

1                   **PROFESSIONAL EMPLOYER ORGANIZATION**

2                                   **LICENSING ACT**

3   2008 GENERAL SESSION

4   STATE OF UTAH

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

6                                   Senate Sponsor: Wayne L. Niederhauser

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8   **LONG TITLE**

9   **General Description:**

10           This bill modifies provisions related to the Insurance Code and Occupations and  
11   Professions to change the regulation of professional employer organizations from  
12   registration under the Division of Occupations and Professional Licensing to licensure  
13   under the Insurance Department.

14   **Highlighted Provisions:**

15           This bill:

- 16           ▶ repeals the Professional Employer Organization Registration Act;
- 17           ▶ enacts the Professional Employer Organization Licensing Act, including:
  - 18           • defining terms;
  - 19           • addressing the duties of the Insurance Department, including rulemaking;
  - 20           • providing for confidentiality of certain information;
  - 21           • outlining enforceable rights and obligations in a coemployment relationship;
  - 22           • discussing covered employees;
  - 23           • outlining rights and obligations affected or unaffected by the act;
  - 24           • establishing financial requirements;
  - 25           • addressing issues such as insurance, taxation, benefit plans, workers'

26   compensation, unemployment compensation insurance, and employment related  
27   economic incentives;

- 28           • imposing licensing requirements and procedures, including grandfathering; and
- 29           • providing for enforcement; and

30           ▶ makes technical and conforming amendments.

31 **Monies Appropriated in this Bill:**

32           None

33 **Other Special Clauses:**

34           None

35 **Utah Code Sections Affected:**

36 **AMENDS:**

37           **34A-2-103**, as last amended by Laws of Utah 2006, Chapter 295

38           **34A-2-105**, as last amended by Laws of Utah 2005, Chapter 71

39           **35A-4-202**, as last amended by Laws of Utah 2006, Chapter 22

40           **49-12-102**, as last amended by Laws of Utah 2006, Chapter 260

41           **49-13-102**, as last amended by Laws of Utah 2006, Chapter 260

42 **ENACTS:**

43           **31A-40-101**, Utah Code Annotated 1953

44           **31A-40-102**, Utah Code Annotated 1953

45           **31A-40-103**, Utah Code Annotated 1953

46           **31A-40-104**, Utah Code Annotated 1953

47           **31A-40-201**, Utah Code Annotated 1953

48           **31A-40-202**, Utah Code Annotated 1953

49           **31A-40-203**, Utah Code Annotated 1953

50           **31A-40-204**, Utah Code Annotated 1953

51           **31A-40-205**, Utah Code Annotated 1953

52           **31A-40-206**, Utah Code Annotated 1953

53           **31A-40-207**, Utah Code Annotated 1953

54           **31A-40-208**, Utah Code Annotated 1953

55           **31A-40-209**, Utah Code Annotated 1953

56           **31A-40-210**, Utah Code Annotated 1953

57           **31A-40-211**, Utah Code Annotated 1953

- 58           **31A-40-301**, Utah Code Annotated 1953
- 59           **31A-40-302**, Utah Code Annotated 1953
- 60           **31A-40-303**, Utah Code Annotated 1953
- 61           **31A-40-304**, Utah Code Annotated 1953
- 62           **31A-40-305**, Utah Code Annotated 1953
- 63           **31A-40-306**, Utah Code Annotated 1953
- 64           **31A-40-401**, Utah Code Annotated 1953
- 65           **31A-40-402**, Utah Code Annotated 1953

66 REPEALS:

- 67           **58-59-101**, as last amended by Laws of Utah 2003, Chapter 260
- 68           **58-59-102**, as last amended by Laws of Utah 2007, Chapter 134
- 69           **58-59-301**, as last amended by Laws of Utah 2003, Chapter 260
- 70           **58-59-302**, as last amended by Laws of Utah 2007, Chapter 134
- 71           **58-59-302.5**, as enacted by Laws of Utah 2007, Chapter 134
- 72           **58-59-303**, as last amended by Laws of Utah 2003, Chapter 260
- 73           **58-59-303.5**, as last amended by Laws of Utah 2007, Chapter 134
- 74           **58-59-306**, as last amended by Laws of Utah 2007, Chapter 134
- 75           **58-59-306.5**, as enacted by Laws of Utah 2007, Chapter 134
- 76           **58-59-308**, as last amended by Laws of Utah 2005, Chapter 102
- 77           **58-59-501**, as last amended by Laws of Utah 2003, Chapters 131 and 260
- 78           **58-59-503**, as last amended by Laws of Utah 2003, Chapter 260



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

81           Section 1. Section **31A-40-101** is enacted to read:

82           **CHAPTER 40. PROFESSIONAL EMPLOYER ORGANIZATION LICENSING ACT**

83   **Part 1. General Provisions**

84           **31A-40-101. Title.**

85           This chapter is known as the "Professional Employer Organization Licensing Act."

86 Section 2. Section 31A-40-102 is enacted to read:

87 **31A-40-102. Definitions.**

88 As used in this chapter:

89 (1) (a) Except as provided in Subsection (1)(b), "administrative fee" means a fee  
90 charged to a client by a professional employer organization for a professional employer service.

91 (b) "Administrative fee" does not include an amount or a fee received by a professional  
92 employer organization that is:

93 (i) compensation of a covered employee;

94 (ii) a benefit for a covered employee;

95 (iii) a payroll-related tax;

96 (iv) an unemployment insurance contribution;

97 (v) withholding of compensation for a covered employee;

98 (vi) a workers' compensation premium; or

99 (vii) another assessment paid by a professional employer organization to or on behalf of  
100 a covered employee under a professional employer agreement.

101 (2) "Assurance organization" means a person designated as an assurance organization in  
102 accordance with Section 31A-40-303.

103 (3) "Client" means a person who enters into a professional employer agreement with a  
104 professional employer organization.

105 (4) "Coemployer" means:

106 (a) a client; or

107 (b) a professional employer organization.

108 (5) "Coemployment relationship" means a relationship:

109 (a) that is intended to be ongoing rather than a temporary or project specific  
110 relationship; and

111 (b) wherein the rights and obligations of an employer that arise out of an employment  
112 relationship are allocated between coemployers pursuant to:

113 (i) a professional employer agreement; or

114 (ii) this chapter.

115 (6) Notwithstanding Section 31A-1-301, "controlling person" means a person who,  
116 individually or acting in concert with one or more persons, owns, directly or indirectly, 10% or  
117 more of the equity interest in a professional employer organization.

118 (7) "Covered employee" means an individual who has a coemployment relationship with  
119 a client and a professional employer organization if the conditions of Section 31A-40-203 are  
120 met.

121 (8) (a) "Employment related economic incentive" means:

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

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

125 (ii) if the credit, exemption, or economic inducement described in Subsection (8)(a)(i):

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

127 (B) has an eligibility requirement that relates in whole or in part to employment

128 including:

129 (I) the number of employees; or

130 (II) the nature of the employment.

131 (9) "Guarantee" means to assume an obligation of another person if that person fails to  
132 meet the obligation.

133 (10) "Licensee" means a person licensed under this chapter.

134 (11) "Professional employer agreement" means a written contract by and between a  
135 client and a professional employer organization that provides for:

136 (a) the coemployment of a covered employee;

137 (b) with respect to a covered employee, the allocation of a right or obligation of an  
138 employer between:

139 (i) the client; and

140 (ii) the professional employer organization; and

141 (c) the assumption of the obligations imposed by this chapter by:

- 142           (i) the client; or
- 143           (ii) the professional employer organization.
- 144           (12) (a) Subject to Subsection (12)(b), "professional employer organization" means a
- 145 person engaged in the business of providing a professional employer service.
- 146           (b) "Professional employer organization" does not include:
- 147           (i) a person that:
- 148           (A) does not:
- 149           (I) have as a principal business activity the entering into of a professional employer
- 150 arrangement; or
- 151           (II) hold the person out as a professional employer organization; and
- 152           (B) shares an employee with a commonly owned company within the meaning of
- 153 Sections 414(b) and (c), Internal Revenue Code;
- 154           (ii) an independent contractor arrangement by which a person:
- 155           (A) assumes responsibility for the product produced or service performed by the person
- 156 or the person's agent; and
- 157           (B) retains and exercises primary direction and control over the work performed by an
- 158 individual whose service is supplied under the independent contractor arrangement; or
- 159           (iii) a person providing temporary help service.
- 160           (13) "Professional employer organization group" means two or more professional
- 161 employer organizations that are majority owned or commonly controlled or directed by the
- 162 same one or more persons.
- 163           (14) "Professional employer service" means the service of entering into a coemployment
- 164 relationship under this chapter under which all or a majority of the employees who provide a
- 165 service to a client, or a division or work unit of a client, are covered employees.
- 166           (15) "Qualified actuary" means an individual who:
- 167           (a) is a member in good standing of a professional actuarial accreditation organization
- 168 designated by the department by rule;
- 169           (b) is qualified to sign a statement of actuarial opinion or annual statement for a

170 professional employer organization in accordance with the qualification standards for an actuary  
171 signing an opinion or annual statement as provided by the professional actuarial accreditation  
172 organization designated under Subsection (15)(a):

173 (c) is familiar with the valuation requirements applicable to a professional employer  
174 organization;

175 (d) has not been found by the commissioner, or if so found has subsequently been  
176 reinstated as a qualified actuary, following appropriate notice and hearing to have:

177 (i) violated a provision of, or an obligation imposed by, statute or other law in the  
178 course of the actuary's dealings as a qualified actuary;

179 (ii) been found guilty of a fraudulent or dishonest practice;

180 (iii) demonstrated the actuary's incompetency, lack of cooperation, or untrustworthiness  
181 to act as a qualified actuary;

182 (iv) submitted to the commissioner during the past five years, pursuant to this rule, an  
183 actuarial opinion or memorandum that the commissioner rejected because it did not meet the  
184 provisions of rule; or

185 (v) resigned or been removed as an actuary within the past five years as a result of an  
186 act or omission indicated in an adverse report on examination or as a result of failure to adhere  
187 to a generally acceptable actuarial standard; and

188 (e) has not failed to notify the commissioner of an action taken by any commissioner of  
189 another state similar to that under Subsection (15)(d).

