

PROFESSIONAL EMPLOYER LICENSING

AMENDMENTS

1999 GENERAL SESSION

STATE OF UTAH

Sponsor: John L. Valentine

AN ACT RELATING TO OCCUPATIONS AND PROFESSIONS; AMENDING AND RENAMING THE EMPLOYEE LEASING COMPANY LICENSING ACT; ADJUSTING THE LICENSURE REQUIREMENTS; REDEFINING EMPLOYEE LEASING COMPANY AS PROFESSIONAL EMPLOYER ORGANIZATION; EXPANDING THE DEFINITION OF UNPROFESSIONAL CONDUCT; AND MAKING TECHNICAL CHANGES.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

12a **h 34A-2-103 (Effective 07/01/99), as last amended by Chapter 277, Laws of Utah 1998**

12b **34A-2-103 (Superseded 07/01/99), as last amended by Chapter 201 and renumbered and**
12c **amended by Chapter 375, Laws of Utah 1997**

12d **34A-2-105, as last amended by Chapter 93 and renumbered and amended by Chapter 375,**
12e **Laws of Utah 1997 h**

13 **58-59-101**, as enacted by Chapter 140, Laws of Utah 1993

14 **58-59-102**, as last amended by Chapter 201, Laws of Utah 1997

15 **58-59-201**, as last amended by Chapters 12 and 247, Laws of Utah 1994

16 **58-59-301**, as last amended by Chapter 247, Laws of Utah 1994

17 **58-59-302**, as last amended by Chapters 201 and 375, Laws of Utah 1997

18 **58-59-305**, as repealed and reenacted by Chapter 247, Laws of Utah 1994

19 **58-59-306**, as last amended by Chapter 201, Laws of Utah 1997

20 **58-59-307**, as repealed and reenacted by Chapter 247, Laws of Utah 1994

21 **58-59-308**, as renumbered and amended by Chapter 247, Laws of Utah 1994

22 **58-59-402**, as enacted by Chapter 201, Laws of Utah 1997

23 **58-59-501**, as last amended by Chapter 375, Laws of Utah 1997

24 **58-59-502**, as last amended by Chapter 201, Laws of Utah 1997

25 **58-59-503**, as enacted by Chapter 247, Laws of Utah 1994

25a **h 63-55-258, as last amended by Chapter 227, Laws of Utah 1998 h**

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

26a **§ Section 1. Section 34A-2-103 (Effective 07/01/99) is amended to read:**

26b **34A-2-103 (Effective 07/01/99). Employers enumerated and defined -- Regularly employed --**
 26c **Statutory employers.**

26d **(1) (a) The state, and each county, city, town, and school district in the state are considered**
 26e **employers under this chapter and Chapter 3, Utah Occupational Disease Act.**

26f **(b) For the purposes of the exclusive remedy in this chapter and Chapter 3, Utah**
Occupational

26g **Disease Act prescribed in Sections 34A-2-105 and 34A-3-102, the state is considered to be a single**
 26h **employer and includes any office, department, agency, authority, commission, board, institution,**
 26i **hospital, college, university, or other instrumentality of the state.**

26j **(2) Except as provided in Subsection (4), each person, including each public utility and each**
 26k **independent contractor, who regularly employs one or more workers or operatives in the same**
 26l **business, or in or about the same establishment, under any contract of hire, express or implied, oral**
 26m **or written, is considered an employer under this chapter and Chapter 3, Utah Occupational Disease**
 26n **Act. As used in this Subsection (2):**

26o **(a) "Independent contractor" means any person engaged in the performance of any work for**
 26p **another who, while so engaged, is:**

26q **(i) independent of the employer in all that pertains to the execution of the work;**

26r **(ii) not subject to the routine rule or control of the employer;**

26s **(iii) engaged only in the performance of a definite job or piece of work; and**

26t **(iv) subordinate to the employer only in effecting a result in accordance with the employer's**
 26u **design.**

26v **(b) "Regularly" includes all employments in the usual course of the trade, business,**
 26w **profession, or occupation of the employer, whether continuous throughout the year or for only a**
 26x **portion of the year.**

26y **(3) (a) The client company in an employee leasing arrangement under Title 58, Chapter 59,**
 26z **~~[Employee Leasing Company]~~ PROFESSIONAL EMPLOYER ORGANIZATION Licensing Act, is**
 26aa **considered the employer of leased employees and shall secure workers' compensation benefits for**
 26ab **them by complying with Subsection 34A-2-201(1)(a) or (b) and commission rules.**

26ac **(b) Insurance carriers may underwrite workers' compensation secured in accordance with**
 26ad **Subsection (3)(a) showing the leasing company as the named insured and each client company as an**
 26ae **additional insured by means of individual endorsements.**

26af **(c) Endorsements shall be filed with the division as directed by commission rule.**

26ag **(d) The division shall promptly inform the Division of Occupation and Professional Licensing**
 26ah **within the Department of Commerce if the division has reason to believe that an employee leasing**
 26ai **company is not in compliance with Subsection 34A-2-201(1)(a) or (b) and commission rules.**

26aj **(4) A domestic employer who does not employ one employee or more than one employee at**
 26ak **least 40 hours per week is not considered an employer under this chapter and Chapter 3,**
 26al **Utah Occupational Disease Act.**

26am **(5) (a) As used in this Subsection (5):**

26an **(i) (A) "agricultural employer" means a person who employs agricultural labor as defined in**
 26ao **Subsections 35A-4-206(1) and (2) and does not include employment as provided in Subsection**

