a) A professional employer organization is eligible  
7 for a limited registration under the act if such professional  
8 employer organization:

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

11 (ii) Is domiciled outside this state and is licensed  
12 or registered as a professional employer organization in another  
13 state;

14 (iii) Does not maintain an office in this state or  
15 directly solicit clients located or domiciled within this state;  
16 and

17 (iv) Does not have more than fifty covered employees  
18 employed or domiciled in this state on any given day.

19 (b) A limited registration is valid for one year and may  
20 be renewed.

21 (c) A professional employer organization seeking limited  
22 registration under this section shall provide the department  
23 with information and documentation necessary to show that the  
24 professional employer organization qualifies for a limited  
25 registration.

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

1           (8) The department shall maintain a list of professional  
2 employer organizations registered under the act that is readily  
3 available to the public by electronic or other means.

4           (9) The department may prescribe forms necessary to  
5 promote the efficient administration of this section.

6           (10) The department shall, to the extent practical,  
7 permit by rule and regulation the acceptance of electronic  
8 filings, including applications, documents, reports, and other  
9 filings required by the department. Such rule and regulation  
10 may provide for the acceptance of electronic filings and other  
11 assurance by an independent and qualified entity approved by  
12 the department that provides satisfactory assurance of compliance  
13 acceptable to the department consistent with or in lieu of the  
14 requirements of this section and section 5 of this act. Such rule  
15 and regulation shall permit a professional employer organization  
16 to authorize the entity approved by the department to act on  
17 the professional employer organization's behalf in complying with  
18 the registration requirements of the act, including electronic  
19 filings of information and payment of registration fees. Use of  
20 such an approved entity shall be optional and not mandatory for a  
21 registrant. Nothing in this subsection shall limit or change the  
22 department's authority to register or terminate registration of a  
23 professional employer organization or to investigate or enforce any  
24 provision of the act.

25           (11) All records, reports, and other information obtained  
26 from a professional employer organization under the act, except to  
27 the extent necessary for the proper administration of the act by

1 the department, shall be confidential and shall not be published  
2 or open to public inspection other than to public employees in the  
3 performance of their public duties.

4 Sec. 5. (1) Except as provided in subsections (7)  
5 and (10) of section 4 of this act, each professional employer  
6 organization or professional employer organization group shall have  
7 either:

8 (a) Positive working capital of at least one hundred  
9 thousand dollars at the time of initial registration and each  
10 renewal thereafter as reflected in the financial statements  
11 submitted to the department with the initial registration and each  
12 annual renewal; or

13 (b) (i) If the positive working capital of the  
14 professional employer organization is less than one hundred  
15 thousand dollars, a bond, certificate of deposit, escrow account,  
16 or irrevocable letter of credit in an amount of not less than one  
17 hundred thousand dollars; or

18 (ii) If the financial statement submitted to the  
19 department indicates a deficit in working capital, a bond,  
20 certificate of deposit, escrow account, or irrevocable letter of  
21 credit in an amount that is not less than one hundred thousand  
22 dollars plus an amount that is sufficient to cover that deficit.

23 (2) The commitment described in this subdivision (1)(b)  
24 of this section shall be in a form approved by the department,  
25 shall be held in a depository designated by the department, and  
26 shall secure the payment by the professional employer organization  
27 or professional employer organization group of any wages, salaries,

1 employee benefits, worker's compensation insurance premiums,  
2 payroll taxes, unemployment insurance contributions, or other  
3 amounts that are payable to or with respect to an employee  
4 performing services for a client if the professional employer  
5 organization or professional employer organization group does not  
6 make those payments when due. The commitment shall be established  
7 in favor of or be made payable to the department, for the  
8 benefit of the state and any employee to whom or with respect  
9 to whom the professional employer organization or professional  
10 employer organization group does not make a payment described in  
11 this subsection when due. The professional employer organization  
12 or professional employer organization group shall file with the  
13 department any agreement, instrument, or other document that  
14 is necessary to enforce the commitment against the professional  
15 employer organization or professional employer organization group,  
16 against any relevant third party, or both.

17           Sec. 6. (1) No person shall enter into a co-employment  
18 relationship in which less than a majority of the employees of the  
19 client in this state are covered employees or in which less than  
20 one-half of the payroll of the client in this state is attributable  
21 to covered employees.

22           (2) Except as specifically provided in the Professional  
23 Employer Organization Registration Act or in the professional  
24 employer agreement, in each co-employment relationship:

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

1           (b) The professional employer organization shall be  
2 entitled to exercise only those rights and obligated to perform  
3 only those duties and responsibilities specifically required by  
4 the act or in the professional employer agreement. The rights,  
5 duties, and obligations of the professional employer organization  
6 as co-employer with respect to any covered employee shall be  
7 limited to those arising pursuant to the professional employer  
8 agreement and the act during the term of co-employment by the  
9 professional employer organization of such covered employee; and

10           (c) Unless otherwise expressly agreed by the professional  
11 employer organization and the client in a professional employer  
12 agreement, the client retains the exclusive right to direct and  
13 control the covered employees as is necessary to conduct the  
14 client's business, to discharge any of the client's fiduciary  
15 responsibilities, or to comply with any licensure requirements  
16 applicable to the client or to the covered employees.

17           (3) Except as specifically provided in the Professional  
18 Employer Organization Registration Act, the co-employment  
19 relationship between the client and the professional employer  
20 organization, and between each co-employer and each covered  
21 employee, shall be governed by the professional employer agreement.  
22 Each professional employer agreement shall include the following:

23           (a) The allocation of rights, duties, and obligations as  
24 described in this section;

25           (b) A provision that the professional employer  
26 organization shall have responsibility to pay wages to covered  
27 employees; to withhold, collect, report, and remit payroll-related



1 and unemployment taxes; and, to the extent the professional  
2 employer organization has assumed responsibility in the  
3 professional employer agreement, to make payments for employee  
4 benefits for covered employees. For purposes of this section,  
5 wages does not include any obligation between a client and  
6 a covered employee for payments beyond or in addition to the  
7 covered employee's salary, draw, or regular rate of pay, such as  
8 bonuses, commissions, severance pay, deferred compensation, profit  
9 sharing, or vacation, sick, or other paid time off pay, unless the  
10 professional employer organization has expressly agreed to assume  
11 liability for such payments in the professional employer agreement;

12 (c) A provision that the professional employer  
13 organization shall have a right to hire, discipline, and terminate  
14 a covered employee as may be necessary to fulfill the professional  
15 employer organization's responsibilities under the act and the  
16 professional employer agreement. The client shall have a right to  
17 hire, discipline, and terminate a covered employee; and

18 (d) A provision that the responsibility to obtain  
19 workers' compensation coverage for covered employees and for other  
20 employees of the client from an insurer licensed to do business  
21 in this state and otherwise in compliance with all applicable  
22 requirements shall be specified in the professional employer  
23 agreement in accordance with section 9 of this act. The client  
24 shall not be relieved of its obligations under the Nebraska  
25 Workers' Compensation Act to provide workers' compensation coverage  
26 in the event that the professional employer organization fails to  
27 obtain workers' compensation insurance for which it has assumed

1 responsibility.

2 (4) With respect to each professional employer agreement  
3 entered into by a professional employer organization, such  
4 professional employer organization shall provide written notice to  
5 each covered employee affected by such agreement. The professional  
6 employer organization shall provide, and the client shall post in a  
7 conspicuous place at the client's worksite, the following:

8 (a) Notice of the general nature of the co-employment  
9 relationship between and among the professional employer  
10 organization, the client, and any covered employees; and

11 (b) Any notice required by the state relating to  
12 unemployment compensation and the minimum wage.

13 (5) Except to the extent otherwise expressly provided by  
14 the applicable professional employer agreement:

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

18 (b) A client shall be solely responsible for directing,  
19 supervising, training, and controlling the work of the covered  
20 employees with respect to the business activities of the client  
21 and solely responsible for the acts, errors, or omissions of the  
22 covered employees with regard to such activities;

23 (c) A client shall not be liable for the acts, errors, or  
24 omissions of a professional employer organization or of any covered  
25 employee of the client and a professional employer organization  
26 when such covered employee is acting under the express direction  
27 and control of the professional employer organization;

1           (d) Nothing in this subsection shall limit any  
2 contractual liability or obligation specifically provided in a  
3 professional employer agreement; and

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

14           (6) When a professional employer organization obtains  
15 workers' compensation coverage for its clients that is written by  
16 an authorized insurer, it shall not be considered to be an insurer  
17 based on its sale of workers' compensation insurance coverage to  
18 a client, even if the professional employer organization charges  
19 the client a different amount than it is charged by the authorized  
20 insurer.

21           (7) Except as provided in subsection (6) of this section,  
22 nothing in the Professional Employer Organization Registration Act  
23 shall exempt a professional employer organization from compliance  
24 with the insurance laws of this state.

25           (8) For purposes of this state or any county,  
26 municipality, or other political subdivision thereof:

27           (a) Covered employees whose services are subject to sales

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

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

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

27 (d) In the case of a tax or an assessment imposed

1 or calculated upon the basis of total payroll, the professional  
2 employer organization shall be eligible to apply any small business  
3 allowance or exemption available to the client for the covered  
4 employees for the purpose of computing the tax.

5 (9) A professional employer organization shall not offer  
6 its covered employees any health benefit plan which is not fully  
7 insured by an authorized insurer.