190 (16) "Temporary help service" means a service consisting of a person:

191 (a) recruiting and hiring the person's own employee;

192 (b) finding another person that wants the services of that employee;

193 (c) assigning the employee to:

194 (i) perform services at or for the other person to support or supplement the other  
195 person's employees;

196 (ii) provide assistance in a special work situation such as:

197 (A) an employee absence;

198           (B) a skill shortage; or  
199           (C) a seasonal workload; or  
200           (iii) perform a special assignment or project; and  
201           (d) customarily reassigning the employee to another organization when the employee  
202 finishes an assignment.

203           (17) "Working capital" means the current assets minus the current liabilities of a  
204 professional employer organization determined in accordance with generally accepted  
205 accounting principles.

206           Section 3. Section **31A-40-103** is enacted to read:

207           **31A-40-103. Duties of the commissioner.**

208           (1) (a) The commissioner shall maintain a list of professional employer organizations  
209 that are licensed under this chapter.

210           (b) The commissioner shall make the list required by this Subsection (1) available to the  
211 public by electronic or other means.

212           (2) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the  
213 commissioner:

214           (a) shall make rules to prescribe the requirements for forms required under this chapter;  
215 and

216           (b) may make rules to prescribe the requirements for the review and submission of a  
217 financial statement under Section 31A-40-305:

218           (i) that are consistent with generally accepted accounting principles; and

219           (ii) including the timeliness of a financial statement.

220           (3) A rule in effect on May 5, 2008 under the repealed Title 58, Chapter 59,

221 Professional Employer Organization Registration Act, shall be:

222           (a) renumbered as a rule made under this chapter; and

223           (b) remain in effect until such time as the commissioner modifies or repeals the rule.

224           (4) The commissioner shall report to the Business and Labor Committee by no later

225 than the November 2009 interim meeting as to whether the commissioner recommends that the



226 working capital requirements of Section 31A-40-205 be modified.

227 Section 4. Section **31A-40-104** is enacted to read:

228 **31A-40-104. Confidentiality -- Cooperation with other agencies.**

229 (1) Notwithstanding Title 63, Chapter 2, Government Records Access and Management  
230 Act, and except as provided in Subsection (2), (3), or (4), the commissioner or department may  
231 not disclose information obtained from a professional employer organization under this chapter.

232 (2) The commissioner or department may disclose information on an aggregate basis  
233 that does not identify an individual professional employer organization or client.

234 (3) The commissioner or department may disclose information obtained from a  
235 professional employer organization under this chapter to a government entity if the government  
236 entity requires the information to perform the government entity's duties.

237 (4) (a) The commissioner shall coordinate the commissioner's administration of this  
238 chapter and share information with:

239 (i) the Department of Workforce Services;

240 (ii) the Labor Commission; and

241 (iii) the State Tax Commission.

242 (b) An agency listed in Subsection (4)(a) shall treat the information obtained under this  
243 section as confidential unless disclosure of the information is required in accordance with:

244 (i) this title; or

245 (ii) Title 63, Chapter 2, Government Records Access and Management Act.

246 Section 5. Section **31A-40-201** is enacted to read:

247 **Part 2. Coemployment Relationship and Professional Employer Services**

248 **31A-40-201. Enforceable rights and obligations.**

249 (1) In a coemployment relationship under a professional employer agreement:

250 (a) a professional employer organization:

251 (i) may only enforce a right of an employer that is specifically allocated to the  
252 professional employer organization under the professional employer agreement or this chapter;  
253 and

254 (ii) is subject only to an obligation of an employer specifically allocated to the  
255 professional employer organization by the professional employer agreement or this chapter; and

256 (b) a client:

257 (i) may enforce a right of an employer:

258 (A) allocated to the client in the professional employer agreement or this chapter; or

259 (B) not specifically allocated to the professional employer organization under the  
260 professional employer agreement or this chapter; and

261 (ii) is subject to an obligation of an employer:

262 (A) allocated to the client by the professional employer agreement or this chapter; or

263 (B) not specifically allocated to a professional employer organization by the  
264 professional employer agreement or this chapter.

265 (2) A right or obligation of a professional employer organization as a coemployer of a  
266 covered employee is limited to a right or obligation arising pursuant to the professional  
267 employer agreement and this chapter during the term of coemployment of the covered employee  
268 by the professional employer organization.

269 Section 6. Section 31A-40-202 is enacted to read:

270 **31A-40-202. Professional employer agreement -- Specific responsibilities.**

271 (1) Except as specifically provided in this chapter, a coemployment relationship  
272 between a client and a professional employer organization, and between each coemployer and a  
273 covered employee, is governed by a professional employer agreement.

274 (2) (a) As used in this Subsection (2), unless a professional employer organization  
275 expressly agrees to assume liability for the payment in a professional employer agreement, the  
276 term "compensation to a covered employee" does not include an obligation between a client and  
277 a covered employee for a payment beyond or in addition to the covered employee's salary,  
278 draw, or regular rate of pay, such as:

279 (i) a bonus;

280 (ii) a commission;

281 (iii) severance pay;

- 282           (iv) deferred compensation;
- 283           (v) profit sharing; or
- 284           (vi) pay for vacation, sick, or other paid time off.
- 285           (b) A professional employer agreement shall include the following:
- 286           (i) the allocation of a right or obligation consistent with Section 31A-40-201;
- 287           (ii) a requirement that the professional employer organization shall:
- 288           (A) pay compensation to a covered employee; and
- 289           (B) withhold, collect, report, and remit one or more of the following:
- 290           (I) a payroll-related tax; and
- 291           (II) an unemployment insurance contribution; and
- 292           (C) to the extent that the professional employer organization assumes responsibility in
- 293 the professional employer agreement, make payments for an employee benefit of a covered
- 294 employee;
- 295           (iii) that the professional employer organization has a right to hire, discipline, or
- 296 terminate a covered employee to the extent necessary to fulfill the professional employer
- 297 organization's obligations under the professional employer agreement and this chapter;
- 298           (iv) that the client has a right to hire, discipline, and terminate a covered employee; and
- 299           (v) the responsibility of the client or professional employer organization related to
- 300 obtaining workers' compensation coverage for a covered employee in a manner consistent with
- 301 Section 31A-40-209.
- 302           (3) A professional employer organization shall provide written notice to a covered
- 303 employee of the general nature of the coemployment relationship between and among the
- 304 professional employer organization, the client, and the covered employee.
- 305           (4) (a) Except to the extent otherwise expressly provided by the professional employer
- 306 agreement:
- 307           (i) a client is solely responsible for the quality, adequacy, or safety of a good or service
- 308 produced or sold in the client's business;
- 309           (ii) a client is solely responsible for directing, supervising, training, and controlling the

310 work of a covered employee with respect to:

311 (A) a business activity of the client;

312 (B) the discharge of a fiduciary responsibility of the client; or

313 (C) compliance with a licensure, registration, or certification requirement applicable to

314 the client or to the covered employee;

315 (iii) a client is solely responsible for an act, error, or omission of a covered employee

316 with regard to a circumstance described in Subsection (4)(a)(ii);

317 (iv) a client is not liable for an act, error, or omission of:

318 (A) a professional employer organization; or

319 (B) a covered employee, if the covered employee is acting under the express direction

320 and control of the professional employer organization; and

321 (v) a professional employer organization is not liable for an act, error, or omission of:

322 (A) a client; or

323 (B) a covered employee, if the covered employee is acting under the express direction

324 and control of the client.

325 (b) This Subsection (4) may not be interpreted to limit a contractual liability or

326 obligation specifically provided in a professional employer agreement.

327 (c) (i) Unless the conditions of Subsection (4)(c)(ii) are met, a covered employee is not,

328 solely as the result of being a covered employee of a professional employer organization, an

329 employee of the professional employer organization for purposes of one or more of the

330 following carried by the professional employer organization:

331 (A) general liability insurance;

332 (B) a fidelity bond;

333 (C) a surety bond;

334 (D) an employer liability that is not covered by workers' compensation; or

335 (E) liquor liability insurance.

336 (ii) A covered employee is considered an employee of the professional employer

337 organization for a purpose described in Subsection (4)(c)(i) if the covered employee is included

338 by specific reference for that purpose in:

339 (A) the professional employer agreement; and

340 (B) a prearranged employment contract, insurance contract, or bond.

341 Section 7. Section **31A-40-203** is enacted to read:

342 **31A-40-203. Covered employee.**

343 (1) (a) An individual is a covered employee of a professional employer organization if  
344 the individual is coemployed pursuant to a professional employer agreement subject to this  
345 chapter.

346 (b) An individual who is a covered employee under a professional employer agreement  
347 is a covered employer, whether or not the professional employer organization provides the  
348 notice required by Subsection 31A-40-202(3), the earlier of the day on which:

349 (i) the employee is first compensated by the professional employer organization; or

350 (ii) the client notifies the professional employer organization of a new hire.

351 (2) An individual who is an officer, director, shareholder, partner, or manager of a client  
352 is a covered employee:

353 (a) to the extent that the client and the professional employer organization expressly  
354 agree in the professional employer agreement that the individual is a covered employee;

355 (b) if the conditions of Subsection (1) are met; and

356 (c) if the individual acts as an operational manager or performs day-to-day an  
357 operational service for the client.