02-17-99 9:14 AM

S.B. 226

26ap 35A-4-206(3); h

- 26aq **h (B) notwithstanding Subsection (5)(a)(i)(A), only for purposes of determining who is a**
 26ar **member of the employer's immediate family under Subsection (5)(a)(ii), if the agricultural employer is**
 26as **a corporation, partnership, or other business entity, "agricultural employer" means an officer,**
 26at **director, or partner of the business entity;**
- 26au **(ii) "employer's immediate family" means:**
 26av **(A) an agricultural employer's:**
 26aw **(I) spouse;**
 26ax **(II) grandparent;**
 26ay **(III) parent;**
 26az **(IV) sibling;**
 26ba **(V) child;**
 26bb **(VI) grandchild;**
 26bc **(VII) nephew; or**
 26bd **(VIII) niece;**
 26be **(B) a spouse of any person provided in Subsection (4)(a)(ii)(A)(II) through (VIII); or**
 26bf **(C) an individual who is similar to those listed in Subsections (4)(a)(ii)(A) or (B) as defined by**
 26bg **rules of the commission; and**
- 26bh **(iii) "non-immediate family" means a person who is not a member of the employer's**
 26bi **immediate family.**
- 26bj **(b) For purposes of this chapter and Chapter 3, Utah Occupational Disease Act, an**
 26bk **agricultural**
 26bl **employer is not considered an employer of a member of the employer's immediate family.**
- 26bm **(c) For purposes of this chapter and Chapter 3, Utah Occupational Disease Act, an**
 26bn **agricultural**
 26bo **employer is not considered an employer of a non-immediate family employee if:**
- 26bp **(i) for the previous calendar year the agricultural employer's total annual payroll for all**
 26bq **non-immediate family employees was less than \$8,000; or**
 26br **(ii) (A) for the previous calendar year the agricultural employer's total annual payroll for all**
 26bs **non-immediate family employees was equal to or greater than \$8,000 but less than \$50,000; and**
 26bt **(B) the agricultural employer maintains insurance that covers job-related injuries of the**
 26bu **employer's nonimmediate family employees in at least the following amounts:**
 26bv **(I) \$300,000 liability insurance, as defined in Section 31A-1-301; and**
 26bw **(II) \$5,000 for medical, hospital, and surgical benefits as described in**
 26bx **Subsection 31A-1-301(50)(a)(ii).**
- 26by **(d) For purposes of this chapter and Chapter 3, Utah Occupational Disease Act, an**
 26bz **agricultural**
 26ca **employer is considered an employer of a non-immediate family employee if:**
 26cb **(i) for the previous calendar year the agricultural employer's total annual payroll for all**
 26cc **non-immediate family employees is equal to or greater than \$50,000; or**
 26cd **(ii) (A) for the previous year the agricultural employer's total payroll for non-immediate family**
 26ce **employees was equal to or exceeds \$8,000 but is less than \$50,000; and**
 26cf **(B) the agricultural employer fails to maintain the insurance required under Subsection**
 26cg **(5)(c)(ii).**

02-17-99 9:14 AM

S.B. 226

26ce **(6) An employer of agricultural laborers or domestic servants who is not considered an**
26cf **employer under this chapter and Chapter 3, Utah Occupational Disease Act, may come under this**
26cg **chapter and Chapter 3, Utah Occupational Disease Act, by complying with: h**

26ch **h** (a) this chapter and Chapter 3, Utah Occupational Disease Act; and

26ci (b) the rules of the commission.

26cj (7) (a) If any person who is an employer procures any work to be done wholly or in part for
the
26ck employer by a contractor over whose work the employer retains supervision or control, and this work
26cl is a part or process in the trade or business of the employer, the contractor, all persons employed by
26cm the contractor, all subcontractors under the contractor, and all persons employed by any of these
26cn subcontractors, are considered employees of the original employer for the purposes of this chapter
26co and Chapter 3, Utah Occupational Disease Act.

26cp (b) Any person who is engaged in constructing, improving, repairing, or remodelling a
26cq residence that the person owns or is in the process of acquiring as the person's personal residence
26cr may not be considered an employee or employer solely by operation of Subsection (7)(a).

26cs (c) A partner in a partnership or an owner of a sole proprietorship may not be considered an
26ct employee under Subsection (7)(a) if the employer who procures work to be done by the partnership
or
26cu sole proprietorship obtains and relies on either:

26cv (i) a valid certification of the partnership's or sole proprietorship's compliance with Section
26cw 34A-2-201 indicating that the partnership or sole proprietorship secured the payment of workers'
26cx compensation benefits pursuant to Section 34A-2-201; or

26cy (ii) if a partnership or sole proprietorship with no employees other than a partner of the
26cz partnership or owner of the sole proprietorship, a workers' compensation policy issued by an insurer
26da pursuant to Subsection 31A-21-104(8) stating that:

26db (A) the partnership or sole proprietorship is customarily engaged in an independently
26dc established trade, occupation, profession, or business; and

26dd (B) the partner or owner personally waives the partner's or owner's entitlement to the
benefits
26de of this chapter and Chapter 3, Utah Occupational Disease Act, in the operation of the partnership or
26df sole proprietorship.

26dg (d) A director or officer of a corporation may not be considered an employee
26dh under Subsection (7)(a) if the director or officer is excluded from coverage under Subsection
26di 34A-2-104(4).

