

**Representative James A. Dunnigan** proposes the following substitute bill:

**PROFESSIONAL EMPLOYER ORGANIZATION**

**RELATED AMENDMENTS**

2007 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: James A. Dunnigan**

Senate Sponsor: Curtis S. Bramble

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**LONG TITLE**

**General Description:**

This bill modifies provisions related to professional employer organizations and their clients.

**Highlighted Provisions:**

This bill:

- ▶ modifies definition provisions;
- ▶ provides for an alternative method of registration;
- ▶ provides for the designation of assurance organizations;
- ▶ addresses employment related economic incentives;
- ▶ addresses taxes and fees; and
- ▶ makes technical changes.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:



- 26 **58-59-102**, as last amended by Chapter 260, Laws of Utah 2003
- 27 **58-59-302**, as last amended by Chapter 260, Laws of Utah 2003
- 28 **58-59-303.5**, as enacted by Chapter 260, Laws of Utah 2003
- 29 **58-59-306**, as repealed and reenacted by Chapter 260, Laws of Utah 2003

30 ENACTS:

- 31 **58-59-302.5**, Utah Code Annotated 1953
- 32 **58-59-306.5**, Utah Code Annotated 1953

33 REPEALS:

- 34 **58-59-305**, as repealed and reenacted by Chapter 260, Laws of Utah 2003



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

37 Section 1. Section **58-59-102** is amended to read:

38 **58-59-102. Definitions.**

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

40 (1) "Assurance organization" means a person designated as an assurance organization  
41 in accordance with Section 58-59-302.5.

42 ~~(1)~~ (2) "Client" or "client company" means a person [or entity] that enters into a  
43 professional employer agreement with a [professional employer organization] PEO.

44 ~~(2)~~ (3) "Coemployer" means either a [professional employer organization] PEO or a  
45 client.

46 ~~(3)~~ (4) "Coemployment relationship" means:

47 (a) as between coemployers, a relationship:

48 (i) whereby the rights, duties, and obligations of an employer which arise out of an  
49 employment relationship have been allocated between coemployers under a professional  
50 employer agreement and this chapter[;]; and [which]

51 (ii) that is intended to be an ongoing relationship, rather than a temporary or  
52 project-specific relationship;

53 (b) as between each PEO and a covered employee as to which a professional employer  
54 agreement applies, an employment relationship whereby the PEO is entitled to enforce those  
55 rights, and obligated to perform those duties and obligations, allocated to the PEO by the  
56 professional employer agreement and this chapter;

57 (c) as between each client and a covered employee to which a professional employer  
58 agreement applies, an employment relationship ~~[whereby]~~ under which:

59 (i) the client is entitled to enforce those rights, and obligated to provide and perform  
60 those employer obligations, allocated to the client by the professional employer agreement and  
61 this chapter; and

62 (ii) the client is responsible for any employer right or obligation not otherwise allocated  
63 by the professional employer agreement or this chapter; and

64 (d) as to those rights enforceable by an employee under state law[-];

65 (i) covered employees are entitled to enforce against the PEO those rights:

66 ~~[(i)]~~ (A) allocated to the PEO by the professional employer agreement and this chapter;

67 or

68 ~~[(ii)]~~ (B) shared by the PEO and the client under the professional employer agreement  
69 and this chapter~~[- All other];~~ and

70 (ii) any rights, duties, and obligations not described in Subsection (4)(d)(i) enforceable  
71 by an employee under state law ~~[shall continue to be]~~ are enforceable against the client under  
72 state law.

