

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

SECOND SESSION

**LEGISLATIVE BILL 579**

FINAL READING

(SECOND)

Introduced by Cornett, 45; Lathrop, 12.

Read first time January 21, 2009

Committee: Business and Labor

A BILL

1 FOR AN ACT relating to labor; to amend sections 44-7515, 48-151,  
2 and 48-443, Reissue Revised Statutes of Nebraska,  
3 sections 44-7504, 48-115, 48-145, 48-146, and 48-602,  
4 Revised Statutes Cumulative Supplement, 2008, and section  
5 48-144.03, Revised Statutes Supplement, 2009; to adopt  
6 the Professional Employer Organization Registration Act;  
7 to create a fund; to provide penalties; to harmonize  
8 insurance, workers' compensation, safety committee, and  
9 unemployment benefit provisions; to provide operative  
10 dates; to provide severability; and to repeal the  
11 original sections.

LB 579

LB 579

1 Be it enacted by the people of the State of Nebraska,

1           Section 1. Sections 1 to 11 of this act shall be  
2 known and may be cited as the Professional Employer Organization  
3 Registration Act.

4           Sec. 2. For purposes of the Professional Employer  
5 Organization Registration Act:

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

9           (2) Co-employer means either a professional employer  
10 organization or a client;

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

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

24           (b) The client is entitled to enforce those rights and  
25 is obligated to provide and perform those employer obligations

1 allocated to such client by the professional employer agreement or  
2 the act; and

3 (c) The client is entitled to enforce any right and  
4 is obligated to perform any obligation of an employer not  
5 specifically allocated to the professional employer organization  
6 by the professional employer agreement or the act;

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

22 (5) Department means the Department of Labor;

23 (6) Direct-hire employee means an individual who is  
24 an employee of the professional employer organization within the  
25 meaning of the Nebraska Workers' Compensation Act and who is not an

1 employee of a client and who is not a covered employee;

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

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

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

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

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

23 (b) For the allocation of employer rights and obligations  
24 between the client and the professional employer organization with  
25 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)(a) Professional employer organization means any  
5 person 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           (b) The following are not professional employer  
12 organizations or professional employment services for purposes of  
13 the act:

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

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

1           (iii) Providing temporary help services;

2           (12) Professional employer organization group means two  
3 or more professional employer organizations that are majority-owned  
4 or commonly controlled by the same entity, parent company, or  
5 controlling person;

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

8           (14) Registrant means a professional employer  
9 organization registered under the act;

10          (15) Temporary help services means services consisting of  
11 a person:

12           (a) Recruiting and hiring its own employees;

13           (b) Finding other organizations that need the services of  
14 those employees;

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

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

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

25          Sec. 3. (1) Nothing contained in the Professional

1 Employer Organization Registration Act or in any professional  
2 employer agreement shall affect, modify, or amend any  
3 collective-bargaining agreement or the rights or obligations  
4 of any client, professional employer organization, or covered  
5 employee under the federal National Labor Relations Act, 29 U.S.C.  
6 151 et seq., or the federal Railway Labor Act, 45 U.S.C. 151 et  
7 seq.

8 (2)(a) Nothing contained in the Professional Employer  
9 Organization Registration Act or any professional employer  
10 agreement shall:

11 (i) Diminish, abolish, or remove rights of covered  
12 employees as to a client or obligations of such client to a  
13 covered employee existing prior to the effective date of the  
14 professional employer agreement;

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



1           (iii) Create any new or additional enforceable right of a  
2 covered employee against a professional employer organization that  
3 is not specifically provided by the professional employer agreement  
4 or the act; or

5           (iv) Diminish, abolish, or remove rights of covered  
6 employees as to a client or obligations of a client to covered  
7 employees, including, but not limited to, rights and obligations  
8 arising from civil rights laws guaranteeing nondiscrimination  
9 in employment practices. A co-employer shall, immediately after  
10 receipt of such notice, notify the other co-employer of such  
11 receipt and shall transmit a copy of the notice to the other  
12 co-employer within ten business days after such receipt.

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

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

21           (c) A professional employer organization shall not  
22 be deemed to engage in any occupation, trade, profession, or  
23 other activity that is subject to licensing, registration,  
24 or certification requirements, or is otherwise regulated by a  
25 governmental entity, solely by entering into and maintaining a

1 co-employment relationship with a covered employee who is subject  
2 to such licensing, registration, or certification requirements.

3 (d) A client shall have the sole right to direct  
4 and control the professional or licensed activities of covered  
5 employees and of the client's business. Such covered employees  
6 and clients shall remain subject to regulation by the regulatory  
7 or governmental entity responsible for licensing, registration, or  
8 certification of such covered employees or clients.

9 (3) With respect to a bid, contract, purchase order, or  
10 agreement entered into with the state or a political subdivision  
11 of the state, a client company's status or certification as  
12 a small, minority-owned, disadvantaged, or woman-owned business  
13 enterprise or as a historically underutilized business is not  
14 affected because the client company has entered into a professional  
15 employer agreement with a professional employer organization or  
16 uses the services of a professional employer organization.

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

22 (2) A person who is not registered under the Professional  
23 Employer Organization Registration Act shall not offer or provide  
24 professional employer services in this state and shall not use  
25 the names PEO, professional employer organization, staff leasing

1 company, employee leasing company, administrative employer, or any  
2 other name or title representing professional employer services.

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

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

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

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

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

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

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

1 employer organization; and

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

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

1 statements reviewed by a certified public accountant.

2 (4) (a) Each professional employer organization operating  
3 within this state as of the operative date of this section shall  
4 complete its initial registration not later than one hundred  
5 eighty days after the operative date of this section. Such initial  
6 registration shall be valid until one hundred eighty days from  
7 the end of the professional employer organization's first fiscal  
8 year that is more than one year after the operative date of this  
9 section.

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

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

7           (6) Professional employer organizations in a professional  
8 employer organization group may satisfy any reporting and financial  
9 requirements of the Professional Employer Organization Registration  
10 Act on a combined or consolidated basis if each member of the  
11 professional employer organization group guarantees the financial  
12 capacity obligations under the act of each other member of  
13 the professional employer organization group. If a professional  
14 employer organization group submits a combined or consolidated  
15 audited financial statement including entities that are not  
16 professional employer organizations or that are not in the  
17 professional employer organization group, the controlling entity of  
18 the professional employer organization group under the consolidated  
19 or combined statement shall guarantee the obligations of the  
20 professional employer organizations in the professional employer  
21 organization group.