358 Section 8. Section **31A-40-204** is enacted to read:

359 **31A-40-204. Rights and obligations unaffected -- Licensed, registered, or certified**  
360 **occupations or professions.**

361 (1) This chapter does not and a professional employer agreement may not affect,  
362 modify, or amend a:

363 (a) collective bargaining agreement; or

364 (b) right or obligation of a client, professional employer organization, or covered  
365 employee under:

366 (i) the federal National Labor Relations Act, 29 U.S.C. Sec. 151 et seq.;  
367 (ii) the federal Railway Labor Act, 45 U.S.C. Sec. 151 et seq.; or  
368 (iii) a state law similar to a federal law described in this Subsection (1)(b).

369 (2) (a) A professional employer agreement may not:

370 (i) diminish, abolish, or remove a right of a covered employee to a client or an  
371 obligation of the client to a covered employee that exists on or before the day on which the  
372 professional employer agreement takes effect;

373 (ii) affect, modify, or amend a contractual relationship or restrictive covenant between a  
374 covered employee and a client in effect on the day on which the professional employer  
375 agreement takes effect; or

376 (iii) prohibit or amend a contractual relationship or restrictive covenant that is entered  
377 into between a covered employee and a client after the day on which the professional employer  
378 agreement takes effect.

379 (b) A professional employer organization is not responsible or liable in connection with,  
380 or arising out of, a contractual relationship or restrictive covenant described in Subsection  
381 (2)(a) unless the professional employer organization specifically agrees to be responsible in  
382 writing.

383 (3) This chapter does not and a professional employer agreement may not create an  
384 enforceable right of a covered employee against a professional employer organization that is not  
385 specifically provided by the professional employer agreement or this chapter.

386 (4) (a) Except as provided in this Subsection (4), this chapter does not and a  
387 professional employer agreement may not affect, modify, or amend a state, local, or federal  
388 license, registration, or certification requirement applicable to a client or a covered employee.

389 (b) If a covered employee is required by federal or state law to be licensed, registered,  
390 or certified, the covered employee is considered to be solely an employee of the client for  
391 purposes of the license, registration, or certification requirement.

392 (c) A professional employer organization is not considered to engage in an activity that  
393 is subject to licensing, registration, or certification by a local, state, or federal government or is

394 regulated by a local, state, or federal government solely by entering into or maintaining a  
 395 coemployment relationship with a covered employee who is:

- 396 (i) subject to licensing, registration, or certification; or
- 397 (ii) regulated by the local, state, or federal government.

398 (d) A client has the sole right to direct or control a professional, licensed, registered, or  
 399 certified activity of:

- 400 (i) a covered employee; and
- 401 (ii) the client's business.

402 (e) Notwithstanding this chapter, a covered employee and client remain subject to  
 403 regulation by the local, state, or federal government responsible for licensing, registration, or  
 404 certification of the covered employee or client.

405 Section 9. Section **31A-40-205** is enacted to read:

406 **31A-40-205. Financial capability.**

407 (1) Except as provided in Subsection (2) or (4), as of the day a person applies for  
 408 licensure or renewal of a license and at all times while licensed, a professional employer  
 409 organization or collectively a professional employer organization group shall:

410 (a) have at least \$100,000 in working capital as determined by generally accepted  
 411 accounting principles; or

412 (b) provide to the commissioner one of the following in an amount equal to or greater  
 413 than an amount calculated by subtracting the amount of working capital of the professional  
 414 employer organization or professional employer organization group from \$100,000:

- 415 (i) a bond;
- 416 (ii) an irrevocable letter of credit;
- 417 (iii) one or more credits or securities as determined by the market value of the credits or  
 418 securities; or

419 (iv) a combination of Subsections (1)(b)(i) through (iii).

420 (2) (a) Except as provided in Subsection (2)(c), the license of a professional employer  
 421 organization or professional employer organization group terminates 180 days from the day on

422 which the commissioner finds that the professional employer organization has less than  
423 \$100,000 in working capital, unless the professional employer organization or professional  
424 employer organization group eliminates the deficiency within 180 days of the day on which the  
425 commissioner makes the finding.

426 (b) During the 180-day period described in Subsection (2)(a), the professional employer  
427 organization or professional employer organization group shall submit quarterly to the  
428 commissioner:

429 (i) a quarterly financial statement; and

430 (ii) an attestation that:

431 (A) is signed by:

432 (I) the chief executive officer or a controlling person of the professional employer  
433 organization; or

434 (II) for a professional employer organization group, the chief executive officer or chief  
435 financial officer of each member of the professional employer organization group; and

436 (B) states that all of the following are paid for a covered employee when due by the  
437 professional employer organization or each member of the professional employer organization  
438 group:

439 (I) compensation;

440 (II) a benefit;

441 (III) a payroll-related tax;

442 (IV) an unemployment insurance contribution;

443 (V) withholding of compensation for a covered employee;

444 (VI) workers' compensation premium; or

445 (VII) another assessment paid by a professional employer organization to or on behalf  
446 of a covered employee under a professional employer agreement.

447 (c) The license of a professional employer organization or professional employer  
448 organization group terminates on the day on which the commissioner finds that the professional  
449 employer organization:



450           (i) has negative working capital; and  
451           (ii) (A) is incapable of continued operations; or  
452           (B) poses an immediate threat to the public welfare.  
453           (3) A bond, letter of credit, or security described in Subsection (1) shall:  
454           (a) be held as designated by the commissioner; and  
455           (b) secure payment by the professional employer organization or the professional  
456 employer organization group of the following payments or other entitlements due to or with  
457 respect to a covered employee, if the professional employer organization or each member of the  
458 professional employer organization group does not make a payment when due:  
459           (i) compensation of a covered employee;  
460           (ii) a benefit for a covered employee;  
461           (iii) payroll-related taxes;  
462           (iv) unemployment insurance contributions; and  
463           (v) workers' compensation premiums.  
464           (4) A professional employer organization is exempt from this section if the professional  
465 employer organization is licensed:  
466           (a) through an assurance organization in accordance with Section 31A-40-303; or  
467           (b) under this chapter with a small operation license in accordance with Section  
468 31A-40-304.  
469           Section 10. Section **31A-40-206** is enacted to read:  
470           **31A-40-206. Professional employer service not insurance.**  
471           (1) A professional employer organization licensed under this chapter is not considered  
472 engaged in the sale of insurance or as acting as a third party administrator when the professional  
473 employer organization engages in one or more of the following with respect to a professional  
474 employer service:  
475           (a) offering;  
476           (b) marketing;  
477           (c) selling;

478 (d) administering; or

479 (e) providing.

480 (2) Subsection (1) applies to a professional employer service that includes an employee  
481 benefit plan for a covered employee.

482 Section 11. Section **31A-40-207** is enacted to read:

483 **31A-40-207. Taxation.**

484 (1) (a) A covered employee whose service is subject to a sales or use tax under Title 59,  
485 Chapter 12, Sales and Use Tax Act, is considered the employee of the client for purposes of  
486 imposing and collecting the sales or use tax on the service performed by the covered employee.

487 (b) This chapter may not be interpreted to relieve a client of a sales or use tax liability  
488 with respect to a good or service of the client.

489 (2) (a) If the amount of a tax or fee described in Subsection (2)(b) is determined on the  
490 basis of the gross receipts of a professional employer organization, only an administrative fee  
491 collected by the professional employer organization is considered gross receipts.

492 (b) This Subsection (2) applies to:

493 (i) a tax on a professional employer service;

494 (ii) a business license fee; or

495 (iii) another fee or charge.

496 (3) A taxing entity shall assess a tax assessed on a per capita or per employee basis:

497 (a) on a client for a covered employee; and

498 (b) on the professional employer organization for an employee of the professional  
499 employer organization who is not a covered employee coemployed with a client.

500 (4) If a tax is imposed or calculated on the basis of total payroll, the professional  
501 employer organization is eligible to apply a small business allowance or exemption available to  
502 the client for a covered employee for the purpose of computing the tax.

503 Section 12. Section **31A-40-208** is enacted to read:

504 **31A-40-208. Benefit plan.**

505 (1) A client and a professional employer organization licensed under this chapter shall

506 each be considered an employer for purposes of sponsoring a retirement or welfare benefit plan  
507 for a covered employee.

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

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

512 (b) may not be considered an employer welfare fund or plan, as described in Section  
513 31A-13-101; and

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

516 (i) an insurance provider; or

517 (ii) an employer welfare fund or plan.

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

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

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

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

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

530 (b) the health benefit plan:

531 (i) is administered by a third-party administrator licensed to do business in this state;

532 (ii) holds all assets of the health benefit plan, including participant contributions, in a  
533 trust account;

534 (iii) has and maintains reserves that are sound for the health benefit plan as determined  
535 by an actuary who:

536 (A) uses generally accepted actuarial standards of practice; and

537 (B) is an independent qualified actuary, including not being an employee or covered  
538 employee of the professional employer organization;

539 (iv) provides written notice to a covered employee participating in the health benefit  
540 plan that the health benefit plan is self-insured or is not fully insured; and

541 (v) consents to an audit:

542 (A) on a random basis; or

543 (B) upon a finding of a reasonable need by the commissioner.

544 (5) The cost of an audit described in Subsection (4)(b)(v) shall be paid by the  
545 sponsoring professional employer organization.

546 (6) A plan of a professional employer organization described in Subsection (4) that is  
547 not fully insured:

548 (a) is subject to the requirements of this section; and

549 (b) is not subject to another licensure or approval requirement of this title.

550 Section 13. Section **31A-40-209** is enacted to read:

551 **31A-40-209. Workers' compensation.**

552 (1) In accordance with Section 34A-2-103, a client is responsible for securing workers'  
553 compensation coverage for a covered employee.