8 Sec. 7. Any funds held by the professional employer  
9 organization in a fiduciary capacity shall be recorded separately  
10 and held in a fiduciary capacity on behalf of each client. The  
11 professional employer organization shall keep copies of all the  
12 records pertaining to such deposits and withdrawals and, upon  
13 request of a client, shall furnish the client with an accounting  
14 and copies of the records.

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

19 (2) A fully insured employee welfare benefit plan offered  
20 to the covered employees of a single professional employer  
21 organization shall be for purposes of state law a single employee  
22 welfare benefit plan and shall not be considered a multiple  
23 employer welfare arrangement, as defined in section 44-7603, and  
24 shall be exempt from the registration requirements of the Multiple  
25 Employer Welfare Arrangement Act.

26 (3) For purposes of the Small Employer Health Insurance  
27 Availability Act, a professional employer organization shall be

1 considered the employer of all of its covered employees and all  
2 covered employees of any client participating in a health benefit  
3 plan sponsored by a single professional employer organization shall  
4 be considered employees of the professional employer organization.  
5 Subject to any eligibility requirements imposed by the plan or  
6 policy, the insurer shall accept and insure all employees of the  
7 client and all beneficiaries of those employees.

8           Sec. 9. (1) The responsibility to obtain workers'  
9 compensation coverage for employees covered by the professional  
10 employer agreement and for other employees of the client shall be  
11 allocated in the professional employer agreement to the client,  
12 the professional employer organization, or both, in accordance  
13 with this section. If any such responsibility is allocated to  
14 the professional employer organization, the professional employer  
15 organization shall:

16           (a) Advise the client of the provisions of subdivisions  
17 (9) and (10) of section 48-115;

18           (b) Advise the client of its obligation to obtain  
19 an additional workers' compensation insurance policy if the  
20 professional employer organization's policy limits coverage to  
21 co-employees as specified in the professional employer agreement;  
22 and

23           (c) Provide the client with the name of the insurer  
24 providing coverage, the policy number, claim notification  
25 instructions, and any separate charges that are to be made  
26 for workers' compensation coverage within ten days after the  
27 professional employer agreement has been signed.

1           (2) (a) If all employees of the client are not covered  
2 employees under the professional employer agreement, then a  
3 workers' compensation insurance policy obtained by the professional  
4 employer organization to cover employees of the client may be  
5 written to limit coverage to those employees who are co-employees  
6 of the professional employer organization and the client. If  
7 a professional employer organization's policy limits coverage  
8 to co-employees as specified in the professional employer  
9 agreement, then the client shall obtain an additional workers'  
10 compensation insurance policy. The policy obtained by the client  
11 shall be written to cover any and all employees not covered by  
12 the professional employer organization's policy, including any  
13 potential new or unknown employees. All insurance policies issued  
14 pursuant to this subsection shall be subject to and shall comply  
15 with the requirements of this subsection and any rule or regulation  
16 adopted by the Department of Insurance.

17           (b) If all employees of the client are covered employees  
18 under the professional employer agreement, then a workers'  
19 compensation insurance policy obtained by the professional employer  
20 organization to cover employees of the client must be written to  
21 cover any and all employees of the client, including potential new  
22 or unknown employees that may not be covered employees under the  
23 agreement.

24           (c) A professional employer organization shall not split  
25 coverage that it obtains for a client between two or more policies.

26           (d) A professional employer organization shall not split  
27 coverage for its direct-hire employees between two or more

1 policies.

2 (e) The Department of Insurance may adopt and promulgate  
3 rules and regulations to implement this subsection.

4 (3) If the professional employer agreement allocates  
5 responsibility to the professional employer organization to  
6 obtain workers' compensation coverage only for co-employees,  
7 then the professional employer organization shall provide the  
8 following information to the administrator of the Nebraska Workers'  
9 Compensation Court. Such information shall be provided prior to the  
10 effective date of the professional employer agreement and prior to  
11 any amendment of an agreement adding such a provision and shall be  
12 provided in a form and manner prescribed by the administrator:

13 (a) The names and addresses of the client and the  
14 professional employer organization;

15 (b) The effective date of the professional employer  
16 agreement;

17 (c) A description of the employees covered under the  
18 professional employer agreement;

19 (d) Evidence that any and all other employees of the  
20 client are covered by a valid workers' compensation insurance  
21 policy; and

22 (e) Any other information the administrator may require  
23 regarding workers' compensation coverage of the professional  
24 employer organization, the client, or the covered employees.

25 (4) If workers' compensation coverage for a client's  
26 employees covered by the professional employer agreement and for  
27 other employees of the client is not entirely available in the



1 voluntary market, then assigned risk workers' compensation coverage  
2 written subject to section 44-3,158 may only be written on a single  
3 policy that covers all employees and co-employees of the client.  
4 Assigned risk workers' compensation insurance for the professional  
5 employer organization may also be written, but only on a basis  
6 that covers its direct-hire employees and excludes employees and  
7 co-employees of its clients. The Department of Insurance may adopt  
8 and promulgate rules and regulations to implement this subsection.

9 (5) If a master policy or multiple coordinated policy  
10 providing coverage to a client is obtained by a professional  
11 employer organization, then the professional employer organization  
12 shall provide the client with a notice that the client shall  
13 conspicuously post at its workplace. Such notice shall provide  
14 the name and address of the workers' compensation insurer and the  
15 individual to whom claims shall be directed. If more than one  
16 workers' compensation insurer provides coverage for employees and  
17 co-employees of the client, the client shall post such information  
18 for all such workers' compensation insurers.

19 (6) Both the client and the professional employer  
20 organization shall be considered the employer for purposes  
21 of coverage under the Nebraska Workers' Compensation Act. The  
22 protection of the exclusive remedy provision of the act shall apply  
23 to the professional employer organization, to the client, and to  
24 all covered employees and other employees of the client regardless  
25 of which co-employer obtains such workers' compensation coverage.

26 (7) If a client receives notice of the cancellation,  
27 nonrenewal, or termination of workers' compensation coverage

1 obtained by the professional employer organization, then the client  
2 may withdraw from the professional employer agreement without  
3 penalty unless the client is notified by the professional employer  
4 organization of replacement coverage within fifteen days after the  
5 notice.

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

11 (9) The professional employer organization shall  
12 not make any materially inaccurate, misleading, or fraudulent  
13 representations to the client regarding the cost of workers'  
14 compensation coverage. If the professional employer organization  
15 charges the client a specified amount for workers' compensation  
16 coverage, the professional employer organization shall provide  
17 the client with an accurate and concise description of the  
18 basis upon which it was calculated and the services that are  
19 included. A professional employer organization shall not charge  
20 a client a specified amount for workers' compensation coverage  
21 that is materially inconsistent with the actual amounts that the  
22 professional employer organization is charged by the insurer,  
23 given reasonably anticipated loss-sensitive charges, if applicable,  
24 reasonable recognition of the professional employer organization's  
25 costs, and a margin for profit.

26 Sec. 10. (1) The department shall adopt a schedule of  
27 fees for initial registration, annual registration renewal, and

1 limited registration, not to exceed two thousand five hundred  
2 dollars for initial registration, one thousand five hundred dollars  
3 for annual registration renewal, and one thousand dollars for  
4 limited registration. Such fees shall not exceed those reasonably  
5 necessary for the administration of the Professional Employer  
6 Organization Registration Act.

7 (2) There is hereby created the Professional Employer  
8 Organization Cash Fund to be administered by the department. Fees  
9 imposed pursuant to this section shall be remitted to the State  
10 Treasurer for credit to the fund. Money in the fund may be used  
11 for the administration of the Professional Employer Organization  
12 Registration Act. Any money in the fund available for investment  
13 shall be invested by the state investment officer pursuant to  
14 the Nebraska Capital Expansion Act and the Nebraska State Funds  
15 Investment Act.

16 Sec. 11. (1)(a) A person shall not knowingly:

17 (i) Offer or provide professional employer services  
18 in this state or use the names PEO, professional employer  
19 organization, staff leasing, employee leasing, administrative  
20 employer, or other title representing professional employer  
21 services unless such person is registered under the Professional  
22 Employer Organization Registration Act;

23 (ii) Provide false or fraudulent information to the  
24 department in conjunction with any registration, renewal, or report  
25 required under the act; or

26 (iii) Enter into a co-employment relationship in which  
27 less than a majority of the employees of the client in this state

1 are covered employees or in which less than one-half of the payroll  
2 of the client in this state is attributable to covered employees.

3 (b) Any person violating this subsection is guilty of a  
4 Class I misdemeanor.

5 (2) Disciplinary action may be taken by the department:

6 (a) Against a person for violation of subsection (1) of  
7 this section;

8 (b) Against a professional employer organization or a  
9 controlling person of a professional employer organization upon the  
10 conviction of a professional employer organization or a controlling  
11 person of a professional employer organization of a crime that  
12 relates to the operation of the professional employer organization  
13 or the ability of a registrant or a controlling person of a  
14 registrant to operate a professional employer organization;

15 (c) Against a professional employer organization or a  
16 controlling person of a professional employer organization for  
17 knowingly making a material misrepresentation to an insurer, an  
18 insurance producer, the department, or other governmental agency;  
19 or

20 (d) Against a professional employer organization or a  
21 controlling person of a professional employer organization for a  
22 willful violation of the act or any order or regulation issued by  
23 the department under the act.