73 ~~[(4)]~~ (5)(a) "Covered employee" means an individual having a coemployment  
74 relationship with a PEO and a client who meets all of the following criteria:

75 ~~[(a)]~~ (i) the individual ~~[has executed an employment agreement]~~ receives written notice  
76 of the coemployment relationship with the PEO and the client;

77 ~~[(b)]~~ (ii) the individual is a party to a coemployment relationship with ~~[a]~~ the PEO and  
78 ~~[a]~~ the client; and

79 ~~[(c)]~~ (iii) the individual's coemployment relationship is pursuant to a professional  
80 employer agreement subject to this chapter. ~~[Individuals who are officers, directors,~~  
81 ~~shareholders, partners, and managers of the client are covered employees]~~

82 (b) "Covered employee" includes an individual who is an officer, director, shareholder,  
83 partner, or manager of a client:

84 (i) to the extent the PEO and the client have expressly agreed in the professional  
85 employer agreement that the ~~[individuals would be covered employees and provided the~~  
86 ~~individuals meet]~~ individual is a covered employee; and

87 (ii) the individual:

88 (A) meets the criteria of ~~[this]~~ Subsection ~~[(4)]~~ (5)(a); and ~~[act]~~

89 (B) (I) acts as an operational ~~[managers]~~ manager; or ~~[perform]~~

90 (II) performs services for the client.

91 (6) (a) "Employment related economic incentive" means:

92 (i) (A) a credit against or exemption from taxes due the state or a political subdivision  
93 of the state; or

94 (B) an economic inducement, including a loan or a grant; and

95 (ii) if the credit, exemption, or economic inducement:

96 (A) is offered by the state or a political subdivision of the state; and

97 (B) has an eligibility requirement that relates in whole or in part on employment  
98 including:

99 (I) the number of employees; or

100 (II) the nature of the employment.

101 ~~[(5)]~~ (7) "Engage in practice as a professional employer organization" means to:

102 (a) hold oneself out as a professional employer organization~~[-, to];~~

103 (b) coemploy an employee with another person~~[-, or to];~~

104 (c) receive any consideration for providing professional employer services; or ~~[to]~~

105 (d) expect payment of any consideration for providing professional employer services.

106 ~~[(6)]~~ (8) "Organization" means any individual, partnership, corporation, limited  
107 liability company, association, or any other form of legally recognized entity.

108 ~~[(7)]~~ (9) "Professional employer agreement" means a written contract by and between a  
109 client and a PEO that provides:

110 (a) for the coemployment of covered employees;

111 (b) for the allocation and sharing between the client and the PEO of employer  
112 responsibilities~~[-]~~ with respect to the covered employees including hiring, firing, and  
113 disciplining~~[-, with respect to the covered employees];~~ and

114 (c) that the PEO and the client assume the responsibilities required by this chapter.

115 ~~[(8)-(a)]~~ (10) (a) "Professional employer organization" or "PEO" means any  
116 organization engaged in the business of providing professional employer services.

117 ~~[(b) An organization engaged in the business of providing professional employer~~  
118 ~~services is subject to registration under this chapter regardless of its use of the term~~

119 "professional employer organization," "PEO," "staff leasing company," "registered staff leasing  
120 company," "employee leasing company," or any other name.]

121 ~~[(c)]~~ (b) The following are not considered to be professional employer organizations or  
122 professional employment services for purposes of this chapter:

123 (i) arrangements ~~[wherein]~~ where an organization~~[- whose principal business activity is~~  
124 ~~not entering into professional employer arrangements and which does not hold itself out as a~~  
125 ~~PEO;]~~ shares employees with a commonly owned company within the meaning of Sections  
126 414(b) and (c) of the Internal Revenue Code of 1986, as amended~~[-];~~ if the organization:

127 (A) does not have as a principal business activity entering into professional employer  
128 arrangements; and

129 (B) does not hold itself out as a PEO;

130 (ii) arrangements by which an organization:

131 (A) assumes responsibility for the product produced or service performed by the person  
132 or the person's agents; and

133 (B) retains and exercises primary direction and control over the work performed by the  
134 individuals whose services are supplied under the arrangements; or

135 (iii) providing temporary help services.

136 ~~[(9)]~~ (11) "Professional employer services" means the service of entering into  
137 coemployment relationships under this chapter in which all or a majority of the employees  
138 providing services to a client or to a division or work unit of a client are covered employees.

139 ~~[(10)]~~ (12) "Temporary help services" means services consisting of an organization:

140 (a) recruiting and hiring its own employees;

141 (b) finding other organizations that need the services of those employees;

142 (c) assigning those employees to perform work at or services for the other  
143 organizations;

144 (i) to support or supplement the other organizations' workforces~~[- or];~~

145 (ii) to provide assistance in special work situations such as employee absences, skill  
146 shortages, or seasonal workloads~~[-];~~ or

147 (iii) to perform special assignments or projects with a definite ending date; and

148 (d) customarily attempting to reassign the employees to other organizations when they  
149 finish each assignment by a definite ending date.

150 ~~[(H)]~~ (13) "Unlawful conduct" is as defined in Sections 58-1-501 and 58-59-501.

151 Section 2. Section **58-59-302** is amended to read:

152 **58-59-302. Qualifications for registration.**

153 (1) ~~[Each registrant]~~ A person engaged in practice as a professional employer  
154 organization shall register under this chapter. A person registering or renewing a registration  
155 as a professional employer organization shall:

156 (a) (i) submit an application in a form prescribed by the division; ~~[and]~~ or

157 (ii) a certification in accordance with Subsection (2); and

158 (b) pay a fee as determined by the department under Section 63-38-3.2.

159 (2) (a) A person may comply with Subsection (1) by filing with the division:

160 (i) a certification that an assurance organization certifies the qualifications of the PEO;

161 (ii) the information required by Subsections 58-9-303.5(1)(a) through (c); and

162 (iii) any changes to the information required by Subsection (2)(a)(ii) within 30 days of  
163 the day on which the information changes.

164 (b) A PEO that meets the requirements of Subsection (1) by complying with this  
165 Subsection (2) is not required:

166 (i) to renew its registration until the day on which the assurance organization no longer  
167 certifies the qualifications of the PEO; and

168 (ii) to provide the information in Subsections 58-9-303.5(1)(d) through (f).

169 (c) If a PEO that meets the requirements of Subsection (1) by complying with  
170 Subsection (2) receives a new or renewed certification by the assurance organization, the PEO  
171 shall file with the division a new certification within 30 days from the day on which the PEO  
172 receives the new or renewed certification from the assurance organization.

173 (d) This Subsection (2) does not modify the division's authority or responsibility to  
174 accept, renew, or terminate a registration.

175 (e) (i) If a PEO authorizes an assurance organization to act on behalf of the PEO for  
176 purposes of registration under this Subsection (2), the division shall accept the assurance  
177 organization's filing of the information required by Subsection (2)(a)(ii), (2)(a)(iii), or (2)(b) if  
178 the information otherwise complies with this Subsection (2) and division rules.

179 (ii) Notwithstanding Subsection (2)(e)(i), if the assurance organization fails to make a  
180 required filing under this Subsection (2), the PEO's registration may be not accepted, not

181 renewed, or terminated.

182 ~~[(2)]~~ (3) (a) Any two or more professional employer organizations held under the  
183 common control of any other person or persons acting in concert may be registered as a  
184 professional employer organization group.

185 (b) A professional employer organization group may satisfy any reporting and financial  
186 requirements under this chapter on a consolidated basis.

187 (4) An organization engaged in the business of providing professional employer  
188 services is subject to registration under this chapter regardless of its use of the term:

189 (a) "professional employer organization";

190 (b) "PEO";

191 (c) "staff leasing company";

192 (d) "registered staff leasing company";

193 (e) "employee leasing company"; or

194 (f) any other name.

195 Section 3. Section **58-59-302.5** is enacted to read:

196 **58-59-302.5. Assurance organization.**

197 (1) The division shall designate one or more assurance organizations by rule:

198 (a) consistent with this section; and

199 (b) made in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking  
200 Act.

201 (2) The division shall require that an assurance organization designated by the division  
202 be licensed by one or more states other than Utah to certify the qualifications of a PEO.

203 (3) The qualifications certified by an assurance organization designated by the division  
204 shall include at a minimum that a PEO:

205 (a) ensure that each controlling person of the PEO:

206 (i) be competent to manage a PEO;

207 (ii) be responsible in the controlling person's finances; and

208 (iii) not have a history of or be engaged in unlawful activities;

209 (b) have a history that is verifiable that the PEO:

210 (i) complies with regulatory requirements; and

211 (ii) engages in financially responsible conduct;

- 212 (c) has or is able to obtain audited financial statements;
- 213 (d) has an adjusted net worth equal to or in excess of the greater of:
- 214 (i) \$100,000; or
- 215 (ii) 5% of total adjusted liabilities;
- 216 (e) has liquid assets that are sufficient to pay short-term liabilities as demonstrated by a
- 217 ratio determined by dividing current assets by current liabilities or a similar formula;
- 218 (f) has on its books adequate financial reserves for all local, state, and federal
- 219 self-insurance and any insurance policy or plan in which the final cost of coverage is affected
- 220 by claim losses;
- 221 (g) operates in conformity with all applicable laws and regulations including those laws
- 222 and regulations in addition to this chapter;
- 223 (h) does not engage in deceptive trade practices or misrepresentations of an employer's
- 224 obligation or liability;
- 225 (i) has a written professional employer agreement with each client;
- 226 (j) has or is willing to obtain a written acknowledgment, as part of an existing form or
- 227 separately, from each covered employee stating that the covered employee understands and
- 228 accepts the nature, terms, and conditions of the coemployment relationship;
- 229 (k) establishes and maintains a coemployment relationship by assuming key employer
- 230 attributes with respect to covered employees as demonstrated by the professional employer
- 231 agreement and employment forms, policies, and procedures;
- 232 (l) provides all covered employees with a written copy of the PEO's employment
- 233 policies and procedures;
- 234 (m) ensures that all covered employees are covered in a regulatory compliant manner
- 235 by workers' compensation insurance;
- 236 (n) does not knowingly use the coemployment relationship to assist a client to evade or
- 237 avoid the client's obligations under:
- 238 (i) the National Labor Relations Act, 29 U.S.C. Sec. 151 et seq.;
- 239 (ii) the federal Railway Labor Act, 45 U.S.C. Sec. 151 et seq.; or
- 240 (iii) any collective bargaining agreement;
- 241 (o) except through a licensed insurance agent, does not:
- 242 (i) represent or imply that it can sell insurance;



243 (ii) attempt to sell insurance; or  
244 (iii) sell insurance;  
245 (p) markets and provides, or is willing to market and provide professional employer  
246 organization services under a separate and distinct trade name from any affiliated PEO that is  
247 not certified by the assurance organization;  
248 (q) does not allow any person not certified by the assurance organization to use the  
249 PEO's trade name in the sale or delivery of the PEO's professional employer organization  
250 services;  
251 (r) does not guarantee, participate in, transfer between, or otherwise share liabilities  
252 with any other PEO that is not certified by the assurance organization:  
253 (i) in the employment of covered employees; or  
254 (ii) in any employee benefit or insurance policy or plan that is not fully insured and  
255 fully funded; and  
256 (s) has the ability to provide a regulatory agency or insurance carrier upon request with:  
257 (i) a client's name, address, and tax identification number;  
258 (ii) payroll data by:  
259 (A) client;  
260 (B) (I) client SIC Code of the 1987 Standard Industrial Classification Manual of the  
261 federal Executive Office of the President, Office of Management and Budget; or  
262 (II) client classification under the 2002 North American Industry Classification System  
263 of the federal Executive Office of the President, Office of Management and Budget; and  
264 (C) workers' compensation classification;  
265 (iii) the names of covered employees by:  
266 (A) the worksite of a client; and  
267 (B) workers' compensation classification; and  
268 (iv) workers' compensation certificates of insurance.  
269 Section 4. Section **58-59-303.5** is amended to read:  
270 **58-59-303.5. Information to be filed by PEO.**  
271 (1) [~~Each registrant~~] A person engaged in practice as a professional employer  
272 organization shall file the following information with the division with its initial application  
273 and with each renewal application:

- 274 (a) the name or names under which the PEO conducts business;
- 275 (b) the address of the principal place of business of the PEO and the address of each  
276 office it maintains in the state;
- 277 (c) the PEO's taxpayer or employer identification number;
- 278 (d) a list by jurisdiction of each name under which the PEO has operated in the  
279 preceding five years, including any alternative names, names of predecessors, and, if known,  
280 successor business entities;
- 281 (e) a statement of ownership, which shall include the name of all individuals that,  
282 individually or acting in concert with one or more other persons, owns or controls, directly or  
283 indirectly, 10% or more of the equity interests of the PEO; and
- 284 (f) a statement of management, which shall include the name of all officers and any  
285 person who has the authority to act as a senior executive officer of the PEO.
- 286 (2) (a) A ~~[professional employer organization which]~~ PEO that is domiciled outside of  
287 the state and employs less than 50 employees who are employed or domiciled in the state is not  
288 required to file the information required under Subsections (1)(e) and (f).
- 289 (b) A PEO that complies with Subsection 58-59-302(2) is not required to file the  
290 information required under Subsections (1)(d) through (f).
- 291 Section 5. Section **58-59-306** is amended to read:
- 292 **58-59-306. Financial requirements, contractual relations, and allocation of rights,**  
293 **duties, and obligations.**
- 294 (1) Nothing contained in this chapter or in any professional employer agreement shall  
295 affect, modify, or amend:
- 296 (a) any collective bargaining agreement[-]; or
- 297 (b) the rights or obligations of any client, PEO, or covered employee under:
- 298 (i) the federal National Labor Relations Act, 29 U.S.C. Sec. 151 et seq.;
- 299 (ii) the federal Railway Labor Act, 45 U.S.C. Sec. 151 et seq.; or
- 300 (iii) similar state law.
- 301 (2) Nothing contained in this chapter or any professional employer agreement shall  
302 affect, modify, or amend any state, local, or federal licensing, registration, or certification  
303 requirement applicable to any client or covered employee.
- 304 (a) A covered employee who must be licensed, registered, or certified according to law

305 or regulation is considered solely an employee of the client for purposes of license, registration,  
306 or certification requirement.

307 (b) A PEO may not be considered to engage in any occupation, trade, profession, or  
308 other activity that is subject to licensing, registration, or certification requirements, or is  
309 otherwise regulated by a governmental entity solely by entering into and maintaining a  
310 coemployment relationship with a covered employee who is subject to the requirements or  
311 regulation.

312 (c) Unless otherwise expressly agreed to by the client in the professional employer  
313 agreement, a client has the sole right to direct and control the professional or licensed activities  
314 of covered employees and of the client's business.

315 ~~[(3) With respect to a bid, contract, purchase order, or agreement entered into with the~~  
316 ~~state or a political subdivision of the state, a client company's status or certification as a small,~~  
317 ~~minority-owned, disadvantaged, or woman-owned business enterprise or as a historically~~  
318 ~~underutilized business is not affected because the client company has entered into an agreement~~  
319 ~~with a registrant or uses the services of a registrant.]~~

320 ~~[(4)]~~ (3) (a) At least quarterly, a PEO shall have an independent certified public  
321 accountant, licensed to practice in the jurisdiction in which the PEO is domiciled, review the  
322 PEO's records and prepare a statement indicating whether all federal, state, and local  
323 withholding taxes, unemployment taxes, FICA taxes, workers' compensation premiums, and  
324 employee benefit plan premiums have been paid.

325 (b) The PEO must provide the statement to a client upon request from the client.

326 ~~[(5)]~~ (4) (a) Except as specifically provided in this chapter, the coemployment  
327 relationship between the client and the PEO, and between each coemployer and each covered  
328 employee, shall be governed by the professional employer agreement.

329 (b) Nothing contained in any professional employer agreement or this chapter shall be  
330 considered to:

331 (i) diminish, abolish, or remove the rights of covered employees as to clients or  
332 obligations of the client as to a covered employee, existing prior to the effective date of a  
333 professional employer agreement;

334 (ii) terminate an employment relationship existing prior to the effective date of a  
335 professional employer agreement; or

336 (iii) create any new or additional enforceable right of a covered employee against a  
337 PEO not specifically allocated to the PEO in the professional employer agreement or this  
338 chapter.

339 (c) Each professional employer agreement shall include the following:

340 (i) (A) the PEO shall reserve a right of direction and control over the covered  
341 employees; and

342 (B) the client may retain the right to exercise the direction and control over covered  
343 employees as is necessary to:

344 (I) conduct the client's business~~[-to]~~;

345 (II) discharge any fiduciary responsibility which it may have~~[-]~~; or ~~[to]~~

346 (III) comply with any applicable licensure requirements;

347 (ii) the PEO shall have responsibility to:

348 (A) pay agreed upon wages and salaries to covered employees;

349 (B) withhold, collect, report, and remit payroll-related and unemployment taxes; and

350 (C) the extent the PEO has assumed responsibility in the professional employer  
351 agreement, to make payments for employee benefits for covered employees;

352 (iii) the PEO and the client shall both have a right to hire, terminate, and discipline the  
353 covered employees; and

354 (iv) the responsibility to obtain workers' compensation coverage for covered  
355 employees, from a carrier licensed to do business in Utah and otherwise in compliance with all  
356 applicable requirements, shall be specifically allocated to the client in the professional  
357 employer agreement.

358 (d) Except as specifically provided in this chapter or in the professional employer  
359 agreement, in each coemployment relationship:

360 (i) the client may exercise all rights and is obligated to perform all duties and  
361 responsibilities otherwise applicable to an employer in an employment relationship;

362 (ii) (A) the PEO may exercise only those rights, and is obligated to perform only those  
363 duties and responsibilities, specifically required by this chapter or set forth in the professional  
364 employer agreement; and

365 (B) the rights, duties, and obligations of the PEO as coemployer with respect to any  
366 covered employee is limited to those arising under the professional employer agreement and

367 this chapter during the term of coemployment by the PEO of the covered employee; and

368 (iii) unless otherwise expressly agreed by the PEO and the client in a professional  
369 employer agreement, the client retains the exclusive right to direct and control the covered  
370 employees as is necessary to:

371 (A) conduct the client's business, to discharge any of the client's fiduciary  
372 responsibilities[;]; or [to]

373 (B) comply with any licensure requirements applicable to the client or to the covered  
374 employees.

375 (e) With respect to each professional employer agreement entered into by a PEO, the  
376 PEO shall provide written notice to each covered employee affected by the agreement of the  
377 general nature of the coemployment relationship between and among the PEO, the client, and  
378 the covered employee.

379 (f) (i) Except to the extent otherwise expressly provided by the applicable professional  
380 employer agreement:

381 (A) a client is solely responsible for the quality, adequacy, or safety of the goods or  
382 services produced or sold in the client's business;

383 (B) a client is solely responsible for directing, supervising, training, and controlling the  
384 work of the covered employees with respect to the business activities of the client and solely  
385 responsible for the acts, errors, or omissions of the covered employees with regard to those  
386 activities; and

387 (C) a client is not liable for the acts, errors, or omissions of a PEO, or of any covered  
388 employee of the client and a PEO when the covered employee is acting under the express  
389 direction and control of the PEO.

390 (ii) Nothing in this Subsection [~~(5)~~] (4)(f) [~~shall serve~~];

391 (A) serves to limit any contractual liability or obligation specifically provided in a  
392 professional employer agreement[~~, nor shall this Subsection (5)(f)~~]; or

393 (B) in any way [~~limit~~] limits the liabilities and obligations of any PEO or client as  
394 defined elsewhere in this chapter.

395 (iii) [~~A~~] (A) Subject to Subsection (4)(f)(i)(B), a covered employee is not, solely as the  
396 result of being a covered employee of a PEO, an employee of the PEO for purposes of:

397 (I) general liability insurance[;];

398            (II) fidelity bonds[;];  
399            (III) surety bonds[;];  
400            (IV) employer's liability which is not covered by workers' compensation[;]; or  
401            (V) liquor liability insurance [~~carried by the PEO, unless~~].  
402            (B) This Subsection (4)(f)(iii) does not apply if the covered employee is included by  
403 specific reference in both the:

404            (I) professional employer agreement; and  
405            (II) applicable prearranged employment contract, insurance contract, or bond.

406            (g) A [~~registrant under this chapter~~] PEO is not engaged in the sale of insurance by  
407 offering, marketing, selling, administering, or providing PEO services or employee benefit  
408 plans for covered employees.

409            (h) (i) (A) Covered employees whose services are subject to sales tax are considered  
410 the employees of the client for purposes of collecting and levying sales tax on the services  
411 performed by the covered employees.

412            (B) Nothing contained in this chapter shall relieve a client of any sales tax liability with  
413 respect to its goods or services.

414            (ii) No portion of a PEO fee to a client that represents pass-through amounts to be paid  
415 for covered employee wages, employment-related taxes, withholding, or benefits is subject to  
416 any sales or excise tax.

417            (i) (i) A client and a PEO shall each be considered an employer for purposes of  
418 sponsoring retirement and welfare benefit plans for its covered employees.

419            (ii) A fully insured welfare benefit plan offered to the covered employees of a single  
420 PEO is considered a single employer welfare benefit plan and may not be considered a multiple  
421 employer welfare arrangement, and is exempt from the licensing requirements contained in  
422 Title 31A, Insurance Code.

423            (iii) PEOs are exempt from Title 31A, Chapter 30, Individual, Small Employer, and  
424 Group [~~Employer~~] Health Insurance Act.

425            (iv) (A) Any PEO offering workers' compensation coverage, a health benefit plan, or  
426 any other insurance plan, must comply with all federal and state laws applicable to these  
427 products.

428            (B) If the PEO chooses to use a third party administrator for the receipt and payment of

429 health benefit claims, that third party administrator must be licensed to do business in the state  
430 under Title 31A, Insurance Code.

431 (C) Anything pertaining to the insurance products referred to in this section or the use  
432 of an unlicensed third party administrator is subject to administrative penalties and forfeitures  
433 under Title 31A, Insurance Code.

434 (v) If a PEO offers to its covered employees any health benefit plan which is not fully  
435 insured by an authorized insurer, the plan shall:

436 (A) [~~utilize~~] use a third party administrator licensed by the Utah State Insurance  
437 Department; and

438 (B) hold all plan assets, including participant contributions, in a trust account.

439 (vi) If a PEO offers to its covered employees any health benefit plan [~~which~~] that is not  
440 fully insured by an authorized insurer, the PEO shall:

441 (A) represent that [~~such~~] the plan is not fully insured; and

442 (B) deliver to each plan participant a summary plan description that accurately  
443 describes the terms of the plan, including disclosure that the plan is self-funded or partially  
444 self-funded.

445 (vii) (A) The Department of Insurance may audit on a random basis, or upon finding a  
446 reasonable need, any health benefit plan [~~which~~] that is not fully insured by an authorized  
447 insurer.

448 (B) The cost of the audit under this Subsection (4)(i)(vii) shall be borne by the PEO if  
449 there is material noncompliance.

450 (j) (i) The client in a coemployment relationship shall secure workers' compensation  
451 benefits for the covered employees by complying with Subsection 34A-2-201(1) or (2) and  
452 commission rules under Subsection 34A-2-103(3)(a).

453 (ii) Every authorized insurer who offers or provides Workers' Compensation Insurance  
454 coverage to a PEO, its client companies, or both shall comply with Title 31A, Chapter 19a,  
455 Utah Rate Regulation Act, and Chapter 21, Insurance Contracts in General, prior to the  
456 issuance of an insurance policy.

457 (iii) The exclusive remedy provisions of Sections 34A-2-105 and 34A-3-102 apply to  
458 both the client company and the PEO in a coemployer relationship under this section.

459 (k) (i) For purposes of Title 35A, Chapter 4, Employment Security Act, covered

460 employees of a registered PEO are considered the employees of the PEO~~[, which]~~.

461 (ii) The PEO described in Subsection (4)(k)(i) shall be responsible for the payment of  
462 contributions, penalties, and interest on wages paid by the PEO to its covered employees during  
463 the term of the applicable professional employer agreement.

464 ~~[(ii)]~~ (iii) The PEO shall report and pay all required contributions to the unemployment  
465 compensation fund using its state employer account number and the contribution rate of the  
466 PEO.

467 ~~[(iii)]~~ (iv) On the termination of a contract between a PEO and a client or the failure by  
468 a PEO to submit reports or make tax payments as required by this chapter, the client shall be  
469 treated as a new employer without a previous experience record unless that client is otherwise  
470 eligible for an experience rating.

471 (5) (a) A tax or fee assessed on a client or PEO on the basis of the number of  
472 employees shall be assessed:

473 (i) against the client for the covered employees under the professional employer  
474 agreement with the PEO; and

475 (ii) against the PEO for the employees of the PEO who are not covered employees in a  
476 coemployment relationship with any client.

477 (b) For a tax imposed or calculated upon the basis of total payroll, a PEO may apply  
478 any small business allowance or exemption available to the client for the covered employees  
479 for purposes of computing the tax.

480 Section 6. Section **58-59-306.5** is enacted to read:

481 **58-59-306.5. Employment related economic incentives -- Client's status.**

482 (1) Notwithstanding the other provisions of this chapter, for purposes of determining  
483 eligibility for an employment related economic incentive, a covered employee is considered  
484 only an employee of the client.

485 (2) (a) If eligibility for an employment related economic incentive relates to a covered  
486 employee, the client is entitled to the employment related economic incentive if the client is  
487 otherwise eligible for the employment related economic incentive.

488 (b) A PEO is not eligible for an employment related economic incentive described in  
489 Subsection (2)(a).

490 (3) If eligibility for or the amount of an employment related economic incentive is



491 determined on the basis of the number of employees, a client is treated as:  
492 (a) employing only those covered employees coemployed by the client under the  
493 professional employer agreement; and  
494 (b) not employing covered employees working for other clients of the PEO.  
495 (4) Subject to any confidentiality provisions provided by federal or state law, a PEO  
496 shall provide employment information:  
497 (a) upon the request of:  
498 (i) the client; or  
499 (ii) the governmental entity administering an employment related economic incentive;  
500 and  
501 (b) reasonably required for:  
502 (i) administration of an employment related economic incentive; or  
503 (ii) necessary to support any of the following by a client seeking an employment related  
504 economic incentive:  
505 (A) a request;  
506 (B) a claim;  
507 (C) an application; or  
508 (D) other action.  
509 (5) With respect to a bid, contract, purchase order, or agreement entered into with the  
510 state or a political subdivision of the state, the fact that the client enters into a professional  
511 employer agreement does not affect the client's status or certification as a:  
512 (a) small business;  
513 (b) minority-owned business;  
514 (c) disadvantaged business;  
515 (d) woman-owned business; or  
516 (e) historically underutilized business.

517 **Section 7. Repealer.**

518 This bill repeals:

519 Section **58-59-305, Conversion from licensee to registrant.**

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**H.B. 29 1st Sub. (Buff) - Professional Employer Organization Related Amendments**

**Fiscal Note**

2007 General Session

State of Utah

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**State Impact**

Enactment of this bill will not require additional appropriations.

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**Individual, Business and/or Local Impact**

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.

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*1/19/2007, 8:31:25 AM, Lead Analyst: Eckersley, S.*

**Office of the Legislative Fiscal Analyst**