554 (2) Subject to the requirements of Section 34A-2-103, if a professional employer  
555 organization obtains or assists a client in obtaining workers' compensation insurance pursuant to  
556 a professional employer agreement:

557 (a) the professional employer organization shall ensure that the client maintains and  
558 provides workers' compensation coverage for a covered employee in accordance with  
559 Subsection 34A-2-201(1) or (2) and rules of the Labor Commission, made in accordance with  
560 Title 63, Chapter 46a, Utah Administrative Rulemaking Act;

561 (b) the workers' compensation coverage may show the professional employer

562 organization as the named insured through a multiple coordinated policy, if:

563 (i) the client is shown as an insured by means of an endorsement for each individual  
564 client;

565 (ii) the experience modification of a client is used; and

566 (iii) the insurer files the endorsement with the Division of Industrial Accidents as  
567 directed by a rule of the Labor Commission, made in accordance with Title 63, Chapter 46a,  
568 Utah Administrative Rulemaking Act;

569 (c) at the termination of the professional employer agreement, if requested by the client,  
570 the insurer shall provide the client records regarding the loss experience related to workers'  
571 compensation insurance provided to a covered employee pursuant to the professional employer  
572 agreement; and

573 (d) the insurer shall notify a client if the workers' compensation coverage for the client  
574 is terminated.

575 (3) In accordance with Section 34A-2-105, the exclusive remedy provisions of Section  
576 34A-2-105 apply to both the client and the professional employer organization under a  
577 professional employer agreement regulated under this chapter.

578 (4) Notwithstanding the other provisions in this section, an insurer may choose whether  
579 to issue:

580 (a) a policy for a client; or

581 (b) a multiple coordinated policy with the client shown as an additional insured by  
582 means of an individual endorsement.

583 Section 14. Section **31A-40-210** is enacted to read:

584 **31A-40-210. Unemployment compensation insurance.**

585 (1) For purposes of Title 35A, Chapter 4, Employment Security Act, a covered  
586 employee of a professional employer organization licensed under this chapter is considered the  
587 employee of the professional employer organization.

588 (2) The professional employer organization described in Subsection (1) shall pay a  
589 contribution, penalty, or interest required under Title 35A, Chapter 4, Employment Security

590 Act, on wages, as defined in Section 35A-4-208, paid by the professional employer organization  
591 to the covered employee during the term of the professional employer agreement.

592 (3) A professional employer organization shall report and pay a required contribution to  
593 the unemployment compensation fund when due using the state employer account number and  
594 the contribution rate of the professional employer organization.

595 (4) Unless a client is otherwise eligible for an experience rating, the Unemployment  
596 Insurance Division of the Department of Workforce Services shall treat a client as a new  
597 employer without a previous experience record beginning on the day on which:

598 (a) a professional employer agreement between the client and a professional employer  
599 organization terminates; or

600 (b) the professional employer organization fails to submit a report or make a tax  
601 payment when due as required by this chapter.

602 Section 15. Section **31A-40-211** is enacted to read:

603 **31A-40-211. Employment related economic incentives -- Employment information**  
604 **-- Client's status.**

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

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

611 (b) A professional employer organization is not eligible for an employment related  
612 economic incentive described in Subsection (2)(a).

613 (3) If eligibility for or the amount of an employment related economic incentive is  
614 determined on the basis of the number of employees, a client is treated as employing only:

615 (a) a covered employee coemployed by the client under the professional employer  
616 agreement; or

617 (b) an employee solely employed by the client.

618 (4) Subject to a confidentiality provision in federal or state law, a professional employer  
619 organization shall provide employment information:

620 (a) upon the request of:

621 (i) the client; or

622 (ii) the governmental entity administering an employment related economic incentive;

623 and

624 (b) reasonably required for:

625 (i) administration of an employment related economic incentive; or

626 (ii) necessary to support any of the following by a client seeking an employment related  
627 economic incentive:

628 (A) a request;

629 (B) a claim;

630 (C) an application; or

631 (D) another action.

632 (5) With respect to a bid, contract, purchase order, or agreement entered into with the  
633 state or a political subdivision of the state, the fact that the client enters into a professional  
634 employer agreement does not affect the client's status or certification as a:

635 (a) small business;

636 (b) minority-owned business;

637 (c) disadvantaged business;

638 (d) woman-owned business; or

639 (e) historically underutilized business.

640 Section 16. Section **31A-40-301** is enacted to read:

641 **Part 3. Licensing Requirements**

642 **31A-40-301. Licensing required.**

643 (1) Except as otherwise provided in this chapter, a person may not engage in the  
644 following before the day on which the person is licensed under this chapter:

645 (a) providing a professional employer service in this state;

- 646 (b) advertising that the person provides a professional employer service in this state; or
- 647 (c) holding itself out as providing a professional employer service in this state.
- 648 (2) A person described in Subsection (1) is subject to this chapter regardless of whether
- 649 the person uses one of the following terms with or without the term "registered" or "licensed":
- 650 (a) "administrative employer";
- 651 (b) "employee leasing company";
- 652 (c) "professional employer organization";
- 653 (d) "PEO";
- 654 (e) "staff leasing company"; or
- 655 (f) another name.

656 Section 17. Section **31A-40-302** is enacted to read:

657 **31A-40-302. Licensing process -- Grandfathering.**

658 (1) To apply for an initial or renewal license under this chapter, a person shall:

659 (a) (i) file an application with the commissioner on a form and in a manner the  
660 commissioner shall determine by rule made in accordance with Title 63, Chapter 46a, Utah  
661 Administrative Rulemaking Act; and

662 (ii) pay a license fee determined in accordance with Section 31A-3-103 that is not  
663 refunded if the application:

664 (A) is denied; or

665 (B) if incomplete, is never completed by the person filing the application; or

666 (b) comply with Section 31A-40-303.

667 (2) In the application described in Subsection (1)(a), the person shall provide:

668 (a) any name under which the professional employer organization will engage in a  
669 professional employer service;

670 (b) the address of the principal place of business of the professional employer  
671 organization;

672 (c) the address of each location the professional employer organization maintains in this  
673 state;



674 (d) the professional employer organization's federal taxpayer or employer identification  
675 number;

676 (e) the following information by jurisdiction of each name under which the professional  
677 employer organization operated in the five years preceding the day on which the person files the  
678 application:

679 (i) the name;

680 (ii) an alternative name, if any;

681 (iii) a name of a predecessor; and

682 (iv) if known, a successor business entity;

683 (f) a statement of ownership that includes the name and evidence of the business  
684 experience of a person that, individually or acting in concert with one or more other persons,  
685 owns or controls, directly or indirectly, 10% or more of the equity interests of the professional  
686 employer organization;

687 (g) a statement of management that includes the name and evidence of the business  
688 experience of a person who:

689 (i) serves as president of the professional employer organization;

690 (ii) serves as chief executive officer of the professional employer organization; or

691 (iii) may act as a senior executive officer of the professional employer organization; and

692 (h) a financial statement that:

693 (i) sets forth the financial condition of:

694 (A) the professional employer organization; or

695 (B) a professional employer organization group in which the professional employer  
696 organization is a member;

697 (ii) states whether or not the professional employer organization complies with Section  
698 31A-40-205; and

699 (iii) complies with Section 31A-40-305.

700 (3) A professional employer organization that is registered by the Division of

701 Occupations and Professional Licensing as of May 4, 2008 shall comply with this section by no

702 later than November 5, 2008. An initial license obtained under this Subsection (3) is valid until  
703 the end of the professional employer organization's first full fiscal year that immediately follows  
704 the day on which the initial license application is filed.

705 (4) Within 180 days after the day on which a professional employer organization's fiscal  
706 year ends, a professional employer organization shall renew its license by complying with  
707 Subsection (1).

708 Section 18. Section **31A-40-303** is enacted to read:

709 **31A-40-303. Licensed through an assurance organization.**

710 (1) (a) A person may comply with Section 31A-40-302 by:

711 (i) filing with the commissioner:

712 (A) a certification that an assurance organization certifies the qualifications of the  
713 professional employer organization;

714 (B) the information required by Subsections 31A-40-302(2)(a) through (d) and  
715 31A-40-302(2)(h); and

716 (C) any changes to the information required by Subsection (1)(a)(i)(B) within 30 days  
717 of the day on which the information changes; and

718 (ii) paying a license fee determined in accordance with Section 31A-3-103.

719 (b) A professional employer organization that meets the requirements of Section  
720 31A-40-302 by complying with this section is not required to:

721 (i) renew its license until the day on which the assurance organization no longer certifies  
722 the qualifications of the professional employer organization;

723 (ii) provide the information in Subsections 31A-40-302(2)(e) through (g); or

724 (iii) comply with Section 31A-40-205.

725 (c) If a professional employer organization that meets the requirements of Section  
726 31A-40-302 by complying with this section receives a new or renewed certification by the

727 assurance organization, the professional employer organization shall file with the commissioner

728 a new certification within 30 days from the day on which the professional employer organization  
729 receives the new or renewed certification from the assurance organization.

730 (d) (i) If a professional employer organization authorizes an assurance organization to  
731 act on behalf of the professional employer organization for purposes of licensure under this  
732 section, the commissioner shall accept the assurance organization's filing of the information  
733 required by Subsection (1)(a) or (1)(c) if the information otherwise complies with this section  
734 and commission rules.

735 (ii) Notwithstanding Subsection (1)(d)(i), if the assurance organization fails to make a  
736 required filing under this section, the commissioner may not accept, not renew, or terminate the  
737 professional employer organization's license.

738 (2) The commissioner shall designate one or more assurance organizations by rule:

739 (a) consistent with this section;

740 (b) made in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking  
741 Act; and

742 (c) that requires that an assurance organization designated by the commissioner be  
743 licensed by one or more states other than Utah to certify the qualifications of a professional  
744 employer organization.