24 (3)(a) Upon finding, after notice and opportunity for  
25 hearing, that a professional employer organization, a controlling  
26 person of a professional employer organization, or a person  
27 offering professional employer services has violated one or more

1 provisions of this section, and subject to any appeal required, the  
2 department may:

- 3 (i) Deny an application for registration;  
4 (ii) Revoke, restrict, or refuse to renew a registration;  
5 (iii) Impose an administrative penalty in an amount not  
6 to exceed one thousand dollars for each material violation;  
7 (iv) Place the registrant on probation for the period and  
8 subject to conditions that the department specifies; or  
9 (v) Issue a cease and desist order.

10 (b) A decision by the department under this subsection  
11 may be appealed in accordance with the Administrative Procedure  
12 Act.

13 (4) The department may adopt and promulgate rules  
14 and regulations reasonably necessary for the administration and  
15 enforcement of sections 4, 5, 10, and 11 of this act.

16 Sec. 12. Section 44-7504, Revised Statutes Cumulative  
17 Supplement, 2008, is amended to read:

18 44-7504 For purposes of the Property and Casualty  
19 Insurance Rate and Form Act:

20 (1) Advisory organization means any entity, including its  
21 affiliates or subsidiaries, which (a) has majority ownership or  
22 control by two or more insurers and assists two or more insurers  
23 in activities related to ratemaking, the promulgation of policy  
24 forms, or related matters or (b) makes the same prospective loss  
25 cost or policy form filings on behalf of or to be available for  
26 two or more insurers. For purposes of this subdivision, a group  
27 of insurers under common ownership or control shall be considered

1 a single insurer. Advisory organization does not include joint  
2 reinsurance pools, joint underwriting pools, or insurers engaged in  
3 joint underwriting;

4 (2) Classification means the process of grouping insureds  
5 with similar loss or expense characteristics so that differences in  
6 losses and expenses may be recognized;

7 (3) Client means client as defined in section 2 of this  
8 act;

9 ~~(3)~~ (4) Director means the Director of Insurance;

10 ~~(4)~~ (5) Exempt commercial policyholder means an entity to  
11 which specific aspects of rate or policy form regulation do not  
12 apply or have been relaxed in accordance with rules and regulations  
13 adopted and promulgated pursuant to section 44-7515;

14 ~~(5)~~ (6) Expense means that portion of a rate attributable  
15 to acquisition, field supervision, collection expense, general  
16 expense, taxes, licenses, and fees. Expense does not include loss  
17 adjustment expense;

18 ~~(6)~~ (7) Experience rating plan means a rating formula  
19 and related procedures that use past loss experience of an  
20 individual policyholder to forecast future losses by measuring  
21 the policyholder's loss experience against the expected losses  
22 for policyholders in that classification to produce a prospective  
23 premium credit, debit, or unity modification;

24 ~~(7)~~ (8) Joint reinsurance pool means an ongoing voluntary  
25 arrangement pursuant to which two or more insurers participate in  
26 the reinsurance of risks written by one or more member insurers  
27 and reinsured by one or more other member insurers. For purposes

1 of this subdivision, a group of insurers under common ownership or  
2 control shall be considered a single insurer. A joint reinsurance  
3 pool may operate through an association, syndicate, or other  
4 arrangement;

5 ~~(8)~~ (9) Joint underwriting means a voluntary arrangement  
6 established on an individual risk basis by which two or more  
7 insurers jointly contract to provide coverage for an insured.  
8 For purposes of this subdivision, a group of insurers under  
9 common ownership or control shall be considered a single insurer.  
10 Joint underwriting does not include any arrangement by which  
11 the participants are reinsuring the direct obligation of another  
12 risk-assuming entity;

13 ~~(9)~~ (10) Joint underwriting pool means an ongoing  
14 voluntary arrangement pursuant to which two or more insurers  
15 participate in the sharing of risks written as their direct  
16 obligations according to a predetermined basis and the insurance  
17 remains the direct obligation of the pool participants. For  
18 purposes of this subdivision, a group of insurers under common  
19 ownership or control shall be considered a single insurer. A joint  
20 underwriting pool may operate through an association, syndicate,  
21 or other arrangement;

22 ~~(10)~~ (11) Loss adjustment expense means the expense  
23 incurred by an insurer in the course of settling claims;

24 (12) Master policy means master policy as defined in  
25 section 2 of this act;

26 (13) Multiple coordinated policy means multiple  
27 coordinated policy as defined in section 2 of this act;

1           ~~(11)~~ (14) Policy form means all policies, certificates,  
2 or other contracts providing insurance coverage. Policy form  
3 includes bonds and includes riders, endorsements, or other  
4 amendments to the policy form;

5           ~~(12)~~ (15) Premium means the cost of insurance to the  
6 policyholder after all audit adjustments have been made and any  
7 dividends payable have been subtracted;

8           (16) Professional employer organization means  
9 professional employer organization as defined in section 2  
10 of this act;

11           ~~(13)~~ (17) Prospective loss cost means that portion of a  
12 rate intended to provide for expected losses and loss adjustment  
13 expenses. Prospective loss costs may provide for anticipated  
14 special assessments. Prospective loss costs do not include  
15 provisions for profits, dividends, or expenses other than loss  
16 adjustment expenses;

17           ~~(14)~~ (18) Rating system means the information needed  
18 to determine the applicable rate or premium including rates, any  
19 manual or plan of rates, classifications, rating schedules, minimum  
20 premiums, policy fees, payment plans, rating plans or rules,  
21 anniversary rating date rules, and other similar information.  
22 Rating system does not include dividend rating plans or other  
23 provisions for the possible payment of dividends if such dividends  
24 are declared by the insurer's board of directors and are not  
25 guaranteed;

26           ~~(15)~~ (19) Special assessments means guaranty fund  
27 assessments made pursuant to section 44-2407, Workers' Compensation



1 Trust Fund assessments made pursuant to section 48-162.02, residual  
2 market assessments made pursuant to section 44-3,158 or 44-7528,  
3 and similar assessments. Special assessments are not expenses or  
4 losses;

5 ~~(16)~~ (20) Statistical agent means an entity that, for the  
6 purpose of fulfilling the statistical reporting obligations of two  
7 or more insurers under the act, collects or compiles statistics  
8 from two or more insurers or provides reports developed from these  
9 statistics to the director. For purposes of this subdivision,  
10 a group of insurers under common ownership or control shall be  
11 considered a single insurer; and

12 ~~(17)~~ (21) Supporting information means the experience  
13 and judgment of the filer and the experience or data of other  
14 insurers or advisory organizations relied upon by the filer,  
15 the interpretation of any other data relied upon by the filer,  
16 descriptions of methods used in developing a rating system, and any  
17 other information required by the director to be filed.

18 Sec. 13. Section 44-7515, Reissue Revised Statutes of  
19 Nebraska, is amended to read:

20 44-7515 (1) The director shall adopt and promulgate rules  
21 and regulations to modify or eliminate requirements for insurers to  
22 use filed rates and policy forms for commercial policyholders under  
23 common ownership identified through the application of subsection  
24 (4) of this section. Unless set forth by rules and regulations,  
25 on and after January 1, 2012, eligibility for a professional  
26 employer organization shall be based upon the professional  
27 employer organization's total premiums, including premiums for

1 multiple coordinated policies written for the professional employer  
2 organization's clients. Unless otherwise set forth in the rules  
3 and regulations, the rules and regulations apply to multiple  
4 coordinated policies written on behalf of an eligible professional  
5 employer organization.

6 (2) The rules and regulations adopted and promulgated  
7 pursuant to this section may establish requirements and thresholds  
8 that differ by line or type of insurance or that differ for rates  
9 and policy forms.

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

16 (4) The director shall consider the following factors in  
17 determining those commercial policyholders to which the rules and  
18 regulations adopted and promulgated pursuant to this section shall  
19 apply:

20 (a) For modification or elimination of the applicability  
21 of filed rates, characteristics of insureds that are likely to  
22 avail themselves of regular price comparisons between competing  
23 insurers and are likely to study and understand the differences and  
24 details of pricing proposals that they receive;

25 (b) For modification or elimination of the applicability  
26 of filed rates, characteristics of insureds for which filed rates  
27 and rating plans are less likely to provide the lowest premiums

1 otherwise consistent with the provisions of the Property and  
2 Casualty Insurance Rate and Form Act;

3 (c) Modification or elimination of the applicability of  
4 filed rates for commercial insureds that are primarily located in  
5 another jurisdiction where they are subject to similar exemptions  
6 or waivers in that jurisdiction;

7 (d) For modification or elimination of the applicability  
8 of filed policy forms, characteristics of insureds that are likely  
9 to study and understand the details of their business risks and  
10 insurance coverages and exclusions;

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

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

19 (g) Any other relevant factor.