22           (7) (a) A professional employer organization is eligible  
23 for a limited registration under the act if such professional  
24 employer organization:

25           (i) Submits a properly executed request for limited

1 registration on a form provided by the department;

2 (ii) Is domiciled outside this state and is licensed  
3 or registered as a professional employer organization in another  
4 state;

5 (iii) Does not maintain an office in this state or  
6 directly solicit clients located or domiciled within this state;  
7 and

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

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

12 (c) A professional employer organization seeking limited  
13 registration under this section shall provide the department  
14 with information and documentation necessary to show that the  
15 professional employer organization qualifies for a limited  
16 registration.

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

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

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

24 (10) The department shall, to the extent practical,  
25 permit by rule and regulation the acceptance of electronic

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

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

24 Sec. 5. (1) Except as provided in subsections (7)  
25 and (10) of section 4 of this act, each professional employer



1 organization or professional employer organization group shall have  
2 either:

3 (a) Positive working capital of at least one hundred  
4 thousand dollars at the time of initial registration and each  
5 renewal thereafter as reflected in the financial statements  
6 submitted to the department with the initial registration and each  
7 annual renewal; or

8 (b)(i) If the positive working capital of the  
9 professional employer organization is less than one hundred  
10 thousand dollars, a bond, certificate of deposit, escrow account,  
11 or irrevocable letter of credit in an amount of not less than one  
12 hundred thousand dollars; or

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

18 (2) The commitment described in subdivision (1)(b) of  
19 this section shall be in a form approved by the department, shall  
20 be held in a depository designated by the department, and shall  
21 secure the payment by the professional employer organization or  
22 professional employer organization group of any wages, salaries,  
23 employee benefits, worker's compensation insurance premiums,  
24 payroll taxes, unemployment insurance contributions, or other  
25 amounts that are payable to or with respect to an employee

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

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

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

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

25           (b) The professional employer organization shall be

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

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

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

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

24 (b) A provision that the professional employer  
25 organization shall have responsibility to pay wages to covered

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

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

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

1 Workers' Compensation Act to provide workers' compensation coverage  
2 in the event that the professional employer organization fails to  
3 obtain workers' compensation insurance for which it has assumed  
4 responsibility.

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

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

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

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

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

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

1 errors, or omissions of the covered employees with regard to such  
2 activities or when such employees are otherwise acting under the  
3 express direction and control of the client;

4 (c) A client shall not be liable for the acts, errors, or  
5 omissions of a professional employer organization or of any covered  
6 employee of the client and a professional employer organization  
7 when such covered employee is acting under the express direction  
8 and control of the professional employer organization;

9 (d) Nothing in this subsection shall limit any  
10 contractual liability or obligation specifically provided in a  
11 professional employer agreement; and

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

22 (6) When a professional employer organization obtains  
23 workers' compensation coverage for its clients that is written by  
24 an authorized insurer, it shall not be considered to be an insurer  
25 based on its provision of workers' compensation insurance coverage

1 to a client, even if the professional employer organization charges  
2 the client a different amount than it is charged by the authorized  
3 insurer.

4 (7) For purposes of this state or any county,  
5 municipality, or other political subdivision thereof:

6 (a) Covered employees whose services are subject to sales  
7 tax shall be deemed the employees of the client for purposes of  
8 collecting and levying sales tax on the services performed by the  
9 covered employee. Nothing contained in the Professional Employer  
10 Organization Registration Act shall relieve a client of any sales  
11 tax liability with respect to its goods or services;

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

22 (c) Any tax assessed or assessment or mandated  
23 expenditure on a per capita or per employee basis shall be  
24 assessed against the client for covered employees and against  
25 the professional employer organization for its employees who are

1 not covered employees co-employed with a client. Any benefit or  
2 monetary consideration that meets the requirements of mandates  
3 imposed on a client and that is received by covered employees  
4 through the professional employer organization either through  
5 payroll or through benefit plans sponsored by the professional  
6 employer organization shall be credited against the client's  
7 obligation to fulfill such mandates; and

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

13 (8) A professional employer organization shall not offer  
14 its covered employees any health benefit plan which is not fully  
15 insured by an authorized insurer.

16 Sec. 7. Any funds held by the professional employer  
17 organization in a fiduciary capacity shall be recorded separately  
18 and held in a fiduciary capacity on behalf of each client. The  
19 professional employer organization shall keep copies of all the  
20 records pertaining to such deposits and withdrawals and, upon  
21 request of a client, shall furnish the client with an accounting  
22 and copies of the records.

23 Sec. 8. (1) A client and a professional employer  
24 organization shall each be deemed an employer under the laws  
25 of this state for purposes of sponsoring retirement and employee



1 welfare benefit plans for its covered employees.

2 (2) A fully insured employee welfare benefit plan offered  
3 to the covered employees of a single professional employer  
4 organization shall be for purposes of state law a single employee  
5 welfare benefit plan and shall not be considered a multiple  
6 employer welfare arrangement, as defined in section 44-7603, and  
7 shall be exempt from the registration requirements of the Multiple  
8 Employer Welfare Arrangement Act.

9 (3) For purposes of the Small Employer Health Insurance  
10 Availability Act, a professional employer organization shall be  
11 considered the employer of all of its covered employees and all  
12 covered employees of any client participating in a health benefit  
13 plan sponsored by a single professional employer organization shall  
14 be considered employees of the professional employer organization.  
15 Subject to any eligibility requirements imposed by the plan or  
16 policy, the insurer shall accept and insure all employees of the  
17 client and all beneficiaries of those employees.

18 Sec. 9. (1) The responsibility to obtain workers'  
19 compensation coverage for employees covered by the professional  
20 employer agreement and for other employees of the client shall be  
21 allocated in the professional employer agreement to the client,  
22 the professional employer organization, or both, in accordance  
23 with this section. If any such responsibility is allocated to  
24 the professional employer organization, the professional employer  
25 organization shall:

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

3           (b) Advise the client of its obligation to obtain  
4 an additional workers' compensation insurance policy if the  
5 professional employer organization's policy limits coverage to  
6 co-employees as specified in the professional employer agreement;  
7 and

8           (c) Provide the client with the name of the insurer  
9 providing coverage, the policy number, claim notification  
10 instructions, and any itemized charges that are to be made for  
11 workers' compensation coverage within ten days after enrollment.