26dj (e) A contractor or subcontractor is not an employee of the employer under Subsection (7)(a),
26dk if the employer who procures work to be done by the contractor or subcontractor obtains and relies
26dl on either:

26dm (i) a valid certification of the contractor's or subcontractor's compliance with Section
26dn 34A-2-201; or

26do (ii) if a partnership, corporation, or sole proprietorship with no employees other than a
partner
26dp of the partnership, officer of the corporation, or owner of the sole proprietorship, a workers'
26dq compensation policy issued by an insurer pursuant to Subsection 31A-21-104(8) stating that:

26dr (A) the partnership, corporation, or sole proprietorship is customarily engaged in an
26ds independently established trade, occupation, profession, or business; and

26dt (B) the partner, corporate officer, or owner personally waives the partner's, corporate

02-17-99 9:14 AM

S.B. 226

officer's,

26du **or owner's entitlement to the benefits of this chapter and Chapter 3, Utah Occupational Disease Act,**
in

26dv **the operation of the partnership's, corporation's, or sole proprietorship's enterprise under a contract**
26dw **of hire for services.**

26dx **Section 2. Section 34A-2-103 (Superseded 07/01/99) is amended to read: \hat{h}**

- 26dy **h** 34A-2-103 (Superseded 07/01/99). Employers enumerated and defined -- Regularly
 26dz **h** employed -- Statutory employers.
- 26ea (1) (a) The state, and each county, city, town, and school district in the state are considered
 26eb employers under this chapter and Chapter 3, Utah Occupational Disease Act.
 26ec (b) For the purposes of the exclusive remedy in this chapter and Chapter 3, Utah
 Occupational
 26ed Disease Act prescribed in Sections 34A-2-105 and 34A-3-102, the state is considered to be a single
 26ee employer and includes any office, department, agency, authority, commission, board, institution,
 26ef hospital, college, university, or other instrumentality of the state.
- 26eg (2) Except as provided in Subsection (4), each person, including each public utility and each
 26eh independent contractor, who regularly employs one or more workers or operatives in the same
 26ei business, or in or about the same establishment, under any contract of hire, express or implied, oral
 26ej or written, is considered an employer under this chapter and Chapter 3, Utah Occupational Disease
 26ek Act. As used in Subsection (2):
- 26el (a) "Regularly" includes all employments in the usual course of the trade, business,
 26em profession, or occupation of the employer, whether continuous throughout the year or for only a
 26en portion of the year.
- 26eo (b) "Independent contractor" means any person engaged in the performance of any work for
 26ep another who, while so engaged, is independent of the employer in all that pertains to the execution of
 26eq the work, is not subject to the routine rule or control of the employer, is engaged only in
 26er the performance of a definite job or piece of work, and is subordinate to the employer only in
 effecting
 26es a result in accordance with the employer's design.
- 26et (3) (a) The client company in an employee leasing arrangement under Title 58, Chapter 59,
 26eu ~~[Employee Leasing Company]~~ PROFESSIONAL EMPLOYER ORGANIZATION Licensing Act, is
 26ev considered the employer of leased employees and shall secure workers' compensation benefits for
 26ew them by complying with Subsection 34A-2-201(1)(a) or (b) and commission rules.
- 26ex (b) Insurance carriers may underwrite workers' compensation secured in accordance with
 26ey Subsection (3)(a) showing the leasing company as the named insured and each client company as an
 26ez additional insured by means of individual endorsements.
- 26fa (c) Endorsements shall be filed with the division as directed by commission rule.
- 26fb (d) The division shall promptly inform the Division of Occupation and Professional Licensing
 26fc within the Department of Commerce if the division has reason to believe that an employee leasing
 26fd company is not in compliance with Subsection 34A-2-201(1)(a) or (b) and commission rules.
- 26fe (4) (a) An agricultural employer is not considered an employer under this chapter and
 Chapter
 26ff 3, Utah Occupational Disease Act, if:
- 26fg (i) (A) the employer's employees are all members of the employer's immediate family; and
 26fh (B) the employer has a proprietary interest in the farm where they work; or
 26fi (ii) the employer employed five or fewer persons other than immediate family members for 40
 26fj hours or more per week per employee for 13 consecutive weeks during any part of the preceding 12
 26fk months.
- 26fl (b) A domestic employer who does not employ one employee or more than one employee at

02-17-99 9:14 AM

S.B. 226

26fm **least 40 hours per week is not considered an employer under this chapter and Chapter 3, Utah**
26fn **Occupational Disease Act.**

26fo **(5) An employer of agricultural laborers or domestic servants who is not considered an h**

26fp **h** employer under this chapter and Chapter 3, Utah Occupational Disease Act, may come under this
26fq chapter and Chapter 3, Utah Occupational Disease Act, by complying with this chapter and Chapter
26fr 3, Utah Occupational Disease Act, and the rules of the commission.

26fs (6) (a) If any person who is an employer procures any work to be done wholly or in part for
the
26ft employer by a contractor over whose work the employer retains supervision or control, and this work
26fu is a part or process in the trade or business of the employer, the contractor, all persons employed by
26fv the contractor, all subcontractors under the contractor, and all persons employed by any of these
26fw subcontractors, are considered employees of the original employer for the purposes of this chapter
26fx and Chapter 3, Utah Occupational Disease Act.

26fy (b) Any person who is engaged in constructing, improving, repairing, or remodelling a
26fz residence that the person owns or is in the process of acquiring as the person's personal residence
26ga may not be considered an employee or employer solely by operation of Subsection (6)(a).

26gb (c) A partner in a partnership or an owner of a sole proprietorship may not be considered an
26gc employee under Subsection (6)(a) if the employer who procures work to be done by the partnership
26gd or sole proprietorship obtains and relies on either:

26ge (i) a valid certification of the partnership's or sole proprietorship's compliance with Section
26gf 34A-2-201 indicating that the partnership or sole proprietorship secured the payment of workers'
26gg compensation benefits pursuant to Section 34A-2-201; or

26gh (ii) if a partnership or sole proprietorship with no employees other than a partner of the
26gi partnership or owner of the sole proprietorship, a workers' compensation policy issued by an insurer
26gj pursuant to Subsection 31A-21-104(8) stating that:

26gk (A) the partnership or sole proprietorship is customarily engaged in an independently
26gl established trade, occupation, profession, or business; and

26gm (B) the partner or owner personally waives the partner's or owner's entitlement to the
benefits

26gn of this chapter and Chapter 3, Utah Occupational Disease Act, in the operation of the partnership or
26go sole proprietorship.

26gp (d) A director or officer of a corporation may not be considered an employee under
26gq Subsection (6)(a) if the director or officer is excluded from coverage under Subsection 34A-2-104(4).