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

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

27 (a) The rules and regulations may not allow any reduction

1 of the benefits payable under workers' compensation or excess  
2 workers' compensation policies or any alteration of provisions for  
3 the handling and settlement of claims under such policies, but  
4 the rules and regulations may allow exempt commercial policyholders  
5 to negotiate workers' compensation or excess workers' compensation  
6 premiums and premium payment provisions;

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

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

18 (d) The rules and regulations may not reduce the rate  
19 regulatory requirements applying to ~~any policyholder~~ insurance  
20 written for a professional employer organization on or after  
21 January 1, 2012, or to any insurance written for an individual  
22 policyholder that is not a client of a professional employer  
23 organization with total premiums of less than twenty-five thousand  
24 dollars for lines of insurance subject to the Property and Casualty  
25 Insurance Rate and Form Act; and

26 (e) The rules and regulations may not reduce the form  
27 regulatory requirements applying to ~~any policyholder~~ insurance

1 written for a professional employer organization on or after  
2 January 1, 2012, or to any insurance written for an individual  
3 policyholder that is not a client of a professional employer  
4 organization with total premiums of less than fifty thousand  
5 dollars for lines of insurance subject to the Property and Casualty  
6 Insurance Rate and Form Act.

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

13 Sec. 14. Section 48-115, Revised Statutes Cumulative  
14 Supplement, 2008, is amended to read:

15 48-115 The terms employee and worker are used  
16 interchangeably and have the same meaning throughout the Nebraska  
17 Workers' Compensation Act. Such terms include the plural and all  
18 ages and both sexes. For purposes of the act, employee or worker  
19 shall be construed to mean:

20 (1) Every person in the service of the state or of any  
21 governmental agency created by it, including the Nebraska National  
22 Guard and members of the military forces of the State of Nebraska,  
23 under any appointment or contract of hire, expressed or implied,  
24 oral or written;

25 (2) Every person in the service of an employer who  
26 is engaged in any trade, occupation, business, or profession as  
27 described in section 48-106 under any contract of hire, expressed

1 or implied, oral or written, including aliens and also including  
2 minors. Minors for the purpose of making election of remedies under  
3 the Nebraska Workers' Compensation Act shall have the same power of  
4 contracting and electing as adult employees.

5 As used in subdivisions (1) through (11) of this section,  
6 the terms employee and worker shall not be construed to include any  
7 person whose employment is not in the usual course of the trade,  
8 business, profession, or occupation of his or her employer.

9 If an employee subject to the Nebraska Workers'  
10 Compensation Act suffers an injury on account of which he or she  
11 or, in the event of his or her death, his or her dependents would  
12 otherwise have been entitled to the benefits provided by such act,  
13 the employee or, in the event of his or her death, his or her  
14 dependents shall be entitled to the benefits provided under such  
15 act, if the injury or injury resulting in death occurred within  
16 this state, or if at the time of such injury (a) the employment  
17 was principally localized within this state, (b) the employer was  
18 performing work within this state, or (c) the contract of hire was  
19 made within this state;

20 (3) Volunteer firefighters of any fire department of  
21 any rural or suburban fire protection district, city, village, or  
22 nonprofit corporation, which fire department is organized under the  
23 laws of the State of Nebraska. Such volunteers shall be deemed  
24 employees of such rural or suburban fire protection district, city,  
25 village, or nonprofit corporation while in the performance of their  
26 duties as members of such department and shall be considered as  
27 having entered and as acting in the regular course and scope of

1 their employment from the instant such persons commence responding  
2 to a call to active duty, whether to a fire station or other  
3 place where firefighting equipment that their company or unit  
4 is to use is located or to any activities that the volunteer  
5 firefighters may be directed to do by the chief of the fire  
6 department or some person authorized to act for such chief. Such  
7 volunteers shall be deemed employees of such rural or suburban fire  
8 protection district, city, village, or nonprofit corporation until  
9 their return to the location from which they were initially called  
10 to active duty or until they engage in any activity beyond the  
11 scope of the performance of their duties, whichever occurs first.

12           Members of such volunteer fire department, before they  
13 are entitled to benefits under the Nebraska Workers' Compensation  
14 Act, shall be recommended by the chief of the fire department  
15 or some person authorized to act for such chief for membership  
16 therein to the board of directors of the rural or suburban fire  
17 protection district or nonprofit corporation, the mayor and city  
18 commission, the mayor and council, or the chairperson and board of  
19 trustees, as the case may be, and upon confirmation shall be deemed  
20 employees of such entity. Members of such fire department after  
21 confirmation to membership may be removed by a majority vote of the  
22 entity's board of directors or governing body and thereafter shall  
23 not be considered employees of such entity. Firefighters of any  
24 fire department of any rural or suburban fire protection district,  
25 nonprofit corporation, city, or village shall be considered as  
26 acting in the performance and within the course and scope of their  
27 employment when performing activities outside of the corporate

1 limits of their respective districts, cities, or villages, but only  
2 if directed to do so by the chief of the fire department or some  
3 person authorized to act for such chief;

4 (4) Members of the Nebraska Emergency Management Agency,  
5 any city, village, county, or interjurisdictional emergency  
6 management organization, or any state emergency response team,  
7 which agency, organization, or team is regularly organized under  
8 the laws of the State of Nebraska. Such members shall be  
9 deemed employees of such agency, organization, or team while  
10 in the performance of their duties as members of such agency,  
11 organization, or team;

12 (5) Any person fulfilling conditions of probation, or  
13 community service as defined in section 29-2277, pursuant to  
14 any order of any court of this state who shall be working for  
15 a governmental body, or agency as defined in section 29-2277,  
16 pursuant to any condition of probation, or community service as  
17 defined in section 29-2277. Such person shall be deemed an employee  
18 of the governmental body or agency for the purposes of the Nebraska  
19 Workers' Compensation Act;

20 (6) Volunteer ambulance drivers and attendants and  
21 out-of-hospital emergency care providers who are members of an  
22 emergency medical service for any county, city, village, rural  
23 or suburban fire protection district, nonprofit corporation, or  
24 any combination of such entities under the authority of section  
25 13-303. Such volunteers shall be deemed employees of such entity  
26 or combination thereof while in the performance of their duties  
27 as ambulance drivers or attendants or out-of-hospital emergency



1 care providers and shall be considered as having entered into and  
2 as acting in the regular course and scope of their employment  
3 from the instant such persons commence responding to a call to  
4 active duty, whether to a hospital or other place where the  
5 ambulance they are to use is located or to any activities that  
6 the volunteer ambulance drivers or attendants or out-of-hospital  
7 emergency care providers may be directed to do by the chief or  
8 some person authorized to act for such chief of the volunteer  
9 ambulance service or out-of-hospital emergency care service. Such  
10 volunteers shall be deemed employees of such county, city, village,  
11 rural or suburban fire protection district, nonprofit corporation,  
12 or combination of such entities until their return to the location  
13 from which they were initially called to active duty or until  
14 they engage in any activity beyond the scope of the performance  
15 of their duties, whichever occurs first. Before such volunteer  
16 ambulance drivers or attendants or out-of-hospital emergency care  
17 providers are entitled to benefits under the Nebraska Workers'  
18 Compensation Act, they shall be recommended by the chief or some  
19 person authorized to act for such chief of the volunteer ambulance  
20 service or out-of-hospital emergency care service for membership  
21 therein to the board of directors of the rural or suburban  
22 fire protection district or nonprofit corporation, the governing  
23 body of the county, city, or village, or combination thereof,  
24 as the case may be, and upon such confirmation shall be deemed  
25 employees of such entity or combination thereof. Members of such  
26 volunteer ambulance or out-of-hospital emergency care service after  
27 confirmation to membership may be removed by majority vote of the

1 entity's board of directors or governing body and thereafter shall  
2 not be considered employees of such entity. Volunteer ambulance  
3 drivers and attendants and out-of-hospital emergency care providers  
4 for any county, city, village, rural or suburban fire protection  
5 district, nonprofit corporation, or any combination thereof shall  
6 be considered as acting in the performance and within the course  
7 and scope of their employment when performing activities outside of  
8 the corporate limits of their respective county, city, village, or  
9 district, but only if directed to do so by the chief or some person  
10 authorized to act for such chief;

11 (7) Members of a law enforcement reserve force appointed  
12 in accordance with section 81-1438. Such members shall be deemed  
13 employees of the county or city for which they were appointed;

14 (8) Any offender committed to the Department of  
15 Correctional Services who is employed pursuant to section 81-1827.  
16 Such offender shall be deemed an employee of the Department of  
17 Correctional Services solely for purposes of the Nebraska Workers'  
18 Compensation Act;

19 (9) An executive officer of a corporation elected or  
20 appointed under the provisions or authority of the charter,  
21 articles of incorporation, or bylaws of such corporation who  
22 owns less than twenty-five percent of the common stock of such  
23 corporation or an executive officer of a nonprofit corporation  
24 elected or appointed under the provisions or authority of the  
25 charter, articles of incorporation, or bylaws of such corporation  
26 who receives annual compensation of more than one thousand dollars  
27 from such corporation. Such executive officer shall be an employee

1 of such corporation under the Nebraska Workers' Compensation Act.