12           (2)(a) If all employees of the client are not covered  
13 employees under the professional employer agreement, then a  
14 workers' compensation insurance policy obtained by the professional  
15 employer organization to cover employees of the client may be  
16 written to limit coverage to those employees who are co-employees  
17 of the professional employer organization and the client. If  
18 a professional employer organization's policy limits coverage  
19 to co-employees as specified in the professional employer  
20 agreement, then the client shall obtain an additional workers'  
21 compensation insurance policy. The policy obtained by the client  
22 shall be written to cover any and all employees not covered by  
23 the professional employer organization's policy, including any  
24 potential new or unknown employees. All insurance policies issued  
25 pursuant to this subsection shall be subject to and shall comply

1 with the requirements of this subsection and any rule or regulation  
2 adopted by the Department of Insurance.

3 (b) If all employees of the client are covered employees  
4 under the professional employer agreement, then a workers'  
5 compensation insurance policy obtained by the professional employer  
6 organization to cover employees of the client must be written to  
7 cover any and all employees of the client, including potential new  
8 or unknown employees that may not be covered employees under the  
9 agreement.

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

12 (d) A professional employer organization shall not split  
13 coverage for its direct-hire employees between two or more  
14 policies.

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

17 (3) If the professional employer agreement allocates  
18 responsibility to the professional employer organization to  
19 obtain workers' compensation coverage only for co-employees,  
20 then the professional employer organization shall provide the  
21 following information to the administrator of the Nebraska Workers'  
22 Compensation Court. Such information shall be provided for any  
23 such professional employer agreement in effect on the operative  
24 date of this section and prior to the effective date of any new  
25 professional employer agreement or any amendment of an agreement

1 adding such a provision after the operative date of this section  
2 and shall be provided in a form and manner prescribed by the  
3 administrator:

4 (a) The names and addresses of the client and the  
5 professional employer organization;

6 (b) The effective date of the professional employer  
7 agreement;

8 (c) A description of the employees covered under the  
9 professional employer agreement;

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

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

16 (4) If workers' compensation coverage for a client's  
17 employees covered by the professional employer agreement and for  
18 other employees of the client is not entirely available in the  
19 voluntary market, then assigned risk workers' compensation coverage  
20 written subject to section 44-3,158 may only be written on a single  
21 policy that covers all employees and co-employees of the client.  
22 Assigned risk workers' compensation insurance for the professional  
23 employer organization may also be written, but only on a basis  
24 that covers its direct-hire employees and excludes employees and  
25 co-employees of its clients. The Department of Insurance may adopt

1 and promulgate rules and regulations to implement this subsection.

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

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

19 (7) If a client receives notice of the cancellation,  
20 nonrenewal, or termination of workers' compensation coverage  
21 obtained by the professional employer organization, then the client  
22 may withdraw from the professional employer agreement without  
23 penalty unless the client is notified by the professional employer  
24 organization of replacement coverage within fifteen days after the  
25 notice.

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

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

21           Sec. 10. (1) The department shall adopt a schedule of  
22 fees for initial registration, annual registration renewal, and  
23 limited registration, not to exceed two thousand five hundred  
24 dollars for initial registration, one thousand five hundred dollars  
25 for annual registration renewal, and one thousand dollars for

1 limited registration. Such fees shall not exceed those reasonably  
2 necessary for the administration of the Professional Employer  
3 Organization Registration Act.

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

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

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

20 (ii) Provide false or fraudulent information to the  
21 department in conjunction with any registration, renewal, or report  
22 required under the act; or

23 (iii) Enter into a co-employment relationship in which  
24 less than a majority of the employees of the client in this state  
25 are covered employees or in which less than one-half of the payroll

1 of the client in this state is attributable to covered employees.

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

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

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

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

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

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

23 (3)(a) Upon finding, after notice and opportunity for  
24 hearing, that a professional employer organization, a controlling  
25 person of a professional employer organization, or a person



1 offering professional employer services has violated one or more  
2 provisions of this section, and subject to any appeal required, the  
3 department may:

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

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

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

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

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

21 (1) Advisory organization means any entity, including its  
22 affiliates or subsidiaries, which (a) has majority ownership or  
23 control by two or more insurers and assists two or more insurers  
24 in activities related to ratemaking, the promulgation of policy  
25 forms, or related matters or (b) makes the same prospective loss

1 cost or policy form filings on behalf of or to be available for  
2 two or more insurers. For purposes of this subdivision, a group  
3 of insurers under common ownership or control shall be considered  
4 a single insurer. Advisory organization does not include joint  
5 reinsurance pools, joint underwriting pools, or insurers engaged in  
6 joint underwriting;

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

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

12 ~~(3)~~ (4) Director means the Director of Insurance;

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

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

21 ~~(6)~~ (7) Experience rating plan means a rating formula  
22 and related procedures that use past loss experience of an  
23 individual policyholder to forecast future losses by measuring  
24 the policyholder's loss experience against the expected losses  
25 for policyholders in that classification to produce a prospective

1 premium credit, debit, or unity modification;

2 ~~(7)~~ (8) Joint reinsurance pool means an ongoing voluntary  
3 arrangement pursuant to which two or more insurers participate in  
4 the reinsurance of risks written by one or more member insurers  
5 and reinsured by one or more other member insurers. For purposes  
6 of this subdivision, a group of insurers under common ownership or  
7 control shall be considered a single insurer. A joint reinsurance  
8 pool may operate through an association, syndicate, or other  
9 arrangement;

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

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

1 or other arrangement;

2 ~~(10)~~ (11) Loss adjustment expense means the expense  
3 incurred by an insurer in the course of settling claims;

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

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

8 ~~(11)~~ (14) Policy form means all policies, certificates,  
9 or other contracts providing insurance coverage. Policy form  
10 includes bonds and includes riders, endorsements, or other  
11 amendments to the policy form;

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

15 (16) Professional employer organization means  
16 professional employer organization as defined in section 2  
17 of this act;

18 ~~(13)~~ (17) Prospective loss cost means that portion of a  
19 rate intended to provide for expected losses and loss adjustment  
20 expenses. Prospective loss costs may provide for anticipated  
21 special assessments. Prospective loss costs do not include  
22 provisions for profits, dividends, or expenses other than loss  
23 adjustment expenses;

24 ~~(14)~~ (18) Rating system means the information needed  
25 to determine the applicable rate or premium including rates, any

