

1 **PROFESSIONAL EMPLOYER ORGANIZATION LICENSING**

2 **ACT AMENDMENTS**

3 2012 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: James A. Dunnigan**

6 Senate Sponsor: Curtis S. Bramble

8 **LONG TITLE**

9 **General Description:**

10 This bill modifies the Insurance Code to address the applicability of provisions of the
11 Insurance Code to professional employer organizations.

12 **Highlighted Provisions:**

13 This bill:

- 14 ▶ provides for continuation of coverage for certain health plans;
- 15 ▶ provides that provisions addressing unfair marketing practices, unfair
16 discrimination, coercion or intimidation, restriction on choice, and inducement
17 apply to professional employer organizations; and
- 18 ▶ makes technical changes.

19 **Money Appropriated in this Bill:**

20 None

21 **Other Special Clauses:**

22 None

23 **Utah Code Sections Affected:**

24 AMENDS:

25 **31A-40-208**, as enacted by Laws of Utah 2008, Chapter 318

26 ENACTS:

27 **31A-40-309**, Utah Code Annotated 1953

29 *Be it enacted by the Legislature of the state of Utah:*

30 Section 1. Section **31A-40-208** is amended to read:

31 **31A-40-208. Benefit plan.**

32 (1) A client and a professional employer organization licensed under this chapter shall
33 each be considered an employer for purposes of sponsoring a retirement or welfare benefit plan
34 for a covered employee.

35 (2) A fully insured welfare benefit plan offered to a covered employee of a single
36 professional employer organization licensed under this chapter:

37 (a) is to be treated as a single employer welfare benefit plan for purposes of this title
38 and rules made under this title;

39 (b) may not be considered an employer welfare fund or plan, as described in Section
40 31A-13-101; and

41 (c) the single professional employer organization that sponsors the fully insured
42 welfare plan is exempt from the registration requirements under this title for:

43 (i) an insurance provider; or

44 (ii) an employer welfare fund or plan.

45 (3) For purposes of Chapter 30, Individual, Small Employer, and Group Health
46 Insurance Act:

47 (a) a professional employer organization licensed under this chapter is considered the
48 employer of a covered employee; and

49 (b) all covered employees of one or more clients participating in a health benefit plan
50 sponsored by a single professional employer organization licensed under this chapter are
51 considered employees of that professional employer organization.

52 (4) A professional employer organization licensed under this chapter may offer to a
53 covered employee a health benefit plan that is not fully insured by an authorized insurer, only
54 if:

55 (a) the professional employer organization has operated as a professional employer
56 organization for at least one year before the day on which the professional employer
57 organization offers the health benefit plan; and

58 (b) the health benefit plan:
59 (i) is administered by a third-party administrator licensed to do business in this state;
60 (ii) holds all assets of the health benefit plan, including participant contributions, in a
61 trust account;
62 (iii) has and maintains reserves that are sound for the health benefit plan as determined
63 by an actuary who:
64 (A) uses generally accepted actuarial standards of practice; and
65 (B) is an independent qualified actuary, including not being an employee or covered
66 employee of the professional employer organization;
67 (iv) provides written notice to a covered employee participating in the health benefit
68 plan that the health benefit plan is self-insured or is not fully insured; [~~and~~]
69 (v) consents to an audit:
70 (A) on a random basis; or
71 (B) upon a finding of a reasonable need by the commissioner[~~;~~]; and
72 (vi) provides for continuation of coverage in compliance with Section 31A-22-722.
73 (5) The cost of an audit described in Subsection (4)(b)(v) shall be paid by the
74 sponsoring professional employer organization.
75 (6) A plan of a professional employer organization described in Subsection (4) that is
76 not fully insured:
77 (a) is subject to the requirements of this section; and
78 (b) is not subject to another licensure or approval requirement of this title.
79 Section 2. Section **31A-40-309** is enacted to read:
80 **31A-40-309. Applicability of other provisions of law.**
81 A professional employer organization is subject to Sections 31A-23a-402 and
82 31A-23a-402.5.