2           An executive officer of a corporation who owns  
3 twenty-five percent or more of the common stock of such corporation  
4 or an executive officer of a nonprofit corporation who receives  
5 annual compensation of one thousand dollars or less from such  
6 corporation shall not be construed to be an employee of the  
7 corporation under the Nebraska Workers' Compensation Act unless  
8 such executive officer elects to bring himself or herself within  
9 the provisions of the act. Such election shall be in writing  
10 and filed with the secretary of the corporation and with the  
11 workers' compensation insurer. Such election shall be effective  
12 upon receipt by the insurer for the current policy and subsequent  
13 policies issued by such insurer and shall remain in effect until  
14 the election is terminated, in writing, by the officer and the  
15 termination is filed with the insurer or until the insurer ceases  
16 to provide coverage for the corporation, whichever occurs first.  
17 Any such termination of election shall also be filed with the  
18 secretary of the corporation. If insurance is provided through a  
19 master policy or a multiple coordinated policy pursuant to the  
20 Professional Employer Organization Registration Act on or after  
21 January 1, 2012, then such election or termination of election  
22 shall also be filed with the professional employer organization.  
23 If coverage under the master policy or multiple coordinated  
24 policy ceases, then such election shall also be effective for a  
25 replacement master policy or multiple coordinated policy obtained  
26 by the professional employer organization and shall remain in  
27 effect for the new policy as provided in this subdivision. If such

1 an executive officer has not elected to bring himself or herself  
2 within the provisions of the act Nebraska Workers' Compensation  
3 Act pursuant to this subdivision and a health, accident, or  
4 other insurance policy covering such executive officer contains  
5 an exclusion of coverage if the executive officer is otherwise  
6 entitled to workers' compensation coverage, such exclusion is null  
7 and void as to such executive officer.

8           It is the intent of the Legislature that the changes  
9 made to this subdivision by Laws 2002, LB 417, shall apply to  
10 policies of insurance against liability arising under the act with  
11 an effective date on or after January 1, 2003, but shall not apply  
12 to any such policy with an effective date prior to January 1, 2003;

13           (10) Each individual employer, partner, limited liability  
14 company member, or self-employed person who is actually engaged  
15 in the individual employer's, partnership's, limited liability  
16 company's, or self-employed person's business on a substantially  
17 full-time basis who elects to bring himself or herself within the  
18 provisions of the Nebraska Workers' Compensation Act. Such election  
19 shall be in writing and filed with the workers' compensation  
20 insurer. Such election shall be effective upon receipt by the  
21 insurer for the current policy and subsequent policies issued by  
22 such insurer and shall remain in effect until the election is  
23 terminated, in writing, by such person and the termination is  
24 filed with the insurer or until the insurer ceases to provide  
25 coverage for the business, whichever occurs first. If insurance is  
26 provided through a master policy or a multiple coordinated policy  
27 pursuant to the Professional Employer Organization Registration Act

1 on or after January 1, 2012, then such election or termination  
2 of election shall also be filed with the professional employer  
3 organization. If coverage under the master policy or multiple  
4 coordinated policy ceases, then such election shall also be  
5 effective for a replacement master policy or multiple coordinated  
6 policy obtained by the professional employer organization and  
7 shall remain in effect for the new policy as provided in this  
8 subdivision. If any such person who is actually engaged in the  
9 business on a substantially full-time basis has not elected to  
10 bring himself or herself within the provisions of the Nebraska  
11 Workers' Compensation Act pursuant to this subdivision and a  
12 health, accident, or other insurance policy covering such person  
13 contains an exclusion of coverage if such person is otherwise  
14 entitled to workers' compensation coverage, such exclusion shall be  
15 null and void as to such person; and

16 (11) An individual lessor of a commercial motor vehicle  
17 leased to a motor carrier and driven by such individual lessor who  
18 elects to bring himself or herself within the provisions of the  
19 Nebraska Workers' Compensation Act. Such election is made if he  
20 or she agrees in writing with the motor carrier to have the same  
21 rights as an employee only for purposes of workers' compensation  
22 coverage maintained by the motor carrier. For an election under  
23 this subdivision, the motor carrier's principal place of business  
24 must be in this state and the motor carrier must be authorized  
25 to self-insure liability under the Nebraska Workers' Compensation  
26 Act. Such an election shall (a) be effective from the date of  
27 such written agreement until such agreement is terminated, (b) be

1 enforceable against such self-insured motor carrier in the same  
2 manner and to the same extent as claims arising under the Nebraska  
3 Workers' Compensation Act by employees of such self-insured motor  
4 carrier, and (c) not be deemed to be a contract of insurance  
5 for purposes of Chapter 44. Section 48-111 shall apply to the  
6 individual lessor and the self-insured motor carrier with respect  
7 to personal injury or death caused to such individual lessor by  
8 accident or occupational disease arising out of and in the course  
9 of performing services for such self-insured motor carrier in  
10 connection with such lease while such election is effective.

11           Sec. 15. Section 48-144.03, Revised Statutes Supplement,  
12 2009, is amended to read:

13           48-144.03 (1) Notwithstanding policy provisions that  
14 stipulate a workers' compensation insurance policy to be a contract  
15 with a fixed term of coverage that expires at the end of the  
16 term, coverage under a workers' compensation insurance policy  
17 shall continue in full force and effect until notice is given in  
18 accordance with this section.

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

1 insurer under any policy written by the insurer for the employer,  
2 (c) failure of the employer to reimburse deductible losses as  
3 required under any policy written by the insurer for the employer,  
4 or (d) failure of the employer, if covered pursuant to section  
5 44-3,158, to comply with sections 48-443 to 48-445.

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

20 (4) Subsections (2) and (3) of this section terminate on  
21 January 1, 2012.

22 (5) (a) This subsection applies to workers' compensation  
23 policies other than master policies or multiple coordinated  
24 policies obtained by a professional employer organization pursuant  
25 to the Professional Employer Organization Registration Act on or  
26 after January 1, 2012.

27 (b) No cancellation of a policy within the policy period

1 shall be effective unless notice of the cancellation is given by  
2 the workers' compensation insurer to the compensation court and  
3 to the employer. No such cancellation shall be effective until  
4 thirty days after giving such notices, except that the cancellation  
5 may be effective ten days after the giving of such notices if  
6 such cancellation is based on (i) notice from the employer to the  
7 insurer to cancel the policy, (ii) nonpayment of premium due the  
8 insurer under any policy written by the insurer for the employer,  
9 (iii) failure of the employer to reimburse deductible losses as  
10 required under any policy written by the insurer for the employer,  
11 or (iv) failure of the employer, if covered pursuant to section  
12 44-3,158, to comply with sections 48-443 to 48-445.

13 (c) No policy shall expire or lapse at the end of the  
14 policy period unless notice of nonrenewal is given by the workers'  
15 compensation insurer to the compensation court and to the employer.  
16 No policy shall expire or lapse until thirty days after giving  
17 such notices, except that a policy may expire or lapse ten days  
18 after the giving of such notices if the nonrenewal is based on (i)  
19 notice from the employer to the insurer to not renew the policy,  
20 (ii) nonpayment of premium due the insurer under any policy written  
21 by the insurer for the employer, (iii) failure of the employer to  
22 reimburse deductible losses as required under any policy written  
23 by the insurer for the employer, or (iv) failure of the employer,  
24 if covered pursuant to section 44-3,158, to comply with sections  
25 48-443 to 48-445.

26 (6) (a) This subsection applies to workers' compensation  
27 master policies obtained by a professional employer organization



1 pursuant to the Professional Employer Organization Registration Act  
2 on or after January 1, 2012.

3 (b) No cancellation of a master policy within the policy  
4 period shall be effective unless notice of the cancellation is  
5 given by the workers' compensation insurer to the compensation  
6 court and to the professional employer organization. No such  
7 cancellation shall be effective until thirty days after giving such  
8 notices.

9 (c) No termination of coverage for a client or any  
10 employees of a client under a master policy within the policy  
11 period shall be effective unless notice is given by the workers'  
12 compensation insurer to the compensation court and to the  
13 professional employer organization. No such termination of coverage  
14 shall be effective until thirty days after giving such notices,  
15 except that the termination of coverage may be effective ten  
16 days after the giving of such notices if such termination is  
17 based on (i) notice from the client to the professional employer  
18 organization or the insurer to terminate the coverage or (ii)  
19 notice from the professional employer organization of the client's  
20 nonpayment of premium.

21 (d) No master policy shall expire or lapse at the end  
22 of the policy period unless notice of nonrenewal is given by the  
23 workers' compensation insurer to the compensation court and to the  
24 professional employer organization. No master policy shall expire  
25 or lapse until thirty days after giving such notices.

26 (7) (a) This subsection applies to workers' compensation  
27 multiple coordinated policies obtained by a professional employer

1 organization pursuant to the Professional Employer Organization  
2 Registration Act on or after January 1, 2012.

3 (b) No cancellation of a policy within the policy period  
4 shall be effective unless notice of the cancellation is given by  
5 the workers' compensation insurer to the compensation court, to the  
6 professional employer organization, and to the client employer. No  
7 such cancellation shall be effective until thirty days after giving  
8 such notices, except that the cancellation may be effective ten  
9 days after giving such notices if such cancellation is based on (i)  
10 notice from the client to the professional employer organization or  
11 the insurer to cancel the policy, (ii) notice from the professional  
12 employer organization of the client's nonpayment of premium or  
13 failure to reimburse deductibles for policies issued pursuant to  
14 section 48-146.03, (iii) failure of the client, if covered pursuant  
15 to section 44-3,158, to comply with sections 48-443 to 48-445, or  
16 (iv) for policies issued pursuant to section 44-3,158, nonpayment  
17 of premium or failure to reimburse deductibles for policies issued  
18 pursuant to section 48-146.03.