745 (3) The qualifications certified by an assurance organization designated by the  
746 commissioner shall include at a minimum that a professional employer organization:

747 (a) ensure that each controlling person of the professional employer organization:

748 (i) be competent to manage a professional employer organization;

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

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

751 (b) has a history that is verifiable that the professional employer organization:

752 (i) complies with regulatory requirements; and

753 (ii) engages in financially responsible conduct;

754 (c) has or is able to obtain audited financial statements;

755 (d) has an adjusted net worth equal to or in excess of the greater of:

756 (i) \$100,000; or

757 (ii) 5% of total adjusted liabilities;

758 (e) has liquid assets that are sufficient to pay short-term liabilities as demonstrated by a  
759 ratio determined by dividing current assets by current liabilities or a similar formula;

760 (f) has on its books adequate financial reserves for all local, state, and federal  
761 self-insurance and any insurance policy or plan in which the final cost of coverage is affected by  
762 claim losses;

763 (g) operates in conformity with all applicable laws and regulations including those laws  
764 and regulations in addition to this chapter;

765 (h) does not engage in deceptive trade practices or misrepresentations of an employer's  
766 obligation or liability;

767 (i) has a written professional employer agreement with each client;

768 (j) has or is willing to obtain a written acknowledgment, as part of an existing form or  
769 separately, from each covered employee stating that the covered employee understands and  
770 accepts the nature, terms, and conditions of the coemployment relationship;

771 (k) establishes and maintains a coemployment relationship by assuming key employer  
772 attributes with respect to covered employees as demonstrated by the professional employer  
773 agreement and employment forms, policies, and procedures;

774 (l) provides all covered employees with a written copy of the professional employer  
775 organization's employment policies and procedures;

776 (m) ensures that all covered employees are covered in a regulatory compliant manner by  
777 workers' compensation insurance;

778 (n) does not knowingly use the coemployment relationship to assist a client to evade or  
779 avoid the client's obligations under:

780 (i) the National Labor Relations Act, 29 U.S.C. Sec. 151 et seq.;

781 (ii) the federal Railway Labor Act, 45 U.S.C. Sec. 151 et seq.; or

782 (iii) any collective bargaining agreement;

783 (o) except through a licensed insurance agent, does not:

784 (i) represent or imply that it can sell insurance;

785 (ii) attempt to sell insurance; or

786           (iii) sell insurance;  
787           (p) markets and provides, or is willing to market and provide professional employer  
788 service under a separate and distinct trade name from any affiliated professional employer  
789 organization that is not certified by the assurance organization;  
790           (q) does not allow any person not certified by the assurance organization to use the  
791 professional employer organization's trade name in the sale or delivery of the professional  
792 employer organization's professional employer service;  
793           (r) does not guarantee, participate in, transfer between, or otherwise share liabilities  
794 with any other professional employer organization that is not certified by the assurance  
795 organization:  
796           (i) in the employment of covered employees; or  
797           (ii) in any employee benefit or insurance policy or plan that is not fully insured and fully  
798 funded; and  
799           (s) has the ability to provide a regulatory agency or insurance carrier upon request with:  
800           (i) a client's name, address, and federal tax identification number;  
801           (ii) payroll data by:  
802           (A) client;  
803           (B) (I) client SIC Code of the 1987 Standard Industrial Classification Manual of the  
804 federal Executive Office of the President, Office of Management and Budget; or  
805           (II) client classification under the 2002 North American Industry Classification System  
806 of the federal Executive Office of the President, Office of Management and Budget; and  
807           (C) workers' compensation classification;  
808           (iii) the names of covered employees by:  
809           (A) the worksite of a client; and  
810           (B) workers' compensation classification; and  
811           (iv) workers' compensation certificates of insurance.  
812           (4) This section does not modify the commissioner's authority or responsibility to  
813 accept, renew, or terminate a license.

814 Section 19. Section **31A-40-304** is enacted to read:

815 **31A-40-304. Small operation license.**

816 (1) A professional employer organization may obtain a small operation license under  
817 this chapter if the professional employer organization:

818 (a) files an application for a small operation license with the commissioner:

819 (i) on a form and in a manner the commissioner shall determine by rule made in  
820 accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act; and

821 (ii) that includes the information and documentation the commissioner determines is  
822 necessary to show that the professional employer organization qualifies for a small operation  
823 license;

824 (b) pays a small operation license fee determined in accordance with Section  
825 31A-3-103, that is not refunded if the application:

826 (i) is denied; or

827 (ii) if incomplete, is never completed by the person filing the application;

828 (c) is domiciled outside of this state;

829 (d) is licensed or registered as a professional employer organization in another state;

830 (e) does not maintain an office in this state or directly solicit a client that:

831 (i) is domiciled in this state; or

832 (ii) maintains a location within this state;

833 (f) does not have at any time more than 50 covered employees employed or domiciled  
834 in this state; and

835 (g) is not owned or directed by another professional employer organization operating in  
836 the state.

837 (2) (a) A small operation license is valid for one year.

838 (b) A professional employer organization may annually renew a small operation license.

839 (3) A professional employer organization with a small operation license under this  
840 chapter is not subject to Section 31A-40-205.

841 Section 20. Section **31A-40-305** is enacted to read:

842 **31A-40-305. Financial statements required for licensing.**

843 (1) (a) A person that files a financial statement with an application for an initial license  
844 under Section 31A-40-302 shall file the professional employer organization's most recent audit  
845 as of the day the application is filed, except that the financial statement may not be older than  
846 ten months from the day on which the application is filed.

847 (b) A person that files a financial statement to renew a license shall file the most recent  
848 financial statement of the professional employer organization as of the day the application for  
849 renewal is filed with the commission.

850 (c) (i) The person filing an application may apply for an extension with the  
851 commissioner if the request for an extension is accompanied by a letter from the person  
852 conducting the audit for the financial statement stating:

853 (A) the reason for the delay; and

854 (B) the anticipated date on which the audit will be completed.

855 (ii) If a person complies with Subsection (1)(c)(i), the commissioner may grant an  
856 extension up to 30 days from the day on which the financial statement is due under this section.

857 (d) A professional employer organization may file a combined or consolidated financial  
858 statement if:

859 (i) the professional employer organization is owned by or in common control with  
860 another person; and

861 (ii) the combined or consolidated financial statement clearly identifies the following of  
862 the professional employer organization:

863 (A) its working capital;

864 (B) its assets; and

865 (C) its liabilities.

866 (2) A financial statement required by this chapter shall be:

867 (a) prepared in accordance with generally accepted accounting principles;

868 (b) audited by an independent certified public accountant licensed to practice in the  
869 jurisdiction in which the person conducting the audit is located; and

870 (c) without qualification as to the going concern status of the professional employer  
871 organization.

872 (3) Notwithstanding the other provisions of this section, the commissioner shall license  
873 a professional employer organization that does not have sufficient operating history to have an  
874 audited financial statement on the basis of at least 12 months if:

875 (a) the professional employer organization complies with the other requirements for  
876 licensure, including Section 31A-40-205; and

877 (b) the person filing the application for license files a financial statement that is reviewed  
878 by a certified public accountant.

879 Section 21. Section **31A-40-306** is enacted to read:

880 **31A-40-306. Professional employer organization group.**

881 (1) Subject to Subsection (2), a professional employer organization that is a member of  
882 a professional employer organization group may comply with Section 31A-40-205 or Sections  
883 31A-40-302 through 31A-40-305 on a combined or consolidated basis if each member of the  
884 professional employer organization group guarantees the obligations under this chapter of each  
885 other member of the professional employer organization group.

886 (2) The controlling entity of a professional employer organization group shall guarantee  
887 the obligations of a professional employer organization under this chapter if the professional  
888 employer organization group files a combined or consolidated audited financial statement that  
889 includes a person that is not:

890 (a) a professional employer organization; or

891 (b) a member of the professional employer organization group.

892 Section 22. Section **31A-40-401** is enacted to read:

893 **Part 4. Enforcement**

894 **31A-40-401. Prohibited acts.**

895 (1) A person may not:

896 (a) offer or provide a professional employer service if the person is not licensed under  
897 this chapter;



- 898 (b) use one of the following names if the person is not licensed under this chapter:
- 899 (i) "administrative employer";
- 900 (ii) "employee leasing";
- 901 (iii) "PEO";
- 902 (iv) "professional employer organization";
- 903 (v) "staff leasing"; or
- 904 (vi) other name that represents the provision of a professional employer service;
- 905 (c) knowingly provide false or fraudulent information to the commissioner:
- 906 (i) in conjunction with an application to be licensed or to renew a license under this
- 907 chapter; or
- 908 (ii) in a report required under this chapter;
- 909 (d) knowingly make a material misrepresentation to the commissioner or other
- 910 governmental agency;
- 911 (e) fail to make a filing with a state agency that is required by this chapter or the
- 912 professional employer agreement within 30 days of the day on which the filing is due;
- 913 (f) fail to make a payment to a state agency that is required by this chapter or the
- 914 professional employer agreement within 30 days of the day on which the payment is due;
- 915 (g) (i) offer a covered employee a self-funded medical plan unless the self-funded
- 916 medical plan is maintained for the sole benefit of covered employees;
- 917 (ii) misrepresent that a self-funded medical plan it offers is other than self-funded; or
- 918 (iii) offer to a covered employee a self-funded or partially self-funded medical plan
- 919 without delivering to a plan participant a summary plan description that accurately describes the
- 920 terms of the plan, including disclosure that the plan is self-funded or partially self-funded;
- 921 (h) subject to Subsection (2), divert to another purpose or use other than as designated
- 922 funds paid by a client to the professional employer organization and designated for:
- 923 (i) compensation of a covered employee;
- 924 (ii) a benefit of a covered employee;
- 925 (iii) a payroll-related tax;

926 (iv) an unemployment insurance contribution;  
927 (v) withholding of compensation for a covered employee;  
928 (vi) a workers' compensation premium; or  
929 (vii) another assessment paid by a professional employer organization to or on behalf of  
930 a covered employee under a professional employer agreement;

931 (i) provide a covered employee to a client under a provision, term, or condition that is  
932 not contained in a professional employer arrangement between the professional employer  
933 organization and client;

934 (j) engage in a willful, fraudulent, or deceitful act that:

935 (i) is by a professional employer organization, caused by a professional employer  
936 organization, or at a professional employer organization's direction; and

937 (ii) causes material injury to a client or covered employee;

938 (k) fail to comply with a federal law or state law, to the extent state law is not  
939 preempted by federal law, regarding an employee benefit offered to an employee; or

940 (l) willfully or recklessly violate this chapter or an order or rule issued by the  
941 commissioner under this chapter.