26gr (e) A contractor or subcontractor is not an employee of the employer under Subsection (6)(a),
26gs if the employer who procures work to be done by the contractor or subcontractor obtains and relies
26gt on either:

26gu (i) a valid certification of the contractor's or subcontractor's compliance with Section
26gv 34A-2-201; or

26gw (ii) if a partnership, corporation, or sole proprietorship with no employees other than a
partner

26gx of the partnership, officer of the corporation, or owner of the sole proprietorship, a workers'
26gy compensation policy issued by an insurer pursuant to Subsection 31A-21-104(8) stating that:

26gz (A) the partnership, corporation, or sole proprietorship is customarily engaged in an
26ha independently established trade, occupation, profession, or business; and

26hb (B) the partner, corporate officer, or owner personally waives the partner's, corporate
officer's,

02-17-99 9:14 AM

S.B. 226

26hc or owner's entitlement to the benefits of this chapter and Chapter 3, Utah Occupational Disease Act,
in
26hd the operation of the partnership's, corporation's, or sole proprietorship's enterprise under a contract
26he of hire for services.

26hf **Section 3. Section 34A-2-105 is amended to read: \hat{h}**

26hg ^h 34A-2-105. Exclusive remedy against employer, or officer, agent, or employee -- Employee
26hh leasing arrangements.

26hi (1) The right to recover compensation pursuant to this chapter for injuries sustained by an
26hj employee, whether resulting in death or not, shall be the exclusive remedy against the employer and
26hk shall be the exclusive remedy against any officer, agent, or employee of the employer and the
26hl liabilities of the employer imposed by this chapter shall be in place of any and all other civil liability
26hm whatsoever, at common law or otherwise, to the employee or to the employee's spouse,
26hn widow, children, parents, dependents, next of kin, heirs, personal representatives, guardian, or any
26ho other person whomsoever, on account of any accident or injury or death, in any way contracted,
26hp sustained, aggravated, or incurred by the employee in the course of or because of or arising out of
the
26hq employee's employment, and no action at law may be maintained against an employer or against any
26hr officer, agent, or employee of the employer based upon any accident, injury, or death of an employee.
26hs Nothing in this section, however, shall prevent an employee, or the employee's dependents, from
26ht filing a claim for compensation in those cases in accordance with Chapter 3, Utah Occupational
26hu Disease Act.

26hv (2) The exclusive remedy provisions of this section apply to both the client company and the
26hw employee leasing company in an employee leasing arrangement under Title 58, Chapter 59,
[Employee
26hx ~~Leasing Company~~] PROFESSIONAL EMPLOYER ORGANIZATION Licensing Act.

26hy (3) (a) For purposes of this section:
26hz (i) "Temporary employee" means an individual who for temporary work assignment is:
26ia (A) an employee of a temporary staffing company; or
26ib (B) registered by or otherwise associated with a temporary staffing company.
26ic (ii) "Temporary staffing company" means a company that engages in the assignment of
26id individuals as temporary full-time or part-time employees to fill assignments with a finite ending date
26ie to another independent entity.

26if (b) If the temporary staffing company secures the payment of workers' compensation in
26ig accordance with Section 35A-3-201 for all temporary employees of the temporary staffing company,
26ih the exclusive remedy provisions of this section apply to both the temporary staffing company and the
26ii client company and its employees and provide the temporary staffing company the same protection
26ij that a client company and its employees has under this section for the acts of any of the temporary
26ik staffing company's temporary employees on assignment at the client company worksite ^h .

27 Section 1. Section 58-59-101 is amended to read:

28 **58-59-101. Short title.**

29 This chapter is known as the "[~~Employee Leasing Company~~] Professional Employer
30 Organization Licensing Act."

31 Section 2. Section **58-59-102** is amended to read:

32 **58-59-102. Definitions.**

33 In addition to the definitions in Section 58-1-102, as used in this chapter:

34 (1) "Adjusted net worth" means stockholder's equity determined in accordance with
35 generally accepted accounting principles, increased by the amount of obligations subordinated to
36 claims of general creditors with a remaining term to maturity in excess of three years, and
37 mandatory redeemable preferred stock with a remaining term to redemption in excess of three
38 years.

39 [~~(1)~~] (2) "Board" means the [~~Employee Leasing Company~~] Professional Employer
40 Organization Board created in Section 58-59-201.

41 [~~(2)~~] (3) "Client company" means a person or entity that leases any or all of its [~~permanent~~]
42 regular employees from [an employee leasing company] a professional employer organization.

43 [~~(3)~~] "~~Employee leasing company" or "leasing company" means an individual or business~~
44 ~~that, under an agreement between the client company and the leasing company and for a fee:]~~

45 [~~(a)~~] ~~places all or substantially all of the regular, full-time employees of the client company~~
46 ~~on the leasing company's payroll;]~~

47 [~~(b)~~] ~~leases the employees to the client company on an ongoing basis with no restriction or~~
48 ~~limitation on the duration of employment; and]~~

49 [~~(c)~~] ~~receives funds from a client company or leasing company employees from which the~~
50 ~~leasing company is obligated to pay taxes, insurance, or benefits on behalf of the employees.]~~

51 (4) "Employment agreement" means the written agreement between [~~an employee leasing~~
52 ~~company] a professional employer organization and each of its employees who are employed for~~
53 ~~the purpose of being leased as [permanent] regular employees to client companies.~~

54 (5) "Engage in practice as [~~an employee leasing company] a professional employer~~
55 organization" means to hold oneself out as [~~an employee leasing company] a professional~~
56 employer organization, to lease an employee to another person, **§ [and] OR §** to receive any
56a consideration

57 for providing employee leasing services or to expect payment of any consideration for providing
58 employee leasing services.