19 (c) No termination of coverage for any employees of the  
20 client during the policy period shall be effective unless notice  
21 is given by the workers' compensation insurer to the compensation  
22 court, to the professional employer organization, and to the  
23 client. No such termination of coverage shall be effective until  
24 thirty days after giving such notices, except that the termination  
25 of coverage may be effective ten days after the giving of such  
26 notices if such termination is based on (i) notice from the  
27 client to the professional employer organization or the insurer

1 to terminate the coverage or (ii) notice from the professional  
2 employer organization of the client's nonpayment of premium or  
3 failure to reimburse deductibles for policies issued pursuant to  
4 section 48-146.03.

5 (d) No policy shall expire or lapse at the end of the  
6 policy period unless notice of nonrenewal is given by the workers'  
7 compensation insurer to the compensation court, to the professional  
8 employer organization, and to the client. No policy shall expire  
9 or lapse until thirty days after giving such notices, except  
10 that a policy may expire or lapse ten days after the giving of  
11 such notices if the nonrenewal is based on (i) notice from the  
12 client to the professional employer organization or the insurer to  
13 not renew the policy, (ii) notice from the professional employer  
14 organization of the client's nonpayment of premium or failure  
15 to reimburse deductibles for policies issued pursuant to section  
16 48-146.03, (iii) failure of the client, if covered pursuant to  
17 section 44-3,158, to comply with sections 48-443 to 48-445, or  
18 (iv) for policies issued pursuant to section 44-3,158, nonpayment  
19 of premium or failure to reimburse deductibles for policies issued  
20 pursuant to section 48-146.03.

21 (e) An insurer may refrain from sending notices required  
22 by this subsection to a professional employer organization's client  
23 based upon the professional employer organization's representation  
24 that coverage has been or will be replaced. Such representation  
25 shall not absolve the insurer of its responsibility to continue  
26 coverage if such representation proves inaccurate.

27 ~~(4)~~ (8) Notwithstanding other provisions of this section,

1 if ~~the employer has secured~~ replacement workers' compensation  
2 insurance coverage has been secured with another workers'  
3 compensation insurer, then the cancellation or nonrenewal of the  
4 policy or the termination of coverage for a client or employees of  
5 a client under the policy shall be effective as of the effective  
6 date of such other insurance coverage.

7 ~~(5)~~ (9) The notices required by this section shall state  
8 the reason for the cancellation or nonrenewal of the policy or  
9 termination of coverage for a client or employees of a client under  
10 a policy.

11 ~~(6)~~ (10) The notices required by this section shall be  
12 provided in writing and shall be deemed given upon the mailing of  
13 such notices by certified mail, except that notices from insurers  
14 to the compensation court may be provided by electronic means  
15 if such electronic means is approved by the administrator of the  
16 compensation court. If notice is provided by electronic means  
17 pursuant to such an approval, it shall be deemed given upon receipt  
18 and acceptance by the compensation court.

19 Sec. 16. Section 48-145, Revised Statutes Cumulative  
20 Supplement, 2008, is amended to read:

21 48-145 To secure the payment of compensation under the  
22 Nebraska Workers' Compensation Act:

23 (1) Every employer in the occupations described in  
24 section 48-106, except the State of Nebraska and any governmental  
25 agency created by the state, shall either (a) insure and keep  
26 insured its liability under such act in some corporation,  
27 association, or organization authorized and licensed to transact

1 the business of workers' compensation insurance in this state,  
2 (b) in the case of an employer who is a lessor of one or more  
3 commercial vehicles leased to a self-insured motor carrier, be  
4 a party to an effective agreement with the self-insured motor  
5 carrier under section 48-115.02, (c) be a member of a risk  
6 management pool authorized and providing group self-insurance of  
7 workers' compensation liability pursuant to the Intergovernmental  
8 Risk Management Act, or (d) with approval of the Nebraska  
9 Workers' Compensation Court, self-insure its workers' compensation  
10 liability.

11 An employer seeking approval to self-insure shall make  
12 application to the compensation court in the form and manner as  
13 the compensation court may prescribe, meet such minimum standards  
14 as the compensation court shall adopt and promulgate by rule and  
15 regulation, and furnish to the compensation court satisfactory  
16 proof of financial ability to pay direct the compensation in the  
17 amount and manner when due as provided for in the Nebraska Workers'  
18 Compensation Act. Approval is valid for the period prescribed by  
19 the compensation court unless earlier revoked pursuant to this  
20 subdivision or subsection (1) of section 48-146.02. Notwithstanding  
21 subdivision (1)(d) of this section, a professional employer  
22 organization shall not be eligible to self-insure its workers'  
23 compensation liability. The compensation court may by rule  
24 and regulation require the deposit of an acceptable security,  
25 indemnity, trust, or bond to secure the payment of compensation  
26 liabilities as they are incurred. The agreement or document  
27 creating a trust for use under this section shall contain a

1 provision that the trust may only be terminated upon the consent  
2 and approval of the compensation court. Any beneficial interest  
3 in the trust principal shall be only for the benefit of the past  
4 or present employees of the self-insurer and any persons to whom  
5 the self-insurer has agreed to pay benefits under subdivision (11)  
6 of section 48-115 and section 48-115.02. Any limitation on the  
7 termination of a trust and all other restrictions on the ownership  
8 or transfer of beneficial interest in the trust assets contained in  
9 such agreement or document creating the trust shall be enforceable,  
10 except that any limitation or restriction shall be enforceable  
11 only if authorized and approved by the compensation court and  
12 specifically delineated in the agreement or document.

13           Notwithstanding any other provision of the Nebraska  
14 Workers' Compensation Act, a three-judge panel of the compensation  
15 court may, after notice and hearing, revoke approval as a  
16 self-insurer if it finds that the financial condition of the  
17 self-insurer or the failure of the self-insurer to comply with  
18 an obligation under the act poses a serious threat to the public  
19 health, safety, or welfare. The Attorney General, when requested  
20 by the administrator of the compensation court, may file a motion  
21 pursuant to section 48-162.03 for an order directing a self-insurer  
22 to appear before a three-judge panel of the compensation court  
23 and show cause as to why the panel should not revoke approval  
24 as a self-insurer pursuant to this subdivision. The Attorney  
25 General shall be considered a party for purposes of such motion.  
26 The Attorney General may appear before the three-judge panel and  
27 present evidence that the financial condition of the self-insurer

1 or the failure of the self-insurer to comply with an obligation  
2 under the act poses a serious threat to the public health, safety,  
3 or welfare. The presiding judge shall rule on a motion of the  
4 Attorney General pursuant to this subdivision and, if applicable,  
5 shall appoint judges of the compensation court to serve on the  
6 three-judge panel. The presiding judge shall not serve on such  
7 panel. Appeal from a revocation pursuant to this subdivision  
8 shall be in accordance with section 48-185. No such appeal shall  
9 operate as a supersedeas unless the self-insurer executes to the  
10 compensation court a bond with one or more sureties authorized to  
11 do business within the State of Nebraska in an amount determined by  
12 the three-judge panel to be sufficient to satisfy the obligations  
13 of the self-insurer under the act;

14           (2) An approved self-insurer shall furnish to the State  
15 Treasurer an annual amount equal to two and one-half percent of  
16 the prospective loss costs for like employment but in no event  
17 less than twenty-five dollars. Prospective loss costs is defined  
18 in section 48-151. The compensation court is the sole judge as  
19 to the prospective loss costs that shall be used. All money which  
20 a self-insurer is required to pay to the State Treasurer, under  
21 this subdivision, shall be computed and tabulated under oath as of  
22 January 1 and paid to the State Treasurer immediately thereafter.  
23 The compensation court or designee of the compensation court may  
24 audit the payroll of a self-insurer at the compensation court's  
25 discretion. All money paid by a self-insurer under this subdivision  
26 shall be credited to the General Fund;

27           (3) Every employer who fails, neglects, or refuses to

1 comply with the conditions set forth in subdivision (1) or (2) of  
2 this section shall be required to respond in damages to an employee  
3 for personal injuries, or when personal injuries result in the  
4 death of an employee, then to his or her dependents; and

5 (4) Any security, indemnity, trust, or bond provided by  
6 a self-insurer pursuant to subdivision (1) of this section shall  
7 be deemed a surety for the purposes of the payment of valid  
8 claims of the self-insurer's employees and the persons to whom the  
9 self-insurer has agreed to pay benefits under the Nebraska Workers'  
10 Compensation Act pursuant to subdivision (11) of section 48-115 and  
11 section 48-115.02 as generally provided in the act.