942 (2) If a client defaults on a professional employer agreement or otherwise fails to pay a  
943 professional employer organization, the professional employer organization is not in violation of  
944 this section if the professional employer organization allocates the deficient payment to the  
945 portions of an invoice.

946 Section 23. Section **31A-40-402** is enacted to read:

947 **31A-40-402. Disciplinary action.**

948 (1) Notwithstanding Section 31A-2-308, in accordance with this section the  
949 commissioner may take action against a person if the commissioner finds that the person:

950 (a) is violating or has violated Section 31A-40-401; or

951 (b) (i) is a:

952 (A) professional employer organization licensed under this chapter; or

953 (B) controlling person of a professional employer organization licensed under this

954 chapter; and

955 (ii) is convicted of a crime that relates to:

956 (A) the operation of a professional employer organization;

957 (B) fraud or deceit; or

958 (C) the ability of the professional employer organization or a controlling person of the  
959 professional employer organization to operate a professional employer organization.

960 (2) After notice and an opportunity for a hearing in accordance with Title 63, Chapter  
961 46b, Administrative Procedures Act, if the commissioner makes a finding described in  
962 Subsection (1), the commissioner may:

963 (a) deny an application for a license;

964 (b) revoke, restrict, or refuse to renew a license;

965 (c) place a licensee on probation for the period and subject to conditions specified by  
966 the commissioner;

967 (d) impose an administrative penalty in an amount not to exceed \$2,500 for each  
968 violation; or

969 (e) issue a cease and desist order.

970 Section 24. Section **34A-2-103** is amended to read:

971 **34A-2-103. Employers enumerated and defined -- Regularly employed --**  
972 **Statutory employers.**

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

975 (b) For the purposes of the exclusive remedy in this chapter and Chapter 3, Utah  
976 Occupational Disease Act prescribed in Sections 34A-2-105 and 34A-3-102, the state is  
977 considered to be a single employer and includes any office, department, agency, authority,  
978 commission, board, institution, hospital, college, university, or other instrumentality of the state.

979 (2) (a) Except as provided in Subsection (4), each person, including each public utility  
980 and each independent contractor, who regularly employs one or more workers or operatives in  
981 the same business, or in or about the same establishment, under any contract of hire, express or

982 implied, oral or written, is considered an employer under this chapter and Chapter 3, Utah  
983 Occupational Disease Act.

984 (b) As used in this Subsection (2):

985 (i) "Independent contractor" means any person engaged in the performance of any work  
986 for another who, while so engaged, is:

987 (A) independent of the employer in all that pertains to the execution of the work;

988 (B) not subject to the routine rule or control of the employer;

989 (C) engaged only in the performance of a definite job or piece of work; and

990 (D) subordinate to the employer only in effecting a result in accordance with the  
991 employer's design.

992 (ii) "Regularly" includes all employments in the usual course of the trade, business,  
993 profession, or occupation of the employer, whether continuous throughout the year or for only  
994 a portion of the year.

995 (3) (a) The client [~~company in an employee leasing arrangement~~] under a professional  
996 employer organization agreement regulated under Title [58, Chapter 59] 31A, Chapter 40,  
997 Professional Employer Organization [Registration] Licensing Act[;]:

998 (i) is considered the employer of [~~leased employees~~] a covered employee; and

999 (ii) subject to Section 31A-40-209, shall secure workers' compensation benefits for  
1000 [~~them~~] a covered employee by complying with Subsection 34A-2-201(1) or (2) and commission  
1001 rules.

1002 [~~(b) An insurance carrier may underwrite workers' compensation secured in accordance~~  
1003 ~~with Subsection (3)(a) showing the leasing company as the named insured and each client~~  
1004 ~~company as an additional insured by means of individual endorsements.]~~

1005 [~~(c) Endorsements shall be filed with the division as directed by commission rule.]~~

1006 [~~(d)~~] (b) The division shall promptly inform the [~~Division of Occupation and~~  
1007 ~~Professional Licensing within the Department of Commerce~~] Insurance Department if the  
1008 division has reason to believe that [~~an employee leasing company~~] a professional employer  
1009 organization is not in compliance with Subsection 34A-2-201(1) or (2) and commission rules.

1010 (4) A domestic employer who does not employ one employee or more than one  
1011 employee at least 40 hours per week is not considered an employer under this chapter and  
1012 Chapter 3, Utah Occupational Disease Act.

1013 (5) (a) As used in this Subsection (5):

1014 (i) (A) "agricultural employer" means a person who employs agricultural labor as  
1015 defined in Subsections 35A-4-206(1) and (2) and does not include employment as provided in  
1016 Subsection 35A-4-206(3); and

1017 (B) notwithstanding Subsection (5)(a)(i)(A), only for purposes of determining who is a  
1018 member of the employer's immediate family under Subsection (5)(a)(ii), if the agricultural  
1019 employer is a corporation, partnership, or other business entity, "agricultural employer" means  
1020 an officer, director, or partner of the business entity;

1021 (ii) "employer's immediate family" means:

1022 (A) an agricultural employer's:

1023 (I) spouse;

1024 (II) grandparent;

1025 (III) parent;

1026 (IV) sibling;

1027 (V) child;

1028 (VI) grandchild;

1029 (VII) nephew; or

1030 (VIII) niece;

1031 (B) a spouse of any person provided in Subsection (5)(a)(ii)(A)(II) through (VIII); or

1032 (C) an individual who is similar to those listed in Subsections (5)(a)(ii)(A) or (B) as  
1033 defined by rules of the commission; and

1034 (iii) "nonimmediate family" means a person who is not a member of the employer's  
1035 immediate family.

1036 (b) For purposes of this chapter and Chapter 3, Utah Occupational Disease Act, an  
1037 agricultural employer is not considered an employer of a member of the employer's immediate

1038 family.

1039 (c) For purposes of this chapter and Chapter 3, Utah Occupational Disease Act, an  
1040 agricultural employer is not considered an employer of a nonimmediate family employee if:

1041 (i) for the previous calendar year the agricultural employer's total annual payroll for all  
1042 nonimmediate family employees was less than \$8,000; or

1043 (ii) (A) for the previous calendar year the agricultural employer's total annual payroll for  
1044 all nonimmediate family employees was equal to or greater than \$8,000 but less than \$50,000;  
1045 and

1046 (B) the agricultural employer maintains insurance that covers job-related injuries of the  
1047 employer's nonimmediate family employees in at least the following amounts:

1048 (I) \$300,000 liability insurance, as defined in Section 31A-1-301; and

1049 (II) \$5,000 for health care benefits similar to benefits under health care insurance as  
1050 defined in Section 31A-1-301.

1051 (d) For purposes of this chapter and Chapter 3, Utah Occupational Disease Act, an  
1052 agricultural employer is considered an employer of a nonimmediate family employee if:

1053 (i) for the previous calendar year the agricultural employer's total annual payroll for all  
1054 nonimmediate family employees is equal to or greater than \$50,000; or

1055 (ii) (A) for the previous year the agricultural employer's total payroll for nonimmediate  
1056 family employees was equal to or exceeds \$8,000 but is less than \$50,000; and

1057 (B) the agricultural employer fails to maintain the insurance required under Subsection  
1058 (5)(c)(ii)(B).

1059 (6) An employer of agricultural laborers or domestic servants who is not considered an  
1060 employer under this chapter and Chapter 3, Utah Occupational Disease Act, may come under  
1061 this chapter and Chapter 3, Utah Occupational Disease Act, by complying with:

1062 (a) this chapter and Chapter 3, Utah Occupational Disease Act; and

1063 (b) the rules of the commission.

1064 (7) (a) If any person who is an employer procures any work to be done wholly or in  
1065 part for the employer by a contractor over whose work the employer retains supervision or

1066 control, and this work is a part or process in the trade or business of the employer, the  
1067 contractor, all persons employed by the contractor, all subcontractors under the contractor, and  
1068 all persons employed by any of these subcontractors, are considered employees of the original  
1069 employer for the purposes of this chapter and Chapter 3, Utah Occupational Disease Act.

1070 (b) Any person who is engaged in constructing, improving, repairing, or remodelling a  
1071 residence that the person owns or is in the process of acquiring as the person's personal  
1072 residence may not be considered an employee or employer solely by operation of Subsection  
1073 (7)(a).

1074 (c) A partner in a partnership or an owner of a sole proprietorship is not considered an  
1075 employee under Subsection (7)(a) if the employer who procures work to be done by the  
1076 partnership or sole proprietorship obtains and relies on either:

1077 (i) a valid certification of the partnership's or sole proprietorship's compliance with  
1078 Section 34A-2-201 indicating that the partnership or sole proprietorship secured the payment of  
1079 workers' compensation benefits pursuant to Section 34A-2-201; or

1080 (ii) if a partnership or sole proprietorship with no employees other than a partner of the  
1081 partnership or owner of the sole proprietorship, a workers' compensation policy issued by an  
1082 insurer pursuant to Subsection 31A-21-104[~~(8)~~](9) stating that:

1083 (A) the partnership or sole proprietorship is customarily engaged in an independently  
1084 established trade, occupation, profession, or business; and

1085 (B) the partner or owner personally waives the partner's or owner's entitlement to the  
1086 benefits of this chapter and Chapter 3, Utah Occupational Disease Act, in the operation of the  
1087 partnership or sole proprietorship.