1 manual or plan of rates, classifications, rating schedules, minimum  
2 premiums, policy fees, payment plans, rating plans or rules,  
3 anniversary rating date rules, and other similar information.  
4 Rating system does not include dividend rating plans or other  
5 provisions for the possible payment of dividends if such dividends  
6 are declared by the insurer's board of directors and are not  
7 guaranteed;

8           ~~(15)~~ (19) Special assessments means guaranty fund  
9 assessments made pursuant to section 44-2407, Workers' Compensation  
10 Trust Fund assessments made pursuant to section 48-162.02, residual  
11 market assessments made pursuant to section 44-3,158 or 44-7528,  
12 and similar assessments. Special assessments are not expenses or  
13 losses;

14           ~~(16)~~ (20) Statistical agent means an entity that, for the  
15 purpose of fulfilling the statistical reporting obligations of two  
16 or more insurers under the act, collects or compiles statistics  
17 from two or more insurers or provides reports developed from these  
18 statistics to the director. For purposes of this subdivision,  
19 a group of insurers under common ownership or control shall be  
20 considered a single insurer; and

21           ~~(17)~~ (21) Supporting information means the experience  
22 and judgment of the filer and the experience or data of other  
23 insurers or advisory organizations relied upon by the filer,  
24 the interpretation of any other data relied upon by the filer,  
25 descriptions of methods used in developing a rating system, and any

1 other information required by the director to be filed.

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

4           44-7515 (1) The director shall adopt and promulgate rules  
5 and regulations to modify or eliminate requirements for insurers to  
6 use filed rates and policy forms for commercial policyholders under  
7 common ownership identified through the application of subsection  
8 (4) of this section. Unless set forth by rules and regulations,  
9 on and after January 1, 2012, eligibility for a professional  
10 employer organization shall be based upon the professional  
11 employer organization's total premiums, including premiums for  
12 multiple coordinated policies written for the professional employer  
13 organization's clients. Unless otherwise set forth in the rules  
14 and regulations, the rules and regulations apply to multiple  
15 coordinated policies written on behalf of an eligible professional  
16 employer organization.

17           (2) The rules and regulations adopted and promulgated  
18 pursuant to this section may establish requirements and thresholds  
19 that differ by line or type of insurance or that differ for rates  
20 and policy forms.

21           (3) The rules and regulations adopted and promulgated  
22 pursuant to this section shall require insurers to inform exempt  
23 commercial policyholders at the earliest practical date, but no  
24 later than thirty days after the inception of coverage, of those  
25 policy forms applying to them that have not been approved by the

1 director.

2 (4) The director shall consider the following factors in  
3 determining those commercial policyholders to which the rules and  
4 regulations adopted and promulgated pursuant to this section shall  
5 apply:

6 (a) For modification or elimination of the applicability  
7 of filed rates, characteristics of insureds that are likely to  
8 avail themselves of regular price comparisons between competing  
9 insurers and are likely to study and understand the differences and  
10 details of pricing proposals that they receive;

11 (b) For modification or elimination of the applicability  
12 of filed rates, characteristics of insureds for which filed rates  
13 and rating plans are less likely to provide the lowest premiums  
14 otherwise consistent with the provisions of the Property and  
15 Casualty Insurance Rate and Form Act;

16 (c) Modification or elimination of the applicability of  
17 filed rates for commercial insureds that are primarily located in  
18 another jurisdiction where they are subject to similar exemptions  
19 or waivers in that jurisdiction;

20 (d) For modification or elimination of the applicability  
21 of filed policy forms, characteristics of insureds that are likely  
22 to study and understand the details of their business risks and  
23 insurance coverages and exclusions;

24 (e) For modification or elimination of the applicability  
25 of filed policy forms, characteristics of insureds that are likely

1 to require individually written policies, as contrasted to insureds  
2 that can customarily have their coverage needs met using policy  
3 forms that could also be used for other insureds;

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

7 (g) Any other relevant factor.

8 (5) For exempt commercial policyholders to which rating  
9 system regulation is made otherwise inapplicable, insurers shall  
10 allocate premiums between policies, exposures, and states in  
11 proportion to the expected losses and expenses for those policies,  
12 exposures, and states.

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

15 (a) The rules and regulations may not allow any reduction  
16 of the benefits payable under workers' compensation or excess  
17 workers' compensation policies or any alteration of provisions for  
18 the handling and settlement of claims under such policies, but  
19 the rules and regulations may allow exempt commercial policyholders  
20 to negotiate workers' compensation or excess workers' compensation  
21 premiums and premium payment provisions;

22 (b) The rules and regulations may not allow any reduction  
23 of automobile insurance coverage limits to less than those required  
24 by Nebraska law, but the rules and regulations may allow exempt  
25 commercial policyholders to negotiate automobile insurance premiums



1 and premium payment provisions;

2 (c) The rules and regulations may not allow any  
3 limitation of the coverage provisions necessary for health care  
4 providers to qualify under the Nebraska Hospital-Medical Liability  
5 Act, but the rules and regulations may allow exempt commercial  
6 policyholders to negotiate medical professional liability insurance  
7 premiums and premium payment provisions;

8 (d) The rules and regulations may not reduce the rate  
9 regulatory requirements applying to any policyholder insurance  
10 written for a professional employer organization on or after  
11 January 1, 2012, or to any insurance written for an individual  
12 policyholder that is not a client of a professional employer  
13 organization with total premiums of less than twenty-five thousand  
14 dollars for lines of insurance subject to the Property and Casualty  
15 Insurance Rate and Form Act; and

16 (e) The rules and regulations may not reduce the form  
17 regulatory requirements applying to any policyholder insurance  
18 written for a professional employer organization on or after  
19 January 1, 2012, or to any insurance written for an individual  
20 policyholder that is not a client of a professional employer  
21 organization with total premiums of less than fifty thousand  
22 dollars for lines of insurance subject to the Property and Casualty  
23 Insurance Rate and Form Act.

24 (7) Policy forms for commercial risks exempted by the  
25 rules and regulations adopted and promulgated pursuant to this

1 section may include language that conflicts with section 44-501. If  
2 a conflict results between a policy form and the requirements of  
3 section 44-501, the language in the policy form shall apply to the  
4 extent that it is inconsistent with such section.