12 Sec. 17. Section 48-146, Revised Statutes Cumulative  
13 Supplement, 2008, is amended to read:

14 48-146 No policy of insurance against liability arising  
15 under the Nebraska Workers' Compensation Act shall be issued  
16 and no agreement pursuant to section 44-4304 providing group  
17 self-insurance coverage of workers' compensation liability by a  
18 risk management pool shall have any force or effect unless it  
19 contains the agreement of the workers' compensation insurer or risk  
20 management pool that it will promptly pay to the person entitled to  
21 the same all benefits conferred by such act, and all installments  
22 of the compensation that may be awarded or agreed upon, and  
23 that the obligation shall not be affected by the insolvency or  
24 bankruptcy of the employer or his or her estate or discharge  
25 therein or by any default of the ~~insured~~ employer after the injury,  
26 or by any default in the giving of any notice required by such  
27 policy, or otherwise. Such agreement shall be construed to be



1 a direct promise by the workers' compensation insurer or risk  
2 management pool to the person entitled to compensation enforceable  
3 in his or her name. Each workers' compensation insurance policy  
4 and each agreement forming a risk management pool shall be deemed  
5 to be made subject to the Nebraska Workers' Compensation Act.  
6 No corporation, association, or organization shall enter into a  
7 workers' compensation insurance policy unless copies of such forms  
8 have been filed with and approved by the Department of Insurance.  
9 Each workers' compensation insurance policy and each agreement  
10 pursuant to section 44-4304 providing group self-insurance coverage  
11 of workers' compensation liability by a risk management pool shall  
12 contain a clause to the effect (1) that as between the employer  
13 and the workers' compensation insurer or risk management pool the  
14 notice to or knowledge of the occurrence of the injury on the part  
15 of the ~~insured~~ employer shall be deemed notice or knowledge, as the  
16 case may be, on the part of the insurer or risk management pool,  
17 (2) that jurisdiction of the ~~insured~~ employer for the purpose of  
18 such act shall be jurisdiction of the insurer or risk management  
19 pool, and (3) that the insurer or risk management pool shall  
20 in all things be bound by the awards, judgments, or decrees  
21 rendered against such ~~insured~~. Each employer. Except when the  
22 Professional Employer Organization Registration Act allows coverage  
23 to be limited to co-employees as specified in a professional  
24 employer agreement, each workers' compensation insurance policy  
25 and each agreement providing such group self-insurance coverage  
26 shall include within its terms the payment of compensation to all  
27 employees who are within the scope and purview of the Nebraska

1 Workers' Compensation Act, including potential new or unknown  
2 employees.

3 Sec. 18. Section 48-151, Reissue Revised Statutes of  
4 Nebraska, is amended to read:

5 48-151 Throughout the Nebraska Workers' Compensation Act,  
6 the following words and phrases shall be considered to have  
7 the following meaning, respectively, unless the context clearly  
8 indicates a different meaning in the construction used:

9 (1) Physician means any person licensed to practice  
10 medicine and surgery, osteopathic medicine, chiropractic, podiatry,  
11 or dentistry in the State of Nebraska or in the state in which the  
12 physician is practicing;

13 (2) Accident means an unexpected or unforeseen injury  
14 happening suddenly and violently, with or without human fault, and  
15 producing at the time objective symptoms of an injury. The claimant  
16 has the burden of proof to establish by a preponderance of the  
17 evidence that such unexpected or unforeseen injury was in fact  
18 caused by the employment. There is no presumption from the mere  
19 occurrence of such unexpected or unforeseen injury that the injury  
20 was in fact caused by the employment;

21 (3) Occupational disease means only a disease which is  
22 due to causes and conditions which are characteristic of and  
23 peculiar to a particular trade, occupation, process, or employment  
24 and excludes all ordinary diseases of life to which the general  
25 public is exposed;

26 (4) Injury and personal injuries mean only violence to  
27 the physical structure of the body and such disease or infection

1 as naturally results therefrom. The terms include disablement  
2 resulting from occupational disease arising out of and in the  
3 course of the employment in which the employee was engaged and  
4 which was contracted in such employment. The terms include an  
5 aggravation of a preexisting occupational disease, the employer  
6 being liable only for the degree of aggravation of the preexisting  
7 occupational disease. The terms do not include disability or death  
8 due to natural causes but occurring while the employee is at work  
9 and do not include an injury, disability, or death that is the  
10 result of a natural progression of any preexisting condition;

11 (5) Death, when mentioned as a basis for the right to  
12 compensation, means only death resulting from such violence and its  
13 resultant effects or from occupational disease;

14 (6) Without otherwise affecting either the meaning or the  
15 interpretation of the abridged clause, personal injuries arising  
16 out of and in the course of employment, it is hereby declared  
17 not to cover workers except while engaged in, on, or about the  
18 premises where their duties are being performed or where their  
19 service requires their presence as a part of such service at the  
20 time of the injury and during the hours of service as such workers,  
21 and not to cover workers who on their own initiative leave their  
22 line of duty or hours of employment for purposes of their own.  
23 Property maintained by an employer is considered the premises of  
24 such employer for purposes of determining whether the injury arose  
25 out of employment;

26 (7) Willful negligence consists of (a) a deliberate act,  
27 (b) such conduct as evidences reckless indifference to safety, or

1 (c) intoxication at the time of the injury, such intoxication being  
2 without the consent, knowledge, or acquiescence of the employer or  
3 the employer's agent;

4 (8) Intoxication includes, but is not limited to, being  
5 under the influence of a controlled substance not prescribed by a  
6 physician;

7 (9) Prospective loss costs means prospective loss costs  
8 as defined in section 44-7504 and prepared, filed, or distributed  
9 by an advisory organization which has been issued a certificate of  
10 authority pursuant to section 44-7518; and

11 (10) Client means client as defined in section 2 of this  
12 act;

13 (11) Professional employer organization means  
14 professional employer organization as defined in section 2  
15 of this act;

16 (12) Multiple coordinated policy means multiple  
17 coordinated policy as defined in section 2 of this act;

18 (13) Master policy means master policy as defined in  
19 section 2 of this act; and

20 ~~(10)~~ (14) Whenever in the Nebraska Workers' Compensation  
21 Act the singular is used, the plural is considered included; when  
22 the masculine gender is used, the feminine is considered included.

23 Sec. 19. Section 48-443, Reissue Revised Statutes of  
24 Nebraska, is amended to read:

25 48-443 ~~(1)~~ (1)(a) Not later than January 1, 1994, every  
26 public and private employer subject to the Nebraska Workers'  
27 Compensation Act shall establish a safety committee. Such committee

1 shall adopt and maintain an effective written injury prevention  
2 program.

3 (b) A client of a professional employer organization is  
4 not relieved of its obligation to establish a safety committee  
5 based on its workers being co-employees of the professional  
6 employer organization. A professional employer agreement shall  
7 not allocate the client's responsibility to establish a safety  
8 committee to the professional employer organization. For purposes  
9 of this subdivision, the terms client, professional employer  
10 organization, and professional employer agreement shall have the  
11 same meaning as in section 2 of this act. This subdivision becomes  
12 operative on January 1, 2012.

13 (2) (a) For employers subject to collective-bargaining  
14 agreements, the establishment of the safety committee shall be  
15 accomplished through the collective-bargaining process.

16 (b) For employers not subject to collective-bargaining  
17 agreements, the safety committee shall be composed of an equal  
18 number of members representing employees and the employer. Employee  
19 members shall not be selected by the employer but shall be selected  
20 pursuant to procedures prescribed in rules and regulations adopted  
21 and promulgated by the Commissioner of Labor.

22 (c) The cost of maintaining and operating the safety  
23 committee shall be minimal to the employer.

24 (3) An employer shall compensate employee members of the  
25 safety committee at their regular hourly wage plus their regular  
26 benefits while the employees are attending committee meetings or  
27 otherwise engaged in committee duties.

1           (4) An employee shall not be discharged or discriminated  
2 against by his or her employer because he or she makes any oral  
3 or written complaint to the safety committee or any governmental  
4 agency having regulatory responsibility for occupational safety and  
5 health, and any employee so discharged or discriminated against  
6 shall be reinstated and shall receive reimbursement for lost wages  
7 and work benefits caused by the employer's action.

8           Sec. 20. Section 48-602, Revised Statutes Cumulative  
9 Supplement, 2008, is amended to read:

10           48-602 For purposes of the Employment Security Law,  
11 unless the context otherwise requires:

12           (1) Base period means the last four completed calendar  
13 quarters immediately preceding the first day of an individual's  
14 benefit year, except that the commissioner may prescribe by rule  
15 and regulation that base period means the first four of the last  
16 five completed calendar quarters immediately preceding the first  
17 day of an individual's benefit year;

18           (2) Benefits means the money payments payable to an  
19 individual with respect to his or her unemployment;

20           (3) Benefit year, with respect to any individual, means  
21 the one-year period beginning with the first day of the first week  
22 with respect to which the individual first files a valid claim  
23 for benefits, and thereafter the one-year period beginning with the  
24 first day of the first week with respect to which the individual  
25 next files a valid claim for benefits after the termination of his  
26 or her last preceding benefit year. Any claim for benefits made in  
27 accordance with section 48-629 shall be deemed to be a valid claim

1 for the purpose of this subdivision if the individual has been  
2 paid the wages for insured work required under section 48-627. For  
3 the purposes of this subdivision a week with respect to which an  
4 individual files a valid claim shall be deemed to be in, within,  
5 or during that benefit year which includes the greater part of such  
6 week;

7 (4) Calendar quarter means the period of three  
8 consecutive calendar months ending on March 31, June 30, September  
9 30, or December 31, or the equivalent thereof as the Commissioner  
10 of Labor may by rule and regulation prescribe;

11 (5) Client means any individual, partnership, limited  
12 liability company, corporation, or other legally recognized entity  
13 that contracts with a professional employer organization to obtain  
14 professional employer services relating to worksite employees  
15 through a professional employer agreement;

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

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

20 (8) Commissioner means the Commissioner of Labor;

21 (9) Contribution rate means the percentage of the  
22 combined tax rate used to determine the contribution portion of  
23 the combined tax;

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

1           (11) Department means the Department of Labor;

2           (12) Employment office means a free public employment  
3 office or branch thereof, operated by this state or maintained as  
4 a part of a state-controlled system of public employment offices,  
5 including public employment offices operated by an agency of a  
6 foreign government;

7           (13) Fund means the Unemployment Compensation Fund  
8 established by section 48-617 to which all contributions and  
9 payments in lieu of contributions required and from which all  
10 benefits provided shall be paid;

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

14           (15) Institution of higher education means an institution  
15 which: (a) Admits as regular students only individuals having a  
16 certificate of graduation from a high school or the recognized  
17 equivalent of such a certificate; (b) is legally authorized in this  
18 state to provide a program of education beyond high school; (c)  
19 provides an educational program for which it awards a bachelor's  
20 degree or higher or provides a program which is acceptable for  
21 full credit toward such a degree, a program of postgraduate or  
22 postdoctoral studies, or a program of training to prepare students  
23 for gainful employment in a recognized occupation; and (d) is  
24 a public or other nonprofit institution; notwithstanding any of  
25 the foregoing provisions of this subdivision, all colleges and  
26 universities in this state are institutions of higher education for  
27 purposes of this section;



1                   (16) Insured work means employment for employers;

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

3           (a) Mutually and voluntarily agreed to by the employer and the  
4           employee; (b) mutually and voluntarily agreed to between the  
5           employer and the employee's bargaining agent; or (c) to which the  
6           employee is entitled to as a matter of state or federal law;

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

12                   (19) Payments in lieu of contributions means the money  
13          payments to the Unemployment Compensation Fund required by sections  
14          48-649, 48-652, 48-660.01, and 48-661;

15                   (20) Professional employer agreement means a written  
16          professional employer services contract whereby:

17           (a) A professional employer organization agrees to  
18          provide payroll services, employee benefit administration, or  
19          personnel services for a majority of the employees providing  
20          services to the client at a client worksite;

21           (b) The agreement is intended to be ongoing rather than  
22          temporary in nature; and

23           (c) Employer responsibilities for worksite employees,  
24          including those of hiring, firing, and disciplining, are shared  
25          between the professional employer organization and the client  
26          by contract. The term professional employer agreement shall not  
27          include a contract between a parent corporation, company, or other

1 entity and a wholly owned subsidiary;

2 (21) Professional employer organization means any  
3 individual, partnership, limited liability company, corporation, or  
4 other legally recognized entity that enters into a professional  
5 employer agreement with a client or clients for a majority of a  
6 client's workforce at a client worksite. The term professional  
7 employer organization does not include an insurer as defined in  
8 section 44-103 or a temporary help firm;

9 (22) State includes, in addition to the states of the  
10 United States of America, any dependency of the United States, the  
11 Commonwealth of Puerto Rico, the Virgin Islands, and the District  
12 of Columbia;

13 (23) State unemployment insurance tax means that portion  
14 of the combined tax which is based upon the state unemployment  
15 insurance tax rate portion of the combined tax rate and which  
16 is deposited in the State Unemployment Insurance Trust Fund as  
17 required by sections 48-648 and 48-649;

18 (24) State unemployment insurance tax rate means the  
19 percentage of the combined tax rate used to determine the state  
20 unemployment insurance tax portion of the combined tax;

21 (25) Temporary employee means an employee of a temporary  
22 help firm assigned to work for the clients of such temporary help  
23 firm;

24 (26) Temporary help firm means a firm that hires  
25 its own employees and assigns them to clients to support or  
26 supplement the client's work force in work situations such as  
27 employee absences, temporary skill shortages, seasonal workloads,

1 and special assignments and projects;

2 (27) Unemployed means an individual during any week in  
3 which the individual performs no service and with respect to which  
4 no wages are payable to the individual or any week of less than  
5 full-time work if the wages payable with respect to such week are  
6 less than the individual's weekly benefit amount, but does not  
7 include any individual on a leave of absence or on paid vacation  
8 leave. When an agreement between the employer and a bargaining unit  
9 representative does not allocate vacation pay allowance or pay in  
10 lieu of vacation to a specified period of time during a period of  
11 temporary layoff or plant shutdown, the payment by the employer or  
12 his or her designated representative will be deemed to be wages  
13 as defined in this section in the week or weeks the vacation is  
14 actually taken;

15 (28) Unemployment Trust Fund means the trust fund in the  
16 Treasury of the United States of America established under section  
17 904 of the federal Social Security Act, 42 U.S.C. 1104, as such  
18 section existed on March 2, 2001, which receives credit from the  
19 state Unemployment Compensation Fund;

20 (29) Wages, except with respect to services performed in  
21 employment as provided in subdivisions (4)(c) and (d) of section  
22 48-604, means all remuneration for personal services, including  
23 commissions and bonuses, remuneration for personal services paid  
24 under a contract of hire, and the cash value of all remunerations  
25 in any medium other than cash. The reasonable cash value of  
26 remuneration in any medium other than cash shall be estimated and  
27 determined in accordance with rules and regulations prescribed by

1 the commissioner. After December 31, 1985, wages includes tips  
2 which are received while performing services which constitute  
3 employment and which are included in a written statement furnished  
4 to the employer pursuant to section 6053(a) of the Internal Revenue  
5 Code as defined in section 49-801.01.

6 With respect to services performed in employment in  
7 agricultural labor as is provided in subdivision (4)(c) of section  
8 48-604, wages means cash remuneration and the cash value of  
9 commodities not intended for personal consumption by the worker  
10 and his or her immediate family for such services. With respect  
11 to services performed in employment in domestic service as is  
12 provided in subdivision (4)(d) of section 48-604, wages means cash  
13 remuneration for such services.

14 The term wages does not include:

15 (a) The amount of any payment, including any amount paid  
16 by an employer for insurance or annuities or into a fund to  
17 provide for such payment, made to, or on behalf of, an individual  
18 in employment or any of his or her dependents under a plan  
19 or system established by an employer which makes provision for  
20 such individuals generally or for a class or classes of such  
21 individuals, including any amount paid by an employer for insurance  
22 or annuities or into a fund to provide for any such payment, on  
23 account of (i) sickness or accident disability, except, in the case  
24 of payments made to an employee or any of his or her dependents,  
25 this subdivision (i) shall exclude from wages only payments which  
26 are received under a workers' compensation law, (ii) medical and  
27 hospitalization expenses in connection with sickness or accident

1 disability, or (iii) death;

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

6 (c) Any payment on account of sickness or accident  
7 disability, or medical or hospitalization expenses in connection  
8 with sickness or accident disability, made by an employer to, or  
9 on behalf of, an individual after the expiration of six calendar  
10 months following the last calendar month in which such individual  
11 worked for such employer;

12 (d) Any payment made to, or on behalf of, an individual  
13 or his or her beneficiary (i) from or to a trust described in  
14 section 401(a) of the Internal Revenue Code as defined in section  
15 49-801.01 which is exempt from tax under section 501(a) of the  
16 Internal Revenue Code as defined in section 49-801.01 at the time  
17 of such payment unless such payment is made to an employee of the  
18 trust as remuneration for services rendered as such employee and  
19 not as a beneficiary of the trust or (ii) under or to an annuity  
20 plan which, at the time of such payment, meets the requirements  
21 of section 401 of the Internal Revenue Code as defined in section  
22 49-801.01;

23 (e) Any payment made to, or on behalf of, an employee  
24 or his or her beneficiary (i) under a simplified employee pension  
25 as defined by the commissioner, (ii) under or to an annuity  
26 contract as defined by the commissioner, other than a payment  
27 for the purchase of such contract which is made by reason of

1 a salary reduction agreement, whether evidenced by a written  
2 instrument or otherwise, (iii) under or to an exempt governmental  
3 deferred compensation plan as defined by the commissioner, (iv)  
4 to supplement pension benefits under a plan or trust, as defined  
5 by the commissioner, to take into account some portion or all of  
6 the increase in the cost of living since retirement, but only if  
7 such supplemental payments are under a plan which is treated as a  
8 welfare plan, or (v) under a cafeteria benefits plan;

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

12 (g) Benefits paid under a supplemental unemployment  
13 benefit plan which satisfies the eight points set forth in Internal  
14 Revenue Service Revenue Ruling 56-249 as the ruling existed on  
15 March 2, 2001, and is in compliance with the standards set forth in  
16 Internal Revenue Service Revenue Rulings 58-128 and 60-330 as the  
17 rulings existed on March 2, 2001; and

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

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

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

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

5           ~~(33) Worksite~~ (33)(a) Until January 1, 2012, worksite  
6 employee means a person receiving wages or benefits from a  
7 professional employer organization pursuant to the terms of a  
8 professional employer agreement for work performed at a client's  
9 worksite.

10           (b) On and after January 1, 2012, worksite employee has  
11 the same meaning as the term covered employee in section 2 of this  
12 act.

13           Sec. 21. Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, and 11  
14 of this act become operative on January 1, 2012. The other sections  
15 of this act become operative on their effective date.

16           Sec. 22. 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. 23. Original sections 44-7515, 48-151, and 48-443,  
21 Reissue Revised Statutes of Nebraska, sections 44-7504, 48-115,  
22 48-145, 48-146, and 48-602, Revised Statutes Cumulative Supplement,  
23 2008, and section 48-144.03, Revised Statutes Supplement, 2009, are  
24 repealed.