59 (6) (a) "Financial responsibility" means a demonstration of a current and expected future
60 condition of financial solvency evidencing a reasonable expectation to the board that an applicant
61 or licensee can successfully engage in business as ~~[an employee leasing company]~~ a professional
62 employer organization without jeopardizing:

63 (i) the interests of the employees of the ~~[leasing company]~~ professional employer
64 organization who are leased to a client company;

65 (ii) the interests of the client company; and

66 (iii) the interests of the public.

67 (b) Financial responsibility may be determined by an evaluation of the total history
68 concerning the licensee or applicant for licensure, including past, present, and expected condition
69 and record of financial solvency and business conduct.

70 (7) "Lease agreement" means the written agreement between ~~[an employee leasing~~
71 ~~company]~~ a professional employer organization and a client company in accordance with which
72 the ~~[leasing company]~~ professional employer organization leases employees to the client company
73 and the client company leases individuals from the ~~[leasing company]~~ professional employer
74 organization.

75 (8) (a) "Professional employer organization," "employee leasing company," or "leasing
76 company" means a person who by contract, or otherwise, agrees to employ a majority of a client's
77 workforce where employer responsibilities for those employees are in fact allocated between or
78 shared by the professional employer organization and the client.

79 (b) The employer responsibilities are considered to be allocated between or shared by the
80 professional employer organization and the client whenever the agreement between the client and
81 the professional employer organization expressly provides for such allocation or sharing or
82 whenever a factual analysis of the client's business reveals such allocation or sharing.

83 (c) The term "professional employer organization arrangement" shall be liberally construed
84 so as to include any and all arrangements meeting the criteria for professional employer
85 organizations regardless of the term used.

86 (d) The following arrangements are not professional employer organization arrangements
87 for purposes of this chapter:

88 (i) arrangements wherein a person, whose principal business activity is not entering into
89 professional employer organization arrangements, shares employees with a commonly owned

90 company within the meaning of Sections 414(b) and (c) of the Internal Revenue Code of 1986, as
91 amended, and which does not hold itself out as a professional employer organization;

92 (ii) arrangements by which a person assumes responsibility for the product produced or
93 service performed by that person or his agents and retains and exercises primary direction and
94 control over the work performed by the individuals whose services are supplied under the
95 arrangements;

96 (iii) a temporary help arrangement, whereby an organization hires its own employees and
97 assigns them to a client to support or supplement the client's workforce in special work situations
98 such as employee absences, temporary skill shortages, seasonal workloads, and special
99 assignments and projects; provided, however, that the temporary help arrangement excludes
100 arrangements where the majority of the client's work force has been assigned by a temporary help
101 organization for a period of more than 12 consecutive months; and

102 (iv) any person otherwise subject to licensure under this chapter if, during any fiscal year
103 of the person, the total gross wages paid to employees employed by the person in this state during
104 such period under one or more professional employer organization arrangements do not exceed
105 5% of the total gross wages paid to all employees employed by the person during the same period,
106 and provided further, that the person does not advertise or hold itself out to the public as providing
107 arrangements denominated as "professional employer" or "employee leasing" in this state.

108 ~~[(8)]~~ (9) "Regular employee" means an individual who is an employee of ~~[an employee~~
109 ~~leasing company]~~ a professional employer organization for the purpose of being placed by the
110 ~~[employee leasing company]~~ professional employer organization as a regular full-time or regular
111 part-time employee of a client company.

112 ~~[(9)]~~ (10) "Represent oneself as ~~[an employee leasing company]~~ a professional employer
113 organization" means to hold oneself out by any means as ~~[an employee leasing company]~~ a
114 professional employer organization.

115 ~~[(10)]~~ (11) "Temporary employee," as may be further defined by rule, means an individual
116 who is an employee of, registered for temporary assignment by, or otherwise associated with a
117 temporary help company that engages in the assignment of individuals as temporary full-time or
118 part-time personnel to fill assignments with a finite ending date to another independent entity.

119 ~~[(11)]~~ (12) "Temporary help company," as may be further defined by rule, means a person
120 or entity that provides temporary employees to fill assignments with a finite ending date to another

121 independent entity in special, unusual, seasonal, or temporary skill shortage situations.

122 (13) "Total adjusted liabilities" means total liabilities as stated in an audited financial
123 statement less obligations subordinated to claims of general creditors with a remaining term to
124 maturity in excess of three years.

125 [~~(12)~~] (14) "Unlawful conduct" is as defined in Sections 58-1-501 and 58-59-501.

126 [~~(13)~~] (15) "Unprofessional conduct" is as defined in Sections 58-1-501 and 58-59-502.

127 Section 3. Section **58-59-201** is amended to read:

128 **58-59-201. Board.**

129 (1) There is created [~~an Employee Leasing Company~~] the Professional Employer
130 Organization Board consisting of:

131 (a) three members who are owners or officers of separate licensed [~~employee leasing~~
132 ~~companies~~] professional employer organizations within [~~the~~] this state;

133 (b) one member who is an owner or officer of a client company; and

134 (c) one member from the general public.

135 (2) The board shall be appointed and serve in accordance with Section 58-1-201.

136 (3) (a) The duties and responsibilities of the board shall be in accordance with Sections
137 58-1-201 through 58-1-203.

138 (b) The board shall designate one of its members on a permanent or rotating basis to:

139 (i) assist the division in reviewing complaints concerning the unlawful or unprofessional
140 conduct of a licensee; and

141 (ii) advise the division in its investigation of these complaints.

142 (c) A board member who has, under Subsection (3)(b), reviewed a complaint or advised
143 in its investigation is disqualified from participating with the board when the board serves as a
144 presiding officer in an adjudicative proceeding concerning the complaint.

145 Section 4. Section **58-59-301** is amended to read:

146 **58-59-301. License required -- License issuance.**

147 (1) A license is required to engage in practice as [~~an employee leasing company~~] a
148 professional employer organization, except as specifically provided in Section 58-1-307 or
149 58-59-305.

