

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

FIRST SESSION

**LEGISLATIVE BILL 579**

Introduced by Cornett, 45.

Read first time January 21, 2009

Committee: Business and Labor

A BILL

1 FOR AN ACT relating to labor; to amend sections 48-602 and 48-648,  
2 Revised Statutes Cumulative Supplement, 2008; to adopt  
3 the Professional Employer Organization Registration Act;  
4 to harmonize unemployment benefit provisions; to provide  
5 an operative date; to provide severability; and to repeal  
6 the original sections.  
7 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. The Legislature finds:

5           (1) That professional employer organizations provide a  
6 valuable service to commerce and the citizens of this state by  
7 increasing the opportunities of employers to develop cost-effective  
8 methods of satisfying their personnel requirements and providing  
9 employees with access to certain employment benefits which might  
10 otherwise not be available to them;

11           (2) That professional employer organizations operating in  
12 this state should be regulated by the Department of Labor; and

13           (3) That any allocation of the employer duties and  
14 responsibilities pursuant to the Professional Employer Organization  
15 Registration Act will preserve all rights to which covered  
16 employees would be entitled under a traditional employment  
17 relationship.

18           Sec. 3. For purposes of the Professional Employer  
19 Organization Registration Act:

20           (1) Client means any person who enters into a  
21 professional employer agreement with a professional employer  
22 organization;

23           (2) Co-employer means either a professional employer  
24 organization or a client;

25           (3) Co-employment relationship means a relationship

1 which is intended to be an ongoing relationship rather than a  
2 temporary or project-specific one, wherein the rights, duties,  
3 and obligations of an employer which arise out of an employment  
4 relationship have been allocated between co-employers pursuant  
5 to a professional employer agreement and the act. In such a  
6 co-employment relationship:

7 (a) The professional employer organization is entitled to  
8 enforce only such employer rights, and is subject to only those  
9 obligations specifically allocated to the professional employer  
10 organization by the professional employer agreement or the act;

11 (b) The client is entitled to enforce those rights  
12 and obligated to provide and perform those employer obligations  
13 allocated to such client by the professional employer agreement and  
14 the act; and

15 (c) The client is entitled to enforce any right and  
16 obligated to perform any obligation of an employer not specifically  
17 allocated to the professional employer organization by the  
18 professional employer agreement or the act.

19 (4) Covered employee means an individual having  
20 a co-employment relationship with a professional employer  
21 organization and a client who meets all of the following  
22 criteria: (a) The individual has received written notice of  
23 co-employment with the professional employer organization and  
24 (b) the individual's co-employment relationship is pursuant to a  
25 professional employer agreement subject to the act. Individuals who

1 are officers, directors, shareholders, partners, and managers of  
2 the client are covered employees to the extent the professional  
3 employer organization and the client have expressly agreed in  
4 the professional employer agreement that such individuals are  
5 covered employees, if such individuals meet the criteria of this  
6 subdivision and act as operational managers or perform day-to-day  
7 operational services for the client;

8 (5) Department means the Department of Labor;

9 (6) Person means any individual, partnership,  
10 corporation, limited liability company, association, or any  
11 other form of legally recognized entity;

12 (7) Professional employer agreement means a written  
13 contract by and between a client and a professional employer  
14 organization that provides:

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

16 (b) For the allocation of employer rights and obligations  
17 between the client and the professional employer organization with  
18 respect to covered employees; and

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

21 (8) Professional employer organization means any person  
22 engaged in the business of providing professional employer  
23 services. A person engaged in the business of providing  
24 professional employer services shall be subject to registration  
25 and regulation under the act regardless of its use of the term or

1 conducting business as a professional employer organization, PEO,  
2 staff leasing company, registered staff leasing company, employee  
3 leasing company, or any other name.

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

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

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

18 (c) Providing temporary help services;

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

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

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

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

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

7 (a) Recruiting and hiring its own employees;

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

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

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

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

20 Sec. 4. (1) Nothing contained in the Professional  
21 Employer Organization Registration Act or in any professional  
22 employer agreement shall affect, modify, or amend any collective  
23 bargaining agreement or the rights or obligations of any client,  
24 professional employer organization, or covered employee under the  
25 federal National Labor Relations Act, 29 U.S.C. 151 et seq., or the

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

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

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

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

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

24 (b) (i) Nothing contained in the act or any professional  
25 employer agreement shall affect, modify, or amend any state, local,

1 or federal licensing, registration, or certification requirement  
2 applicable to any client or covered employee.

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

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

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

20 (3) For purposes of determination of tax credits and  
21 other economic incentives provided by this state and based on  
22 employment, covered employees shall be deemed employees solely of  
23 the client. A client shall be entitled to the benefit of any  
24 tax credit, economic incentive, or other benefit arising as the  
25 result of the employment of covered employees of such client.



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

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

23 Sec. 5. (1) Except as otherwise provided in the  
24 Professional Employer Organization Registration Act, no person  
25 shall provide, advertise, or otherwise hold itself out as providing

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

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

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

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

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

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

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

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

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 or professional employer organization group's fiscal  
11 year, a succeeding audit. An applicant may apply for an extension  
12 with the department, but any such request shall be accompanied by a  
13 letter from the auditor stating the reasons for the delay and the  
14 anticipated audit completion date.

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

1 capacity requirements of subsection (5) of this section and present  
2 financial statements reviewed by a certified public accountant.

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

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

1 potential covered employees.

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

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

22 (6) (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 7 of this act does not apply to applicants  
18 for limited registration.

19 (7) 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 (8) The department may prescribe forms necessary to  
23 promote the efficient administration of this section.

24 (9) The department shall, to the extent practical,  
25 permit by rule the acceptance of electronic filings, including

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

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

25 Sec. 6. (1) Upon filing an initial registration

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

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

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

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

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

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

23 Sec. 7. Except as provided in subsections (6) and (9) of  
24 section 5 of this act, each professional employer organization or  
25 professional employer organization group shall either:



- 1           (1) Maintain positive working capital at registration as  
2 reflected in the financial statements submitted to the department  
3 with the initial registration and each annual renewal; or
- 4           (2) For a professional employer organization group that  
5 does not have positive working capital, provide a bond, irrevocable  
6 letter of credit, or securities with a minimum market value  
7 equaling the deficiency plus one hundred thousand dollars to the  
8 department. Such bond shall be held by a depository designated  
9 by the department and shall secure payment by the professional  
10 employer organization of all taxes, wages, benefits, or other  
11 entitlement due to or with respect to covered employees, if the  
12 professional employer organization does not make such payments when  
13 due.

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

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

21           (b) The professional employer organization shall be  
22 entitled to exercise only those rights and obligated to perform  
23 only those duties and responsibilities specifically required by  
24 the act or in the professional employer agreement. The rights,  
25 duties, and obligations of the professional employer organization

1 as co-employer with respect to any covered employee shall be  
2 limited to those arising pursuant to the professional employer  
3 agreement and the act during the term of co-employment by the  
4 professional employer organization of such covered employee; and

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

12 (2) Except as specifically provided in the Professional  
13 Employer Organization Registration Act, the co-employment  
14 relationship between the client and the professional employer  
15 organization, and between each co-employer and each covered  
16 employee, shall be governed by the professional employer agreement.  
17 Each professional employer agreement shall include the following:

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

20 (b) That the professional employer organization shall  
21 have responsibility to pay wages to covered employees; to withhold,  
22 collect, report, and remit payroll-related and unemployment taxes;  
23 and, to the extent the professional employer organization has  
24 assumed responsibility in the professional employer agreement, to  
25 make payments for employee benefits for covered employees. For

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

9 (c) That the professional employer organization shall  
10 have a right to hire, discipline, and terminate a covered  
11 employee as may be necessary to fulfill the professional employer  
12 organization's responsibilities under the act and the professional  
13 employer agreement. The client shall have a right to hire,  
14 discipline, and terminate a covered employee; and

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

20 (3) With respect to each professional employer agreement  
21 entered into by a professional employer organization, such  
22 professional employer organization shall provide written notice to  
23 each covered employee affected by such agreement of the general  
24 nature of the co-employment relationship between and among the  
25 professional employer organization, the client, and such covered

1 employee.