1088 (d) A director or officer of a corporation is not considered an employee under  
1089 Subsection (7)(a) if the director or officer is excluded from coverage under Subsection  
1090 34A-2-104(4).

1091 (e) A contractor or subcontractor is not an employee of the employer under Subsection  
1092 (7)(a), if the employer who procures work to be done by the contractor or subcontractor  
1093 obtains and relies on either:

1094 (i) a valid certification of the contractor's or subcontractor's compliance with Section  
1095 34A-2-201; or

1096 (ii) if a partnership, corporation, or sole proprietorship with no employees other than a  
1097 partner of the partnership, officer of the corporation, or owner of the sole proprietorship, a  
1098 workers' compensation policy issued by an insurer pursuant to Subsection 31A-21-104~~(8)~~(9)  
1099 stating that:

1100 (A) the partnership, corporation, or sole proprietorship is customarily engaged in an  
1101 independently established trade, occupation, profession, or business; and

1102 (B) the partner, corporate officer, or owner personally waives the partner's, corporate  
1103 officer's, or owner's entitlement to the benefits of this chapter and Chapter 3, Utah Occupational  
1104 Disease Act, in the operation of the partnership's, corporation's, or sole proprietorship's  
1105 enterprise under a contract of hire for services.

1106 (f) (i) For purposes of this Subsection (7)(f), "eligible employer" means a person who:

1107 (A) is an employer; and

1108 (B) procures work to be done wholly or in part for the employer by a contractor,  
1109 including:

1110 (I) all persons employed by the contractor;

1111 (II) all subcontractors under the contractor; and

1112 (III) all persons employed by any of these subcontractors.

1113 (ii) Notwithstanding the other provisions in this Subsection (7), if the conditions of  
1114 Subsection (7)(f)(iii) are met, an eligible employer is considered an employer for purposes of  
1115 Section 34A-2-105 of the contractor, subcontractor, and all persons employed by the contractor  
1116 or subcontractor described in Subsection (7)(f)(i)(B).

1117 (iii) Subsection (7)(f)(ii) applies if the eligible employer:

1118 (A) under Subsection (7)(a) is liable for and pays workers' compensation benefits as an  
1119 original employer under Subsection (7)(a) because the contractor or subcontractor fails to  
1120 comply with Section 34A-2-201;

1121 (B) (I) secures the payment of workers' compensation benefits for the contractor or



1122 subcontractor pursuant to Section 34A-2-201;

1123       (II) procures work to be done that is part or process of the trade or business of the  
1124 eligible employer; and

1125       (III) does the following with regard to a written workplace accident and injury  
1126 reduction program that meets the requirements of Subsection 34A-2-111(3)(d):

1127       (Aa) adopts the workplace accident and injury reduction program;

1128       (Bb) posts the workplace accident and injury reduction program at the work site at  
1129 which the eligible employer procures work; and

1130       (Cc) enforces the workplace accident and injury reduction program according to the  
1131 terms of the workplace accident and injury reduction program; or

1132       (C) (I) obtains and relies on:

1133       (Aa) a valid certification described in Subsection (7)(c)(i) or (7)(e)(i);

1134       (Bb) a workers' compensation policy described in Subsection (7)(c)(ii) or (7)(e)(ii); or

1135       (Cc) proof that a director or officer is excluded from coverage under Subsection  
1136 34A-2-104(4);

1137       (II) is liable under Subsection (7)(a) for the payment of workers' compensation benefits  
1138 if the contractor or subcontractor fails to comply with Section 34A-2-201;

1139       (III) procures work to be done that is part or process in the trade or business of the  
1140 eligible employer; and

1141       (IV) does the following with regard to a written workplace accident and injury  
1142 reduction program that meets the requirements of Subsection 34A-2-111(3)(d):

1143       (Aa) adopts the workplace accident and injury reduction program;

1144       (Bb) posts the workplace accident and injury reduction program at the work site at  
1145 which the eligible employer procures work; and

1146       (Cc) enforces the workplace accident and injury reduction program according to the  
1147 terms of the workplace accident and injury reduction program.

1148       Section 25. Section **34A-2-105** is amended to read:

1149       **34A-2-105. Exclusive remedy against employer, and officer, agent, or employee of**

1150 **employer.**

1151 (1) The right to recover compensation pursuant to this chapter for injuries sustained by  
1152 an employee, whether resulting in death or not, ~~[shall be]~~ is the exclusive remedy against the  
1153 employer and ~~[shall be]~~ is the exclusive remedy against any officer, agent, or employee of the  
1154 employer and the liabilities of the employer imposed by this chapter ~~[shall be]~~ is in place of any  
1155 and all other civil liability whatsoever, at common law or otherwise, to the employee or to the  
1156 employee's spouse, widow, children, parents, dependents, next of kin, heirs, personal  
1157 representatives, guardian, or any other person whomsoever, on account of any accident or  
1158 injury or death, in any way contracted, sustained, aggravated, or incurred by the employee in the  
1159 course of or because of or arising out of the employee's employment, and ~~[no]~~ an action at law  
1160 may not be maintained against an employer or against any officer, agent, or employee of the  
1161 employer based upon any accident, injury, or death of an employee. Nothing in this section~~;~~  
1162 ~~however, shall prevent~~ prevents an employee, or the employee's dependents, from filing a claim  
1163 for compensation in those cases in accordance with Chapter 3, Utah Occupational Disease Act.

1164 (2) The exclusive remedy provisions of this section apply to both the client [~~company~~]  
1165 and the [~~employee leasing company in an employee leasing arrangement~~] professional employer  
1166 organization in a coemployment relationship regulated under Title ~~[58]~~ 31A, Chapter ~~[59]~~ 40,  
1167 Professional Employer Organization [~~Registration~~] Licensing Act.

1168 (3) (a) For purposes of this section:

1169 (i) "Temporary employee" means an individual who for temporary work assignment is:

1170 (A) an employee of a temporary staffing company; or

1171 (B) registered by or otherwise associated with a temporary staffing company.

1172 (ii) "Temporary staffing company" means a company that engages in the assignment of  
1173 individuals as temporary full-time or part-time employees to fill assignments with a finite ending  
1174 date to another independent entity.

1175 (b) If the temporary staffing company secures the payment of workers' compensation in  
1176 accordance with Section 34A-2-201 for all temporary employees of the temporary staffing  
1177 company, the exclusive remedy provisions of this section apply to both the temporary staffing

1178 company and the client company and its employees and provide the temporary staffing company  
1179 the same protection that a client company and its employees has under this section for the acts  
1180 of any of the temporary staffing company's temporary employees on assignment at the client  
1181 company worksite.

1182 Section 26. Section **35A-4-202** is amended to read:

1183 **35A-4-202. Employing units.**

1184 As used in this chapter:

1185 (1) (a) "Employing unit" means:

1186 (i) any individual or type of organization that has or subsequent to January 1, 1935, had  
1187 one or more individuals performing services for it within the state including any:

1188 (A) partnership;

1189 (B) association;

1190 (C) trust;

1191 (D) estate;

1192 (E) joint stock company;

1193 (F) insurance company;

1194 (G) limited liability company;

1195 (H) limited liability partnership;

1196 (I) joint venture;

1197 (J) corporation, whether domestic or foreign;

1198 (K) the receiver, trustee in bankruptcy, trustee or successor of any entity listed in

1199 Subsections (1)(a)(i)(A) through (J);

1200 (L) the legal representative of a deceased person; or

1201 (M) a tribal unit; or

1202 (ii) any properly and legally registered professional employer organization[~~, commonly~~  
1203 ~~known as an employee leasing company,~~] as defined by Section [~~58-59-102~~] 31A-40-102.

1204 (b) The department may adopt rules specific to a professional employer organization  
1205 pursuant to Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

1206 (c) All individuals performing services within this state for any employing unit that  
1207 maintains two or more separate establishments within this state are considered to be performing  
1208 services for a single employing unit for all the purposes of this chapter.

1209 (d) Each individual employed to perform or to assist in performing the work of any  
1210 person in the service of an employing unit is considered to be engaged by the employing unit for  
1211 all the purposes of this chapter whether the individual was hired or paid directly by the  
1212 employing unit or by the person, provided the employing unit had actual or constructive  
1213 knowledge of the work.

1214 (2) "Hospital" means an institution that is licensed, certified, or approved by the  
1215 Department of Health as a hospital.

1216 (3) "Institution of higher education," for the purposes of this section, means an  
1217 educational institution that:

1218 (a) (i) admits, as regular students only, individuals having a certificate of graduation  
1219 from a high school or the recognized equivalent of a certificate;

1220 (ii) is legally authorized in this state to provide a program of education beyond high  
1221 school;

1222 (iii) provides:

1223 (A) an educational program for which it awards a bachelor's or higher degree;

1224 (B) a program that is acceptable for full credit toward a bachelor's or higher degree;

1225 (C) a program of postgraduate or postdoctoral studies; or

1226 (D) a program of training to prepare students for gainful employment in a recognized  
1227 occupation; and

1228 (iv) is a public or other nonprofit institution.

1229 (b) All colleges and universities in this state are institutions of higher education for  
1230 purposes of this section.

1231 Section 27. Section **49-12-102** is amended to read:

1232 **49-12-102. Definitions.**

1233 As used in this chapter:

1234 (1) (a) Except as provided in Subsection (1)(c), "compensation" means the total amount  
1235 of payments made by a participating employer to a member of this system for services rendered  
1236 to the participating employer, including:

- 1237 (i) bonuses;
- 1238 (ii) cost-of-living adjustments;
- 1239 (iii) other payments currently includable in gross income and that are subject to Social  
1240 Security deductions, including any payments in excess of the maximum amount subject to  
1241 deduction under Social Security law;

- 1242 (iv) amounts that the member authorizes to be deducted or reduced for salary deferral  
1243 or other benefits authorized by federal law; and

- 1244 (v) member contributions.