150 (2) The division shall issue to persons qualified under the provision of this chapter a
151 license as [~~an employee leasing company~~] a professional employer organization.

152 Section 5. Section **58-59-302** is amended to read:

153 **58-59-302. Qualifications for licensure.**

154 Each applicant for licensure as [~~an employee leasing company~~] a professional employer
155 organization shall:

156 (1) submit an application in a form prescribed by the division;

157 (2) pay a fee as determined by the department under Section 63-38-3.2;

158 (3) provide documentation that the applicant is properly registered with:

159 (a) the Division of Corporations and Commercial Code;

160 (b) the Division of Workforce Information and Payment Services in the Department of
161 Workforce Services, for the purposes of Title 35A, Chapter 4, Employment Security Act;

162 (c) the State Tax Commission;

163 (d) the Internal Revenue Service; and

164 (e) any other agency identified by rule that is determined by the division and the board as
165 necessary for a person engaged in practice as [~~an employee leasing company~~] a professional
166 employer organization;

167 (4) provide documentation satisfactory to the division and the board that employees leased
168 by the [~~employee leasing company~~] professional employer organization to any client company are
169 covered by workers' compensation insurance pursuant to Section 34A-2-103;

170 (5) provide evidence to the division and the board of financial responsibility, as this
171 evidence is prescribed by rule;

172 (6) [~~in the case of an employee leasing company that is commencing or reentering business~~
173 ~~as an employee leasing company,~~] submit to the division [~~and the board~~] a certified audit

174 performed by an independent certified public accountant showing at least **§ AN ADJUSTED NET**

174a **WORTH OF** § \$50,000 **§ [adjusted net**

175 **worth]** § [~~as starting capital~~] or 5% of total adjusted liabilities, whichever is greater;

176 (7) provide evidence satisfactory to the division [~~and the board~~] of the financial
177 responsibility of any self-funded or partially self-funded insurance plan as defined by rule[;] which
178 meets the following requirements:

179 (a) the self-funded or partially self-funded plan has purchased adequate excess loss
180 insurance to prevent material adverse impact on the financial condition of the professional
181 employer organization;

182 (b) the plan uses a third-party administrator licensed by the state in which the third party

02-17-99 9:14 AM

S.B. 226

183 administrator is domiciled;

184 (c) the self-funded nature of the self-funded or partially self-funded plan is disclosed to
 185 each eligible employee; and

186 (d) all self-funded or partially self-funded plan assets, including participant contributions,
 187 are held in a trust account;

188 (8) provide, for a criminal background check by the division, the name of:

189 (a) any person who has control of or a controlling interest in, as defined in Section
 190 16-10a-102, the ~~[leasing company]~~ professional employer organization;

191 (b) any officer or director of the ~~[leasing company]~~ professional employer organization;

192 and

193 (c) any responsible manager of the ~~[leasing company]~~ professional employer organization
 194 or other person if the manager or person has signatory authority over fiduciary funds;

195 (9) provide evidence satisfactory to the division ~~[and the board]~~ that the responsible
 196 managers of the ~~[leasing company]~~ professional employer organization have education and
 197 experience in the conduct of business that demonstrate a reasonable expectation that the ~~[company]~~
 198 professional employer organization will be managed with the skill and expertise necessary to
 199 protect the interests of its employees, client companies, and the public; and

200 (10) provide evidence that the applicant is of good moral character.

201 Section 6. Section **58-59-305** is amended to read:

202 **58-59-305. Exemptions from licensure.**

203 In addition to the exemptions from licensure in Section 58-1-307[;] the following are
 204 exempt from licensure under this chapter:

205 (1) related companies under common ownership that are not individually considered
 206 [employee leasing companies] professional employer organizations under this chapter [may,
 207 without being licensed in accordance with this chapter,] which combine employees of one
 208 commonly owned company with employees of another commonly owned company on either a
 209 temporary or regular basis[-]; and

210 (2) a professional employer organization § , WHICH IS NOT DOMICILED IN THIS STATE, AND §
 210a which employs less than 25 employees working
 211 within this state § [which is not domiciled in this state] § .

212 Section 7. Section **58-59-306** is amended to read:

213 **58-59-306. Financial responsibility.**

02-17-99 9:14 AM

S.B. 226

214 (1) To maintain a license in good standing, ~~[an employee leasing company]~~ a professional
 215 employer organization shall demonstrate financial responsibility.

216 (2) Financial responsibility shall be demonstrated on:

217 (a) a quarterly basis by providing the division ~~[and the board]~~ with:

218 (i) evidence from an independent certified public accountant, in a form prescribed by the
 219 division, that all federal, state, and local withholding taxes, unemployment taxes, FICA taxes,
 220 workers' compensation premiums, and employee benefit plan premiums have been paid; and

221 (ii) any other relevant information the division ~~[or board]~~ considers appropriate; and

222 (b) an annual basis by providing the division ~~[and the board]~~ with:

223 (i) ~~[a]~~ an audited financial statement prepared in a form prescribed by the division by an
 224 independent certified public accountant that includes a review of the payment of all federal, state,
 225 and local withholding taxes, unemployment taxes, FICA taxes, workers' compensation premiums,
 226 and employee benefit plan premiums; and

227 (ii) any other relevant information the division ~~[or board]~~ considers appropriate.