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

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

7 (b) A client shall be solely responsible for directing,  
8 supervising, training, and controlling the work of the covered  
9 employees with respect to the business activities of the client  
10 and solely responsible for the acts, errors, or omissions of the  
11 covered employees with regard to such activities;

12 (c) A client shall not be liable for the acts, errors, or  
13 omissions of a professional employer organization or of any covered  
14 employee of the client and a professional employer organization  
15 when such covered employee is acting under the express direction  
16 and control of the professional employer organization;

17 (d) Nothing in this subsection shall limit any  
18 contractual liability or obligation specifically provided in a  
19 professional employer agreement;

20 (e) A covered employee is not, solely as the result of  
21 being a covered employee of a professional employer organization,  
22 an employee of the professional employer organization for purposes  
23 of general liability insurance, fidelity bonds, surety bonds,  
24 employer's liability which is not covered by workers' compensation,  
25 or liquor liability insurance carried by the professional employer

1 organization unless the covered employee is included by specific  
2 reference in the professional employer agreement and applicable  
3 prearranged employment contract, insurance contract, or bond.

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

9 (6) For purposes of this state or any county,  
10 municipality, or other political subdivision thereof:

11 (a) Covered employees whose services are subject to sales  
12 tax shall be deemed the employees of the client for purposes of  
13 collecting and levying sales tax on the services performed by the  
14 covered employee. Nothing contained in the act shall relieve a  
15 client of any sales tax liability with respect to its goods or  
16 services;

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

1 professional employer agreement;

2 (c) Any tax assessed or assessment or mandated  
3 expenditure on a per capita or per employee basis shall be  
4 assessed against the client for covered employees and against the  
5 professional employer organization for its employees who are not  
6 covered employees co-employed with a client. Benefits or monetary  
7 consideration that meet the requirements of mandates imposed on  
8 a client and that are received by covered employees through  
9 the professional employer organization either through payroll  
10 or through benefit plans sponsored by the professional employer  
11 organization shall be credited against the client's obligation to  
12 fulfill such mandates; and

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

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

22 (2) A fully insured employee welfare benefit plan offered  
23 to the covered employees of a single professional employer  
24 organization shall be considered a single employee welfare benefit  
25 plan and shall not be considered a multiple employer welfare

1 arrangement, as defined in section 44-7603, and shall be exempt  
2 from the registration requirements of the Multiple Employer Welfare  
3 Arrangement Act.

4 (3) For purposes of the Small Employer Health Insurance  
5 Availability Act, a professional employer organization shall be  
6 considered the employer of all of its covered employees and  
7 all covered employees of one or more clients participating in a  
8 health benefit plan sponsored by a single professional employer  
9 organization shall be considered employees of the professional  
10 employer organization.

11 (4) If a professional employer organization offers to  
12 its covered employees any health benefit plan which is not fully  
13 insured by an authorized insurer, the plan shall:

14 (a) Utilize a third-party administrator licensed to do  
15 business in this state;

16 (b) Hold all plan assets, including participant  
17 contributions, in a trust account consistent with the requirements  
18 of section 403 of the federal Employee Retirement Income Security  
19 Act of 1974;

20 (c) Provide sound reserves for such plan as determined  
21 using generally accepted actuarial standards of practice and  
22 consistent with the prudence and loyalty standards of care for  
23 fiduciaries under the federal act; and

24 (d) Provide written notice to each covered employee  
25 participating in the health benefit plan that the plan is

1 self-funded or is not fully insured.

2           Sec. 10. (1) The responsibility to obtain workers'  
3 compensation coverage for covered employees in compliance with the  
4 Nebraska Workers' Compensation Act shall be specifically allocated  
5 in the professional employer agreement to either the client or the  
6 professional employer organization.

7           (2) Coverage for both the directly employed workers of a  
8 client and the covered employees of that client shall be all in the  
9 residual or all in the voluntary market and:

10           (a) Workers' compensation coverage for covered employees  
11 in the voluntary market may be obtained by either (i) the client  
12 through a standard workers' compensation policy or through duly  
13 authorized self-insurance or (ii) by the professional employer  
14 organization through a duly authorized self-insurance program,  
15 through a master policy issued to the professional employer  
16 organization by a carrier authorized to do business in this  
17 state, or through a multiple coordinated policy issued by a  
18 carrier authorized to do business in this state in the name of  
19 the professional employer organization or the client. A carrier  
20 providing coverage through the professional employer organization  
21 or a professional employer organization authorized to self-insure  
22 shall report to the appropriate state and rating authorities such  
23 client-based information as is necessary to maintain the client's  
24 experience rating; and

25           (b) Workers' compensation for covered employees in the



1 residual market may be obtained (i) by the client through a  
2 residual market policy or (ii) by the professional employer  
3 organization through a multiple coordinated policy in either the  
4 name of the professional employer organization or the client  
5 that provides to the appropriate state and rating authorities  
6 the client-based information satisfactory to maintain the client's  
7 experience rating.

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

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

16 (a) Offer or provide professional employer services  
17 or use the names PEO, Professional Employer Organization, staff  
18 leasing, employee leasing, administrative employer or other title  
19 representing professional employer services without first becoming  
20 registered under the Professional Employer Organization Act; or

21 (b) Provide false or fraudulent information to the  
22 department in conjunction with any registration, renewal, or in  
23 any report required under the act.

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

1           (a) The conviction of a professional employer  
2 organization or a controlling person of a professional employer  
3 organization of a crime that relates to the operation of a  
4 professional employer organization or the ability of the registrant  
5 or a controlling person of a registrant to operate a professional  
6 employer organization;

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

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

11           (3) Upon finding, after notice and opportunity for  
12 hearing, that a professional employer organization, a controlling  
13 person of a professional employer organization, or a person  
14 offering professional employer organization services has violated  
15 one or more provisions of this section and subject to any appeal  
16 required, the department may:

17           (a) Deny an application for registration;

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

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

21           (d) Place the registrant on probation for the period and  
22 subject to conditions that the department specifies; or

23           (e) Issue a cease and desist order.

24           Sec. 12. Section 48-602, Revised Statutes Cumulative  
25 Supplement, 2008, is amended to read:

1           48-602 For purposes of the Employment Security Law,  
2 unless the context otherwise requires:

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

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

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

25           (4) Calendar quarter means the period of three

1 consecutive calendar months ending on March 31, June 30, September  
2 30, or December 31, or the equivalent thereof as the Commissioner  
3 of Labor may by rule and regulation prescribe;

4 (5) Client has the same meaning as in section 3 of  
5 this act; means any individual, partnership, limited liability  
6 company, corporation, or other legally recognized entity that  
7 contracts with a professional employer organization to obtain  
8 professional employer services relating to worksite employees  
9 through a professional employer agreement;

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

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

14 (8) Commissioner means the Commissioner of Labor;

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

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

22 (11) Department means the Department of Labor;

23 (12) Employment office means a free public employment  
24 office or branch thereof, operated by this state or maintained as  
25 a part of a state-controlled system of public employment offices,

1 including public employment offices operated by an agency of a  
2 foreign government;

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

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

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

24 (16) Insured work means employment for employers;

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

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

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

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

13 (20) Professional employer agreement means a written  
14 professional employer services contract whereby has the same  
15 meaning as in section 3 of this act;

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

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

22 (c) Employer responsibilities for worksite employees,  
23 including those of hiring, firing, and disciplining, are shared  
24 between the professional employer organization and the client  
25 by contract. The term professional employer agreement shall not

1 include a contract between a parent corporation, company, or other  
2 entity and a wholly owned subsidiary;

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

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 Covered employee means a person receiving~~  
18 ~~wages or benefits from a professional employer organization~~  
19 ~~pursuant to the terms of a professional employer agreement for~~  
20 ~~work performed at a client's worksite. has the same meaning as in~~  
21 ~~section 3 of this act.~~

22 Sec. 13. Section 48-648, Revised Statutes Cumulative  
23 Supplement, 2008, is amended to read:

24 48-648 (1) Combined tax shall accrue and become payable  
25 by each employer not otherwise entitled to make payments in lieu

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

21 (2) If two or more related corporations or limited  
22 liability companies concurrently employ the same individual and  
23 compensate such individual through a common paymaster which is  
24 one of such corporations or limited liability companies, each such  
25 corporation or limited liability company shall be considered to

1 have paid as remuneration to such individual only the amounts  
2 actually disbursed by it to such individual and shall not  
3 be considered to have paid as remuneration to such individual  
4 amounts actually disbursed to such individual by another of such  
5 corporations or limited liability companies. An employee of a  
6 wholly owned subsidiary shall be considered to be concurrently  
7 employed by the parent corporation, company, or other entity  
8 and the wholly owned subsidiary whether or not both companies  
9 separately provide remuneration.

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

18 Sec. 14. This act becomes operative on January 1, 2010.

19 Sec. 15. If any section in this act or any part of any  
20 section is declared invalid or unconstitutional, the declaration  
21 shall not affect the validity or constitutionality of the remaining  
22 portions.

23 Sec. 16. Original sections 48-602 and 48-648, Revised  
24 Statutes Cumulative Supplement, 2008, are repealed.