1245 (b) "Compensation" for purposes of this chapter may not exceed the amount allowed  
1246 under Internal Revenue Code, Section 401(a)(17).

1247 (c) "Compensation" does not include:

- 1248 (i) the monetary value of remuneration paid in kind, including a residence or use of  
1249 equipment;

- 1250 (ii) the cost of any employment benefits paid for by the participating employer;

- 1251 (iii) compensation paid to a temporary employee, an exempt employee, or an employee  
1252 otherwise ineligible for service credit;

- 1253 (iv) any payments upon termination, including accumulated vacation, sick leave  
1254 payments, severance payments, compensatory time payments, or any other special payments; or

- 1255 (v) any allowances or payments to a member for costs or expenses paid by the  
1256 participating employer, including automobile costs, uniform costs, travel costs, tuition costs,  
1257 housing costs, insurance costs, equipment costs, and dependent care costs.

1258 (d) The executive director may determine if a payment not listed under this Subsection  
1259 (1) falls within the definition of compensation.

1260 (2) "Final average salary" means the amount computed by averaging the highest five  
1261 years of annual compensation preceding retirement subject to Subsections (2)(a), (b), (c), and

1262 (d).

1263 (a) Except as provided in Subsection (2)(b), the percentage increase in annual  
1264 compensation in any one of the years used may not exceed the previous year's compensation by  
1265 more than 10% plus a cost-of-living adjustment equal to the decrease in the purchasing power  
1266 of the dollar during the previous year, as measured by a United States Bureau of Labor  
1267 Statistics Consumer Price Index average as determined by the board.

1268 (b) In cases where the participating employer provides acceptable documentation to the  
1269 office, the limitation in Subsection (2)(a) may be exceeded if:

1270 (i) the member has transferred from another agency; or

1271 (ii) the member has been promoted to a new position.

1272 (c) If the member retires more than six months from the date of termination of  
1273 employment, the member is considered to have been in service at the member's last rate of pay  
1274 from the date of the termination of employment to the effective date of retirement for purposes  
1275 of computing the member's final average salary only.

1276 (d) If the member has less than five years of service credit in this system, final average  
1277 salary means the average annual compensation paid to the member during the full period of  
1278 service credit.

1279 (3) "Participating employer" means an employer which meets the participation  
1280 requirements of Sections 49-12-201 and 49-12-202.

1281 (4) (a) "Regular full-time employee" means an employee whose term of employment for  
1282 a participating employer contemplates continued employment during a fiscal or calendar year  
1283 and whose employment normally requires an average of 20 hours or more per week, except as  
1284 modified by the board, and who receives benefits normally provided by the participating  
1285 employer.

1286 (b) "Regular full-time employee" includes:

1287 (i) a teacher whose term of employment for a participating employer contemplates  
1288 continued employment during a school year and who teaches half-time or more;

1289 (ii) a classified school employee whose employment normally requires an average of 20

1290 hours per week or more for a participating employer, regardless of benefits provided;  
1291 (iii) an officer, elective or appointive, who earns during the first full month of the term  
1292 of office \$500 or more, indexed as of January 1, 1990, as provided in Section 49-12-407;  
1293 (iv) a faculty member or employee of an institution of higher education who is  
1294 considered full-time by that institution of higher education; and  
1295 (v) an individual who otherwise meets the definition of this Subsection (4) who  
1296 performs services for a participating employer through [~~an employee leasing~~] a professional  
1297 employer organization or similar arrangement.

1298 (5) "System" means the Public Employees' Contributory Retirement System created  
1299 under this chapter.

1300 (6) "Years of service credit" means:

- 1301 (a) a period, consisting of 12 full months as determined by the board;
- 1302 (b) a period determined by the board, whether consecutive or not, during which a  
1303 regular full-time employee performed services for a participating employer, including any time  
1304 the regular full-time employee was absent on a paid leave of absence granted by a participating  
1305 employer or was absent in the service of the United States government on military duty as  
1306 provided by this chapter; or
- 1307 (c) the regular school year consisting of not less than eight months of full-time service  
1308 for a regular full-time employee of an educational institution.

1309 Section 28. Section **49-13-102** is amended to read:

1310 **49-13-102. Definitions.**

1311 As used in this chapter:

- 1312 (1) (a) Except as provided in Subsection (1)(c), "compensation" means the total amount  
1313 of payments made by a participating employer to a member of this system for services rendered  
1314 to the participating employer, including:
  - 1315 (i) bonuses;
  - 1316 (ii) cost-of-living adjustments;
  - 1317 (iii) other payments currently includable in gross income and that are subject to Social

1318 Security deductions, including any payments in excess of the maximum amount subject to  
1319 deduction under Social Security law; and

1320 (iv) amounts that the member authorizes to be deducted or reduced for salary deferral  
1321 or other benefits authorized by federal law.

1322 (b) "Compensation" for purposes of this chapter may not exceed the amount allowed  
1323 under Internal Revenue Code, Section 401(a)(17).

1324 (c) "Compensation" does not include:

1325 (i) the monetary value of remuneration paid in kind, including a residence or use of  
1326 equipment;

1327 (ii) the cost of any employment benefits paid for by the participating employer;

1328 (iii) compensation paid to a temporary employee, an exempt employee, or an employee  
1329 otherwise ineligible for service credit;

1330 (iv) any payments upon termination, including accumulated vacation, sick leave  
1331 payments, severance payments, compensatory time payments, or any other special payments; or

1332 (v) any allowances or payments to a member for costs or expenses paid by the  
1333 participating employer, including automobile costs, uniform costs, travel costs, tuition costs,  
1334 housing costs, insurance costs, equipment costs, and dependent care costs.

1335 (d) The executive director may determine if a payment not listed under this Subsection  
1336 (1) falls within the definition of compensation.

1337 (2) "Final average salary" means the amount computed by averaging the highest three  
1338 years of annual compensation preceding retirement subject to the following:

1339 (a) Except as provided in Subsection (2)(b), the percentage increase in annual  
1340 compensation in any one of the years used may not exceed the previous year's compensation by  
1341 more than 10% plus a cost-of-living adjustment equal to the decrease in the purchasing power  
1342 of the dollar during the previous year, as measured by a United States Bureau of Labor  
1343 Statistics Consumer Price Index average as determined by the board.

1344 (b) In cases where the participating employer provides acceptable documentation to the  
1345 office, the limitation in Subsection (2)(a) may be exceeded if:



1346 (i) the member has transferred from another agency; or  
1347 (ii) the member has been promoted to a new position.  
1348 (c) If the member retires more than six months from the date of termination of  
1349 employment and for purposes of computing the member's final average salary only, the member  
1350 is considered to have been in service at his last rate of pay from the date of the termination of  
1351 employment to the effective date of retirement.

1352 (3) "Participating employer" means an employer which meets the participation  
1353 requirements of Sections 49-13-201 and 49-13-202.

1354 (4) (a) "Regular full-time employee" means an employee whose term of employment for  
1355 a participating employer contemplates continued employment during a fiscal or calendar year  
1356 and whose employment normally requires an average of 20 hours or more per week, except as  
1357 modified by the board, and who receives benefits normally provided by the participating  
1358 employer.

1359 (b) "Regular full-time employee" includes:

1360 (i) a teacher whose term of employment for a participating employer contemplates  
1361 continued employment during a school year and who teaches half-time or more;

1362 (ii) a classified school employee whose employment normally requires an average of 20  
1363 hours per week or more for a participating employer, regardless of benefits provided;

1364 (iii) an officer, elective or appointive, who earns during the first full month of the term  
1365 of office \$500 or more, indexed as of January 1, 1990, as provided in Section 49-13-407;

1366 (iv) a faculty member or employee of an institution of higher education who is  
1367 considered full-time by that institution of higher education; and

1368 (v) an individual who otherwise meets the definition of this Subsection (4) who  
1369 performs services for a participating employer through [~~an employee leasing~~] a professional  
1370 employer organization or similar arrangement.

1371 (5) "System" means the Public Employees' Noncontributory Retirement System.

1372 (6) "Years of service credit" means:

1373 (a) a period, consisting of 12 full months as determined by the board;

1374 (b) a period determined by the board, whether consecutive or not, during which a  
1375 regular full-time employee performed services for a participating employer, including any time  
1376 the regular full-time employee was absent on a paid leave of absence granted by a participating  
1377 employer or was absent in the service of the United States government on military duty as  
1378 provided by this chapter; or

1379 (c) the regular school year consisting of not less than eight months of full-time service  
1380 for a regular full-time employee of an educational institution.

1381 **Section 29. Repealer.**

1382 This bill repeals:

1383 **Section 58-59-101, Short title.**

1384 **Section 58-59-102, Definitions.**

1385 **Section 58-59-301, Registration required.**

1386 **Section 58-59-302, Registration process.**

1387 **Section 58-59-302.5, Assurance organization.**

1388 **Section 58-59-303, Term of registration -- Expiration -- Renewal.**

1389 **Section 58-59-303.5, Information to be filed by PEO.**

1390 **Section 58-59-306, Financial requirements, contractual relations, and allocation of**  
1391 **rights, duties, and obligations -- Taxes and fees.**

1392 **Section 58-59-306.5, Employment related economic incentives -- Employment**  
1393 **information -- Client's status.**

1394 **Section 58-59-308, No guarantee.**

1395 **Section 58-59-501, Unlawful conduct.**

1396 **Section 58-59-503, Penalty for unlawful conduct.**