228 **§ ~~[(3)(a) In addition to quarterly evidence or an annual financial statement required under~~**
 229 **~~Subsection (2), the division [and board] may request a licensee to submit a certified audit~~**
 230 **~~performed by an independent certified public accountant if:~~**

231 ~~—— (i) a licensee fails to submit quarterly evidence or a financial statement as required by~~
 232 **~~Subsection (2);~~**

233 ~~—— (ii) the division [and board have] has reason to believe that the evidence or financial~~
 234 **~~statement submitted by a licensee under Subsection (2):~~**

235 ~~—— (A) is incomplete or misleading; or~~

236 ~~—— (B) contains evidence of:~~

237 ~~—— (I) a material financial irregularity; or~~

238 ~~—— (II) the failure of the licensee to fully and timely pay a tax or premium identified in~~
 239 **~~Subsection (2) for which it is obligated to pay; or~~**

240 ~~—— (iii) the division [or board] receives information from a state or federal agency or other~~
 241 **~~person of:~~**

242 ~~—— (A) a material financial irregularity; or~~

243 ~~—— (B) the failure of the licensee to fully and timely pay a tax or premium identified in~~

244 **~~Subsection (2) for which it is obligated to pay.] §~~**

§ [

245 ~~————(b) The division [and the board] may require that an audit requested under Subsection~~
 246 ~~(3)(a) not be performed by an independent certified public accountant who has previously prepared~~
 247 ~~quarterly evidence or an annual financial statement for the licensee.~~

248 ~~————(4) An independent certified public accountant shall submit documentation required under~~
 249 ~~Subsections (2) and (3) directly to the division before reviewing the documentation with the~~
 250 ~~licensee.] §~~

251 Section 8. Section **58-59-307** is amended to read:

252 **58-59-307. Records and reports protected.**

253 Notwithstanding Title 63, Chapter 2, Government Records Access and Management Act,
 254 financial information submitted to the division [~~or the board~~] by or at the request and direction of
 255 an applicant or licensee for the purpose of supporting a representation of financial responsibility
 256 [~~shall be~~] is confidential [~~and are~~], is not for public inspection, and [~~shall~~] is not [~~be~~] subject to
 257 discovery in civil or administrative proceedings.

258 Section 9. Section **58-59-308** is amended to read:

259 **58-59-308. No guarantee.**

260 By licensing and regulating [~~employee leasing companies~~] professional employer
 261 organizations under this chapter, the state:

262 (1) does not guarantee any right, claim, or defense of any [~~employee leasing company~~]
 263 professional employer organization, client company, regular employee, or other person;

264 (2) does not guarantee the financial responsibility or solvency of any [~~employee leasing~~
 265 ~~company~~] professional employer organization; and

266 (3) does not waive any right, claim, or defense of immunity that it may have under Title
 267 63, Chapter 30, Utah Governmental Immunity Act, or other law.

268 Section 10. Section **58-59-402** is amended to read:

269 **58-59-402. Court intervention.**

270 If a professional employer organization is operating without a license or the financial
 271 condition of a licensee [~~or unlicensed employee leasing company~~] is impaired to the extent of
 272 posing a significant threat to the public, the division may file a complaint in district court asking
 273 for:

274 (1) injunctive relief;

275 (2) the appointment of a receiver;

276 (3) the sale of the [licensee's] company to a third party;

277 (4) the liquidation of the [licensee's] company; and

278 (5) any other appropriate remedy.

279 Section 11. Section **58-59-501** is amended to read:

280 **58-59-501. Unlawful conduct.**

281 Unlawful conduct includes:

282 (1) engaging in practice as [~~an employee leasing company~~] a professional employer
283 organization without a license;

284 (2) offering an employee a self-funded medical program, unless:

285 (a) the program provides its benefits under an employee benefit plan that complies with
286 29 U.S.C. Sec. 1143 et seq.; and

287 (b) the program is maintained for the sole benefit of eligible plan participants;

288 (3) misrepresenting that any self-funded medical program it offers is other than
289 self-funded;

290 (4) offering to its employees any self-funded or partially self-funded medical plan without
291 delivering to each plan participant a summary plan description that accurately describes terms of
292 the plan, including disclosure that the plan is self-funded or partially self-funded;

293 (5) providing leased employees to any client company under any provision, term, or
294 condition that is not contained in a clearly written agreement between the [~~leasing company~~]
295 professional employer organization and client company;

296 (6) any willful, fraudulent, or deceitful act by a licensee, caused by a licensee, or at a
297 licensee's direction, that causes material injury to a client company or employee leased to a client
298 company;

299 (7) failing to maintain or ensure that client companies maintain in full force and effect
300 required workers' compensation insurance on all leased employees in accordance with Utah law
301 pursuant to Section 34A-2-103;

302 (8) failing to pay in a timely manner any federal or state income tax withholding, FICA,
303 unemployment tax, employee insurance benefit premium, workers' compensation premium, or
304 other obligation due and payable directly as a result of engaging in business as an employee leasing
305 company; and

306 (9) failing to comply with federal law regarding any employee benefit offered to an

307 employee.

308 Section 12. Section **58-59-502** is amended to read:

309 **58-59-502. Unprofessional conduct.**

310 Unprofessional conduct includes:

311 (1) failing to establish, maintain, or demonstrate financial responsibility and management
312 competence while licensed as ~~[an employee leasing company]~~ a professional employer
313 organization;

314 (2) failing to maintain proper registration with any agency for which registration is
315 required as a condition of licensure under this chapter;

316 (3) failing to maintain current lease agreements and employment agreements in appropriate
317 form and content as required under this chapter;

318 (4) failing to inform the division of a change in ownership, in the address of its owners or
319 officers, or in its principal business address or change in any responsible manager of the
320 professional employer organization who has signatory authority over company funds within ten
321 days after the change;

322 (5) failing to maintain and make available, upon request, to the division and the licensee's
323 workers' compensation insurance carrier:

324 (a) the name and federal identification number of each client company;

325 (b) the number and, if good cause is shown, the names of all covered employees provided
326 to each client company; and

327 (c) the total eligible wages and workers' compensation premiums due to the carrier for the
328 employees provided to each client company; ~~[and]~~

329 (6) failing within 30 days to notify the division and the licensee's workers' compensation
330 insurance carrier of the initiation or termination of a relationship with a client company[-];