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

7 48-115 The terms employee and worker are used  
8 interchangeably and have the same meaning throughout the Nebraska  
9 Workers' Compensation Act. Such terms include the plural and all  
10 ages and both sexes. For purposes of the act, employee or worker  
11 shall be construed to mean:

12 (1) Every person in the service of the state or of any  
13 governmental agency created by it, including the Nebraska National  
14 Guard and members of the military forces of the State of Nebraska,  
15 under any appointment or contract of hire, expressed or implied,  
16 oral or written;

17 (2) Every person in the service of an employer who  
18 is engaged in any trade, occupation, business, or profession as  
19 described in section 48-106 under any contract of hire, expressed  
20 or implied, oral or written, including aliens and also including  
21 minors. Minors for the purpose of making election of remedies under  
22 the Nebraska Workers' Compensation Act shall have the same power of  
23 contracting and electing as adult employees.

24 As used in subdivisions (1) through (11) of this section,  
25 the terms employee and worker shall not be construed to include any

1 person whose employment is not in the usual course of the trade,  
2 business, profession, or occupation of his or her employer.

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

14           (3) Volunteer firefighters of any fire department of  
15 any rural or suburban fire protection district, city, village, or  
16 nonprofit corporation, which fire department is organized under the  
17 laws of the State of Nebraska. Such volunteers shall be deemed  
18 employees of such rural or suburban fire protection district, city,  
19 village, or nonprofit corporation while in the performance of their  
20 duties as members of such department and shall be considered as  
21 having entered and as acting in the regular course and scope of  
22 their employment from the instant such persons commence responding  
23 to a call to active duty, whether to a fire station or other  
24 place where firefighting equipment that their company or unit  
25 is to use is located or to any activities that the volunteer

1 firefighters may be directed to do by the chief of the fire  
2 department or some person authorized to act for such chief. Such  
3 volunteers shall be deemed employees of such rural or suburban fire  
4 protection district, city, village, or nonprofit corporation until  
5 their return to the location from which they were initially called  
6 to active duty or until they engage in any activity beyond the  
7 scope of the performance of their duties, whichever occurs first.

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

1 person authorized to act for such chief;

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

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

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

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

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

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

21 (9) An executive officer of a corporation elected or  
22 appointed under the provisions or authority of the charter,  
23 articles of incorporation, or bylaws of such corporation who  
24 owns less than twenty-five percent of the common stock of such  
25 corporation or an executive officer of a nonprofit corporation

1 elected or appointed under the provisions or authority of the  
2 charter, articles of incorporation, or bylaws of such corporation  
3 who receives annual compensation of more than one thousand dollars  
4 from such corporation. Such executive officer shall be an employee  
5 of such corporation under the Nebraska Workers' Compensation Act.

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



1 shall also be filed with the professional employer organization.  
2 If coverage under the master policy or multiple coordinated  
3 policy ceases, then such election shall also be effective for a  
4 replacement master policy or multiple coordinated policy obtained  
5 by the professional employer organization and shall remain in  
6 effect for the new policy as provided in this subdivision. If such  
7 an executive officer has not elected to bring himself or herself  
8 within the provisions of the act Nebraska Workers' Compensation  
9 Act pursuant to this subdivision and a health, accident, or  
10 other insurance policy covering such executive officer contains  
11 an exclusion of coverage if the executive officer is otherwise  
12 entitled to workers' compensation coverage, such exclusion is null  
13 and void as to such executive officer.

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

19           (10) Each individual employer, partner, limited liability  
20 company member, or self-employed person who is actually engaged  
21 in the individual employer's, partnership's, limited liability  
22 company's, or self-employed person's business on a substantially  
23 full-time basis who elects to bring himself or herself within the  
24 provisions of the Nebraska Workers' Compensation Act. Such election  
25 shall be in writing and filed with the workers' compensation

1 insurer. Such election shall be effective upon receipt by the  
2 insurer for the current policy and subsequent policies issued by  
3 such insurer and shall remain in effect until the election is  
4 terminated, in writing, by such person and the termination is  
5 filed with the insurer or until the insurer ceases to provide  
6 coverage for the business, whichever occurs first. If insurance is  
7 provided through a master policy or a multiple coordinated policy  
8 pursuant to the Professional Employer Organization Registration Act  
9 on or after January 1, 2012, then such election or termination  
10 of election shall also be filed with the professional employer  
11 organization. If coverage under the master policy or multiple  
12 coordinated policy ceases, then such election shall also be  
13 effective for a replacement master policy or multiple coordinated  
14 policy obtained by the professional employer organization and  
15 shall remain in effect for the new policy as provided in this  
16 subdivision. If any such person who is actually engaged in the  
17 business on a substantially full-time basis has not elected to  
18 bring himself or herself within the provisions of the Nebraska  
19 Workers' Compensation Act pursuant to this subdivision and a  
20 health, accident, or other insurance policy covering such person  
21 contains an exclusion of coverage if such person is otherwise  
22 entitled to workers' compensation coverage, such exclusion shall be  
23 null and void as to such person; and

24 (11) An individual lessor of a commercial motor vehicle  
25 leased to a motor carrier and driven by such individual lessor who

1 elects to bring himself or herself within the provisions of the  
2 Nebraska Workers' Compensation Act. Such election is made if he  
3 or she agrees in writing with the motor carrier to have the same  
4 rights as an employee only for purposes of workers' compensation  
5 coverage maintained by the motor carrier. For an election under  
6 this subdivision, the motor carrier's principal place of business  
7 must be in this state and the motor carrier must be authorized  
8 to self-insure liability under the Nebraska Workers' Compensation  
9 Act. Such an election shall (a) be effective from the date of  
10 such written agreement until such agreement is terminated, (b) be  
11 enforceable against such self-insured motor carrier in the same  
12 manner and to the same extent as claims arising under the Nebraska  
13 Workers' Compensation Act by employees of such self-insured motor  
14 carrier, and (c) not be deemed to be a contract of insurance  
15 for purposes of Chapter 44. Section 48-111 shall apply to the  
16 individual lessor and the self-insured motor carrier with respect  
17 to personal injury or death caused to such individual lessor by  
18 accident or occupational disease arising out of and in the course  
19 of performing services for such self-insured motor carrier in  
20 connection with such lease while such election is effective.

21           Sec. 15. Section 48-144.03, Revised Statutes Supplement,  
22 2009, is amended to read:

23           48-144.03 (1) Notwithstanding policy provisions that  
24 stipulate a workers' compensation insurance policy to be a contract  
25 with a fixed term of coverage that expires at the end of the

1 term, coverage under a workers' compensation insurance policy  
2 shall continue in full force and effect until notice is given in  
3 accordance with this section.

4 (2) No cancellation of a workers' compensation insurance  
5 policy within the policy period shall be effective unless notice  
6 of the cancellation is given by the workers' compensation insurer  
7 to the Nebraska Workers' Compensation Court and to the employer.  
8 No such cancellation shall be effective until thirty days after  
9 the giving of such notices, except that the cancellation may  
10 be effective ten days after the giving of such notices if such  
11 cancellation is based on (a) notice from the employer to the  
12 insurer to cancel the policy, (b) nonpayment of premium due the  
13 insurer under any policy written by the insurer for the employer,  
14 (c) failure of the employer to reimburse deductible losses as  
15 required under any policy written by the insurer for the employer,  
16 or (d) failure of the employer, if covered pursuant to section  
17 44-3,158, to comply with sections 48-443 to 48-445.

18 (3) No workers' compensation insurance policy shall  
19 expire or lapse at the end of the policy period unless notice  
20 of nonrenewal is given by the workers' compensation insurer to the  
21 compensation court and to the employer. No workers' compensation  
22 insurance policy shall expire or lapse until thirty days after the  
23 giving of such notices, except that a policy may expire or lapse  
24 ten days after the giving of such notices if the nonrenewal is  
25 based on (a) notice from the employer to the insurer to not renew

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

7 (4) Subsections (2) and (3) of this section terminate on  
8 January 1, 2012. Subsections (5), (6), and (7) of this section  
9 apply beginning on January 1, 2012.

10 (5)(a) This subsection applies to workers' compensation  
11 policies other than master policies or multiple coordinated  
12 policies obtained by a professional employer organization.

13 (b) No cancellation of a policy within the policy period  
14 shall be effective unless notice of the cancellation is given by  
15 the workers' compensation insurer to the compensation court and  
16 to the employer. No such cancellation shall be effective until  
17 thirty days after giving such notices, except that the cancellation  
18 may be effective ten days after the giving of such notices if  
19 such cancellation is based on (i) notice from the employer to the  
20 insurer to cancel the policy, (ii) nonpayment of premium due the  
21 insurer under any policy written by the insurer for the employer,  
22 (iii) failure of the employer to reimburse deductible losses as  
23 required under any policy written by the insurer for the employer,  
24 or (iv) failure of the employer, if covered pursuant to section  
25 44-3,158, to comply with sections 48-443 to 48-445.

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

14           (6) (a) This subsection applies to workers' compensation  
15 master policies obtained by a professional employer organization.

16           (b) No cancellation of a master policy within the policy  
17 period shall be effective unless notice of the cancellation is  
18 given by the workers' compensation insurer to the compensation  
19 court and to the professional employer organization. No such  
20 cancellation shall be effective until thirty days after giving such  
21 notices.

22           (c) No termination of coverage for a client or any  
23 employees of a client under a master policy within the policy  
24 period shall be effective unless notice is given by the workers'  
25 compensation insurer to the compensation court and to the

1 professional employer organization. No such termination of coverage  
2 shall be effective until thirty days after giving such notices,  
3 except that the termination of coverage may be effective ten  
4 days after the giving of such notices if such termination is  
5 based on (i) notice from the client to the professional employer  
6 organization or the insurer to terminate the coverage or (ii)  
7 notice from the professional employer organization of the client's  
8 nonpayment of premium.

9 (d) No master policy shall expire or lapse at the end  
10 of the policy period unless notice of nonrenewal is given by the  
11 workers' compensation insurer to the compensation court and to the  
12 professional employer organization. No master policy shall expire  
13 or lapse until thirty days after giving such notices.

14 (e) Notice of the cancellation or nonrenewal of a master  
15 policy or the termination of coverage for a client or the employees  
16 of a client under such a policy shall be given by the professional  
17 employer organization to the client within fifteen days after  
18 the cancellation, nonrenewal, or termination unless replacement  
19 coverage has been obtained.

20 (7) (a) This subsection applies to workers' compensation  
21 multiple coordinated policies obtained by a professional employer  
22 organization.

23 (b) No cancellation of a policy within the policy period  
24 shall be effective unless notice of the cancellation is given by  
25 the workers' compensation insurer to the compensation court, to the

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

14 (c) No termination of coverage for any employees of the  
15 client during the policy period shall be effective unless notice  
16 is given by the workers' compensation insurer to the compensation  
17 court, to the professional employer organization, and to the  
18 client. No such termination of coverage shall be effective until  
19 thirty days after giving such notices, except that the termination  
20 of coverage may be effective ten days after the giving of such  
21 notices if such termination is based on (i) notice from the  
22 client to the professional employer organization or the insurer  
23 to terminate the coverage or (ii) notice from the professional  
24 employer organization of the client's nonpayment of premium or  
25 failure to reimburse deductibles for policies issued pursuant to



1 section 48-146.03.

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

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

24 ~~(4)~~ (8) Notwithstanding other provisions of this section,  
25 if the employer has secured replacement workers' compensation

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

6 ~~(5)~~ (9) The notices required by this section shall state  
7 the reason for the cancellation or nonrenewal of the policy or  
8 termination of coverage for a client or employees of a client under  
9 a policy.

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

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

20 48-145 To secure the payment of compensation under the  
21 Nebraska Workers' Compensation Act:

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

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

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

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

16           Notwithstanding any other provision of the Nebraska  
17 Workers' Compensation Act, a three-judge panel of the compensation  
18 court may, after notice and hearing, revoke approval as a  
19 self-insurer if it finds that the financial condition of the  
20 self-insurer or the failure of the self-insurer to comply with  
21 an obligation under the act poses a serious threat to the public  
22 health, safety, or welfare. The Attorney General, when requested  
23 by the administrator of the compensation court, may file a motion  
24 pursuant to section 48-162.03 for an order directing a self-insurer  
25 to appear before a three-judge panel of the compensation court

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

19 (2) An approved self-insurer shall furnish to the State  
20 Treasurer an annual amount equal to two and one-half percent of  
21 the prospective loss costs for like employment but in no event  
22 less than twenty-five dollars. Prospective loss costs is defined  
23 in section 48-151. The compensation court is the sole judge as  
24 to the prospective loss costs that shall be used. All money which  
25 a self-insurer is required to pay to the State Treasurer, under

1 this subdivision, shall be computed and tabulated under oath as of  
2 January 1 and paid to the State Treasurer immediately thereafter.  
3 The compensation court or designee of the compensation court may  
4 audit the payroll of a self-insurer at the compensation court's  
5 discretion. All money paid by a self-insurer under this subdivision  
6 shall be credited to the General Fund;

7 (3) Every employer who fails, neglects, or refuses to  
8 comply with the conditions set forth in subdivision (1) or (2) of  
9 this section shall be required to respond in damages to an employee  
10 for personal injuries, or when personal injuries result in the  
11 death of an employee, then to his or her dependents; and

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

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

21 48-146 No policy of insurance against liability arising  
22 under the Nebraska Workers' Compensation Act shall be issued  
23 and no agreement pursuant to section 44-4304 providing group  
24 self-insurance coverage of workers' compensation liability by a  
25 risk management pool shall have any force or effect unless it

1 contains the agreement of the workers' compensation insurer or risk  
2 management pool that it will promptly pay to the person entitled to  
3 the same all benefits conferred by such act, and all installments  
4 of the compensation that may be awarded or agreed upon, and  
5 that the obligation shall not be affected by the insolvency or  
6 bankruptcy of the employer or his or her estate or discharge  
7 therein or by any default of the ~~insured~~ employer after the injury,  
8 or by any default in the giving of any notice required by such  
9 policy, or otherwise. Such agreement shall be construed to be  
10 a direct promise by the workers' compensation insurer or risk  
11 management pool to the person entitled to compensation enforceable  
12 in his or her name. Each workers' compensation insurance policy  
13 and each agreement forming a risk management pool shall be deemed  
14 to be made subject to the Nebraska Workers' Compensation Act.  
15 No corporation, association, or organization shall enter into a  
16 workers' compensation insurance policy unless copies of such forms  
17 have been filed with and approved by the Department of Insurance.  
18 Each workers' compensation insurance policy and each agreement  
19 pursuant to section 44-4304 providing group self-insurance coverage  
20 of workers' compensation liability by a risk management pool shall  
21 contain a clause to the effect (1) that as between the employer  
22 and the workers' compensation insurer or risk management pool the  
23 notice to or knowledge of the occurrence of the injury on the part  
24 of the ~~insured~~ employer shall be deemed notice or knowledge, as the  
25 case may be, on the part of the insurer or risk management pool,

1 (2) that jurisdiction of the ~~insured~~ employer for the purpose of  
2 such act shall be jurisdiction of the insurer or risk management  
3 pool, and (3) that the insurer or risk management pool shall  
4 in all things be bound by the awards, judgments, or decrees  
5 rendered against such ~~insured~~. Each employer. Except when the  
6 Professional Employer Organization Registration Act allows coverage  
7 to be limited to co-employees as specified in a professional  
8 employer agreement, each workers' compensation insurance policy  
9 and each agreement providing such group self-insurance coverage  
10 shall include within its terms the payment of compensation to all  
11 employees who are within the scope and purview of the Nebraska  
12 Workers' Compensation Act, including potential new or unknown  
13 employees.

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

16 48-151 Throughout the Nebraska Workers' Compensation Act,  
17 the following words and phrases shall be considered to have  
18 the following meaning, respectively, unless the context clearly  
19 indicates a different meaning in the construction used:

20 (1) Physician means any person licensed to practice  
21 medicine and surgery, osteopathic medicine, chiropractic, podiatry,  
22 or dentistry in the State of Nebraska or in the state in which the  
23 physician is practicing;

24 (2) Accident means an unexpected or unforeseen injury  
25 happening suddenly and violently, with or without human fault, and



1 producing at the time objective symptoms of an injury. The claimant  
2 has the burden of proof to establish by a preponderance of the  
3 evidence that such unexpected or unforeseen injury was in fact  
4 caused by the employment. There is no presumption from the mere  
5 occurrence of such unexpected or unforeseen injury that the injury  
6 was in fact caused by the employment;

7 (3) Occupational disease means only a disease which is  
8 due to causes and conditions which are characteristic of and  
9 peculiar to a particular trade, occupation, process, or employment  
10 and excludes all ordinary diseases of life to which the general  
11 public is exposed;

12 (4) Injury and personal injuries mean only violence to  
13 the physical structure of the body and such disease or infection  
14 as naturally results therefrom. The terms include disablement  
15 resulting from occupational disease arising out of and in the  
16 course of the employment in which the employee was engaged and  
17 which was contracted in such employment. The terms include an  
18 aggravation of a preexisting occupational disease, the employer  
19 being liable only for the degree of aggravation of the preexisting  
20 occupational disease. The terms do not include disability or death  
21 due to natural causes but occurring while the employee is at work  
22 and do not include an injury, disability, or death that is the  
23 result of a natural progression of any preexisting condition;

24 (5) Death, when mentioned as a basis for the right to  
25 compensation, means only death resulting from such violence and its

1 resultant effects or from occupational disease;

2 (6) Without otherwise affecting either the meaning or the  
3 interpretation of the abridged clause, personal injuries arising  
4 out of and in the course of employment, it is hereby declared  
5 not to cover workers except while engaged in, on, or about the  
6 premises where their duties are being performed or where their  
7 service requires their presence as a part of such service at the  
8 time of the injury and during the hours of service as such workers,  
9 and not to cover workers who on their own initiative leave their  
10 line of duty or hours of employment for purposes of their own.  
11 Property maintained by an employer is considered the premises of  
12 such employer for purposes of determining whether the injury arose  
13 out of employment;

14 (7) Willful negligence consists of (a) a deliberate act,  
15 (b) such conduct as evidences reckless indifference to safety, or  
16 (c) intoxication at the time of the injury, such intoxication being  
17 without the consent, knowledge, or acquiescence of the employer or  
18 the employer's agent;

19 (8) Intoxication includes, but is not limited to, being  
20 under the influence of a controlled substance not prescribed by a  
21 physician;

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

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

3           (11) Professional employer organization means  
4 professional employer organization as defined in section 2  
5 of this act;

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

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

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

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

15           48-443 ~~(1)~~ (1) (a) Not later than January 1, 1994, every  
16 public and private employer subject to the Nebraska Workers'  
17 Compensation Act shall establish a safety committee. Such committee  
18 shall adopt and maintain an effective written injury prevention  
19 program.

20           (b) A client of a professional employer organization is  
21 not relieved of its obligation to establish a safety committee  
22 based on its workers being co-employees of the professional  
23 employer organization. A professional employer agreement shall  
24 not allocate the client's responsibility to establish a safety  
25 committee to the professional employer organization. For purposes

1 of this subdivision, the terms client, professional employer  
2 organization, and professional employer agreement shall have the  
3 same meaning as in section 2 of this act. This subdivision becomes  
4 operative on January 1, 2012.

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

8 (b) For employers not subject to collective-bargaining  
9 agreements, the safety committee shall be composed of an equal  
10 number of members representing employees and the employer. Employee  
11 members shall not be selected by the employer but shall be selected  
12 pursuant to procedures prescribed in rules and regulations adopted  
13 and promulgated by the Commissioner of Labor.

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

16 (3) An employer shall compensate employee members of the  
17 safety committee at their regular hourly wage plus their regular  
18 benefits while the employees are attending committee meetings or  
19 otherwise engaged in committee duties.

20 (4) An employee shall not be discharged or discriminated  
21 against by his or her employer because he or she makes any oral  
22 or written complaint to the safety committee or any governmental  
23 agency having regulatory responsibility for occupational safety and  
24 health, and any employee so discharged or discriminated against  
25 shall be reinstated and shall receive reimbursement for lost wages

1 and work benefits caused by the employer's action.

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

4           48-602 For purposes of the Employment Security Law,  
5 unless the context otherwise requires:

6           (1) Base period means the last four completed calendar  
7 quarters immediately preceding the first day of an individual's  
8 benefit year, except that the commissioner may prescribe by rule  
9 and regulation that base period means the first four of the last  
10 five completed calendar quarters immediately preceding the first  
11 day of an individual's benefit year;

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

14           (3) Benefit year, with respect to any individual, means  
15 the one-year period beginning with the first day of the first week  
16 with respect to which the individual first files a valid claim  
17 for benefits, and thereafter the one-year period beginning with the  
18 first day of the first week with respect to which the individual  
19 next files a valid claim for benefits after the termination of his  
20 or her last preceding benefit year. Any claim for benefits made in  
21 accordance with section 48-629 shall be deemed to be a valid claim  
22 for the purpose of this subdivision if the individual has been  
23 paid the wages for insured work required under section 48-627. For  
24 the purposes of this subdivision a week with respect to which an  
25 individual files a valid claim shall be deemed to be in, within,

1 or during that benefit year which includes the greater part of such  
2 week;

3 (4) Calendar quarter means the period of three  
4 consecutive calendar months ending on March 31, June 30, September  
5 30, or December 31, or the equivalent thereof as the Commissioner  
6 of Labor may by rule and regulation prescribe;

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

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

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

16 (8) Commissioner means the Commissioner of Labor;

17 (9) Contribution rate means the percentage of the  
18 combined tax rate used to determine the contribution portion of  
19 the combined tax;

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

24 (11) Department means the Department of Labor;

25 (12) Employment office means a free public employment

1 office or branch thereof, operated by this state or maintained as  
2 a part of a state-controlled system of public employment offices,  
3 including public employment offices operated by an agency of a  
4 foreign government;

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

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

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



1 by contract. The term professional employer agreement shall not  
2 include a contract between a parent corporation, company, or other  
3 entity and a wholly owned subsidiary;

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

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

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

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

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

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

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

19           (28) Unemployment Trust Fund means the trust fund in the  
20 Treasury of the United States of America established under section  
21 904 of the federal Social Security Act, 42 U.S.C. 1104, as such  
22 section existed on March 2, 2001, which receives credit from the  
23 state Unemployment Compensation Fund;

24           (29) Wages, except with respect to services performed in  
25 employment as provided in subdivisions (4)(c) and (d) of section

1 48-604, means all remuneration for personal services, including  
2 commissions and bonuses, remuneration for personal services paid  
3 under a contract of hire, and the cash value of all remunerations  
4 in any medium other than cash. The reasonable cash value of  
5 remuneration in any medium other than cash shall be estimated and  
6 determined in accordance with rules and regulations prescribed by  
7 the commissioner. After December 31, 1985, wages includes tips  
8 which are received while performing services which constitute  
9 employment and which are included in a written statement furnished  
10 to the employer pursuant to section 6053(a) of the Internal Revenue  
11 Code as defined in section 49-801.01.

12 With respect to services performed in employment in  
13 agricultural labor as is provided in subdivision (4)(c) of section  
14 48-604, wages means cash remuneration and the cash value of  
15 commodities not intended for personal consumption by the worker  
16 and his or her immediate family for such services. With respect  
17 to services performed in employment in domestic service as is  
18 provided in subdivision (4)(d) of section 48-604, wages means cash  
19 remuneration for such services.

20 The term wages does not include:

21 (a) The amount of any payment, including any amount paid  
22 by an employer for insurance or annuities or into a fund to  
23 provide for such payment, made to, or on behalf of, an individual  
24 in employment or any of his or her dependents under a plan  
25 or system established by an employer which makes provision for

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

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

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

20 (d) Any payment made to, or on behalf of, an individual  
21 or his or her beneficiary (i) from or to a trust described in  
22 section 401(a) of the Internal Revenue Code as defined in section  
23 49-801.01 which is exempt from tax under section 501(a) of the  
24 Internal Revenue Code as defined in section 49-801.01 at the time  
25 of such payment unless such payment is made to an employee of the

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

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

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

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

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

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

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

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

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

17 ~~(33) Worksite~~ (33)(a) Until January 1, 2012, worksite  
18 employee means a person receiving wages or benefits from a  
19 professional employer organization pursuant to the terms of a  
20 professional employer agreement for work performed at a client's  
21 worksite.

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

25 Sec. 21. Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, and 11

1 of this act become operative on January 1, 2012. The other sections  
2 of this act become operative on their effective date.

3           Sec. 22. If any section in this act or any part of any  
4 section is declared invalid or unconstitutional, the declaration  
5 shall not affect the validity or constitutionality of the remaining  
6 portions.

7           Sec. 23. Original sections 44-7515, 48-151, and 48-443,  
8 Reissue Revised Statutes of Nebraska, sections 44-7504, 48-115,  
9 48-145, 48-146, and 48-602, Revised Statutes Cumulative Supplement,  
10 2008, and section 48-144.03, Revised Statutes Supplement, 2009, are  
11 repealed.