331 (7) failing within ten days to notify the division of the failure to pay when due an amount
332 exceeding \$5,000 of any of the following obligations: any federal or state income tax, withholding
333 tax, FICA, unemployment tax, employee insurance benefit premium, or worker compensation
334 premium; and

335 (8) any of the following events unless the licensee first obtains written approval from the
336 division for that event:

337 (a) the sale or transfer of a majority of the employee leasing contracts of the licensee;

- 338 (b) the sale or transfer of a majority of the physical assets of the licensee;
- 339 (c) the sale or transfer of more than 25% of the ownership interest of a licensee by any
- 340 means including the sale, transfer, or issuance of a member interest in a limited liability company,
- 341 the sale, transfer, or issuance of a member interest in a partnership, the sale, transfer, or issuance
- 342 of a ownership interest in a licensee in any other manner other than that the sale or transfer of
- 343 publicly traded shares of a corporation affected through a public exchange or market; and
- 344 (d) entering into one or more contracts, other than employee lease agreements with
- 345 employee leasing clients, which commits the licensee to make future payments to any person or
- 346 persons in amounts which in total exceed the equity of the business for payment of service
- 347 provided to or for the licensee.

Section 13. Section **58-59-503** is amended to read:

58-59-503. Penalty for unlawful conduct.

(1) Any person who violates Subsections 58-59-501(1) through [~~(3)~~] (4) is guilty of a third degree felony.

(2) Any person who violates Subsections 58-59-501[~~(4)~~] (5) through § [f] (9) [f] [~~(10)~~] § is guilty of a class A misdemeanor.

(3) Any person who has engaged in unlawful conduct may be assessed the costs associated with the investigations, disciplinary proceedings, court proceedings, or other actions to enforce the provisions of this act.

h Section 17. Section 63-55-258 is amended to read:

63-55-258. Repeal dates, Title 58.

(1) Title 58, Chapter 3a, Architects Licensing Act, is repealed July 1, 2003.

(2) Title 58, Chapter 5a, Podiatric Physician Licensing Act, is repealed July 1, 2002.

(3) Title 58, Chapter 9, Funeral Services Licensing Act, is repealed July 1, 2008.

(4) Title 58, Chapter 13, Health Care Providers Immunity from Liability Act, is repealed July 1, 2006.

(5) Title 58, Chapter 15, Health Facility Administrator Act, is repealed July 1, 2005.

(6) Title 58, Chapter 16a, Utah Optometry Practice Act, is repealed July 1, 1999.

(7) Title 58, Chapter 17a, Pharmacy Practice Act, is repealed July 1, 2006.

(8) Title 58, Chapter 20a, Environmental Health Scientist Act, is repealed July 1, 2003.

(9) Title 58, Chapter 22, Professional Engineers and Land Surveyors Licensing Act, is repealed July 1, 2005. h

- 356n ^h (10) Title 58, Chapter 24a, Physical Therapist Practice Act, is repealed July 1, 2003.
- 356o (11) Title 58, Chapter 26, Certified Public Accountant Licensing Act, is repealed July 1, 2002.
- 356p (12) Title 58, Chapter 28, Veterinary Practice Act, is repealed July 1, 2004.
- 356q (13) Title 58, Chapter 31, Nurse Practice Act, is repealed July 1, 2005.
- 356r (14) Title 58, Chapter 37, Utah Controlled Substances Act, is repealed July 1, 2007.
- 356s (15) Title 58, Chapter 37a, Utah Drug Paraphernalia Act, is repealed July 1, 2007.
- 356t (16) Title 58, Chapter 37b, Imitation Controlled Substances Act, is repealed July 1, 2007.
- 356u (17) Title 58, Chapter 40, Recreational Therapy Practice Act, is repealed July 1, 2005.
- 356v (18) Title 58, Chapter 41, Speech-language Pathology and Audiology Licensing Act, is
356w repealed July 1, 1999.
- 356x (19) Title 58, Chapter 42a, Occupational Therapy Practice Act, is repealed July 1, 2005.
- 356y (20) Title 58, Chapter 44a, Nurse Midwife Practice Act, is repealed July 1, 2000.
- 356z (21) Title 58, Chapter 46a, Hearing Instrument Specialist Licensing Act, is repealed July 1,
356aa 2003.
- 356ab (22) Title 58, Chapter 47b, Massage Practice Act, is repealed July 1, 2004.
- 356ac (23) Title 58, Chapter 49, Dietitian Certification Act, is repealed July 1, 2005.
- 356ad (24) Title 58, Chapter 53, Landscape Architects Licensing Act, is repealed July 1, 2008.
- 356ae (25) Title 58, Chapter 58, Preneed Funeral Arrangement Act, is repealed July 1, 2001.
- 356af (26) Title 58, Chapter 59, [~~Employee Leasing Company~~] PROFESSIONAL EMPLOYER
356ag ORGANIZATION Licensing Act, is repealed July 1, 2002.
- 356ah (27) Title 58, Chapter 66, Utah Professional Boxing Regulation Act, is repealed July 1, 2005.
- 356ai (28) Title 58, Chapter 67, Utah Medical Practice Act, is repealed July 1, 2006.
- 356aj (29) Title 58, Chapter 68, Utah Osteopathic Medical Practice Act, is repealed July 1, 2006.
- 356ak (30) Title 58, Chapter 69, Dentist and Dental Hygienist Practice Act, is repealed July 1, 2006.
- 356al (31) Title 58, Chapter 71, Naturopathic Physician Practice Act, is repealed July 1, 2006.
- 356am (32) Title 58, Chapter 72, Acupuncture Licensing Act, is repealed July 1, 2002.
- 356an (33) Title 58, Chapter 73, Chiropractic Physician Practice Act, is repealed July 1, 2006. ^h

Legislative Review Note as of 2-15-99 3:34 PM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel