

LEGISLATIVE BILL 579

Approved by the Governor March 17, 2010

Introduced by Cornett, 45; Lathrop, 12.

FOR AN ACT relating to labor; to amend sections 44-7515, 48-151, and 48-443, Reissue Revised Statutes of Nebraska, sections 44-7504, 48-115, 48-145, 48-146, and 48-602, Revised Statutes Cumulative Supplement, 2008, and section 48-144.03, Revised Statutes Supplement, 2009; to adopt the Professional Employer Organization Registration Act; to create a fund; to provide penalties; to harmonize insurance, workers' compensation, safety committee, and unemployment benefit provisions; to provide operative dates; to provide severability; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. Sections 1 to 11 of this act shall be known and may be cited as the Professional Employer Organization Registration Act.

Sec. 2. For purposes of the Professional Employer Organization Registration Act:

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

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

(3) Co-employment relationship means a relationship which is intended to be an ongoing relationship rather than a temporary or project-specific one, wherein the rights, duties, and obligations of an employer which arise out of an employment relationship have been allocated between the client employer and a professional employer organization as co-employers pursuant to a professional employer agreement and the act. In such a co-employment relationship:

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

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

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

(4) Covered employee means an individual having a co-employment relationship with a professional employer organization and a client who meets all of the following criteria: (a) The individual has received written notice of co-employment with the professional employer organization; and (b) the individual's co-employment relationship is pursuant to a professional employer agreement subject to the act. Individuals who are officers, directors, shareholders, partners, and managers of the client or who are members of a limited liability company if such company is the client are covered employees to the extent the professional employer organization and the client have expressly agreed in the professional employer agreement that such individuals are covered employees, if such individuals meet the criteria of this subdivision and act as operational managers or perform day-to-day operational services for the client;

(5) Department means the Department of Labor;

(6) Direct-hire employee means an individual who is an employee of the professional employer organization within the meaning of the Nebraska Workers' Compensation Act and who is not an employee of a client and who is not a covered employee;

(7) Master policy means a workers' compensation insurance policy issued to a professional employer organization that provides coverage for more than one client and may provide coverage to the professional employer organization with respect to its direct-hire employees or that provides coverage for one client in addition to the professional employer organization's direct-hire employees. Two or more clients insured under the same policy solely because they are under common ownership are considered a single client for purposes of this subdivision;

(8) Multiple coordinated policy means a workers' compensation insurance policy that provides coverage for only a single client or group of clients under common ownership but with payment obligations and certain policy

communications coordinated through the professional employer organization;

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

(10) Professional employer agreement means a written contract by and between a client and a professional employer organization that provides:

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

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

(c) That the professional employer organization and the client assume the responsibilities required by the Professional Employer Organization Registration Act;

(11) (a) Professional employer organization means any person engaged in the business of providing professional employer services. The applicability of the act to a person engaged in the business of providing professional employer services shall be unaffected by the person's use of the term staff leasing company, administrative employer, employee leasing company, or any name other than professional employer organization or PEO.

(b) The following are not professional employer organizations or professional employment services for purposes of the act:

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

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

(iii) Providing temporary help services;

(12) Professional employer organization group means two or more professional employer organizations that are majority-owned or commonly controlled by the same entity, parent company, or controlling person;

(13) Professional employer services means the service of entering into co-employment relationships;

(14) Registrant means a professional employer organization registered under the act;

(15) Temporary help services means services consisting of a person:

(a) Recruiting and hiring its own employees;

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

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

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

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

Sec. 3. (1) Nothing contained in the Professional Employer Organization Registration Act or in any professional employer agreement shall affect, modify, or amend any collective-bargaining agreement or the rights or obligations of any client, professional employer organization, or covered employee under the federal National Labor Relations Act, 29 U.S.C. 151 et seq., or the federal Railway Labor Act, 45 U.S.C. 151 et seq.

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

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

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

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

(iv) Diminish, abolish, or remove rights of covered employees as to a client or obligations of a client to covered employees, including, but not limited to, rights and obligations arising from civil rights laws guaranteeing nondiscrimination in employment practices. A co-employer shall, immediately after receipt of such notice, notify the other co-employer of such receipt and shall transmit a copy of the notice to the other co-employer within ten business days after such receipt.

(b) (i) Nothing contained in the act or any professional employer agreement shall affect, modify, or amend any state, local, or federal licensing, registration, or certification requirement applicable to any client or covered employee.

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

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

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

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

Sec. 4. (1) A person engaged in the business of providing professional employer services pursuant to co-employment relationships in which all or a majority of the employees of a client are covered employees shall be registered under the Professional Employer Organization Registration Act.

(2) A person who is not registered under the Professional Employer Organization Registration Act shall not offer or provide professional employer services in this state and shall not use the names PEO, professional employer organization, staff leasing company, employee leasing company, administrative employer, or any other name or title representing professional employer services.

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

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

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

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

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

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

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

(g) A financial statement setting forth the financial condition of the professional employer organization or professional employer organization group. At the time of initial registration, the applicant shall submit the

most recent audit of the applicant, which audit may not be older than thirteen months. Thereafter, a professional employer organization or professional employer organization group shall file on an annual basis, within one hundred eighty days after the end of the professional employer organization's fiscal year, a succeeding audit. An applicant may apply for an extension with the department, but any such request shall be accompanied by a letter from the auditor stating the reasons for the delay and the anticipated audit completion date.

The financial statement shall be prepared in accordance with generally accepted accounting principles and audited by an independent certified public accountant licensed to practice in the jurisdiction in which such accountant is located and shall be without qualification as to the going concern status of the professional employer organization. A professional employer organization group may submit combined or consolidated financial statements to meet the requirements of this section. A professional employer organization that has not had sufficient operating history to have audited financial statements based upon at least twelve months of operating history shall meet the financial responsibility requirements of section 5 of this act and present financial statements reviewed by a certified public accountant.

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

(b) Each professional employer organization not operating within this state as of the operative date of this section shall complete its initial registration prior to initiating operations within this state. If a professional employer organization not registered in this state becomes aware that an existing client not based in this state has employees and operations in this state, the professional employer organization shall either decline to provide professional employer services for those employees or notify the department within five business days of its knowledge of this fact and file a limited registration application under subsection (7) of this section or a full registration if there are more than fifty covered employees. The department may issue an interim operating permit for the period the registration application is pending if the professional employer organization is currently registered or licensed by another state and the department determines it to be in the best interests of the potential covered employees.

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

(6) Professional employer organizations in a professional employer organization group may satisfy any reporting and financial requirements of the Professional Employer Organization Registration Act on a combined or consolidated basis if each member of the professional employer organization group guarantees the financial capacity obligations under the act of each other member of the professional employer organization group. If a professional employer organization group submits a combined or consolidated audited financial statement including entities that are not professional employer organizations or that are not in the professional employer organization group, the controlling entity of the professional employer organization group under the consolidated or combined statement shall guarantee the obligations of the professional employer organizations in the professional employer organization group.

(7) (a) A professional employer organization is eligible for a limited registration under the act if such professional employer organization:

(i) Submits a properly executed request for limited registration on a form provided by the department;

(ii) Is domiciled outside this state and is licensed or registered as a professional employer organization in another state;

(iii) Does not maintain an office in this state or directly solicit clients located or domiciled within this state; and

(iv) Does not have more than fifty covered employees employed or domiciled in this state on any given day.

(b) A limited registration is valid for one year and may be renewed.

(c) A professional employer organization seeking limited registration under this section shall provide the department with information and documentation necessary to show that the professional employer

organization qualifies for a limited registration.

(d) Section 5 of this act does not apply to applicants for limited registration.

(8) The department shall maintain a list of professional employer organizations registered under the act that is readily available to the public by electronic or other means.

(9) The department may prescribe forms necessary to promote the efficient administration of this section.

(10) The department shall, to the extent practical, permit by rule and regulation the acceptance of electronic filings, including applications, documents, reports, and other filings required by the department. Such rule and regulation may provide for the acceptance of electronic filings and other assurance by an independent and qualified entity approved by the department that provides satisfactory assurance of compliance acceptable to the department consistent with or in lieu of the requirements of this section and section 5 of this act. Such rule and regulation shall permit a professional employer organization to authorize the entity approved by the department to act on the professional employer organization's behalf in complying with the registration requirements of the act, including electronic filings of information and payment of registration fees. Use of such an approved entity shall be optional and not mandatory for a registrant. Nothing in this subsection shall limit or change the department's authority to register or terminate registration of a professional employer organization or to investigate or enforce any provision of the act.

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

Sec. 5. (1) Except as provided in subsections (7) and (10) of section 4 of this act, each professional employer organization or professional employer organization group shall have either:

(a) Positive working capital of at least one hundred thousand dollars at the time of initial registration and each renewal thereafter as reflected in the financial statements submitted to the department with the initial registration and each annual renewal; or

(b)(i) If the positive working capital of the professional employer organization is less than one hundred thousand dollars, a bond, certificate of deposit, escrow account, or irrevocable letter of credit in an amount of not less than one hundred thousand dollars; or

(ii) If the financial statement submitted to the department indicates a deficit in working capital, a bond, certificate of deposit, escrow account, or irrevocable letter of credit in an amount that is not less than one hundred thousand dollars plus an amount that is sufficient to cover that deficit.

(2) The commitment described in subdivision (1)(b) of this section shall be in a form approved by the department, shall be held in a depository designated by the department, and shall secure the payment by the professional employer organization or professional employer organization group of any wages, salaries, employee benefits, worker's compensation insurance premiums, payroll taxes, unemployment insurance contributions, or other amounts that are payable to or with respect to an employee performing services for a client if the professional employer organization or professional employer organization group does not make those payments when due. The commitment shall be established in favor of or be made payable to the department, for the benefit of the state and any employee to whom or with respect to whom the professional employer organization or professional employer organization group does not make a payment described in this subsection when due. The professional employer organization or professional employer organization group shall file with the department any agreement, instrument, or other document that is necessary to enforce the commitment against the professional employer organization or professional employer organization group, against any relevant third party, or both.

Sec. 6. (1) No person shall knowingly enter into a co-employment relationship in which less than a majority of the employees of the client in this state are covered employees or in which less than one-half of the payroll of the client in this state is attributable to covered employees.

(2) Except as specifically provided in the Professional Employer Organization Registration Act or in the professional employer agreement, in each co-employment relationship:

(a) The client shall be entitled to exercise all rights and shall be obligated to perform all duties and responsibilities otherwise applicable to

an employer in an employment relationship;

(b) The professional employer organization shall be entitled to exercise only those rights and obligated to perform only those duties and responsibilities specifically required by the act or in the professional employer agreement. The rights, duties, and obligations of the professional employer organization as co-employer with respect to any covered employee shall be limited to those arising pursuant to the professional employer agreement and the act during the term of co-employment by the professional employer organization of such covered employee; and

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

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

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

(b) A provision that the professional employer organization shall have responsibility to pay wages to covered employees; to withhold, collect, report, and remit payroll-related and unemployment taxes; and, to the extent the professional employer organization has assumed responsibility in the professional employer agreement, to make payments for employee benefits for covered employees. For purposes of this section, wages does not include any obligation between a client and a covered employee for payments beyond or in addition to the covered employee's salary, draw, or regular rate of pay, such as bonuses, commissions, severance pay, deferred compensation, profit sharing, or vacation, sick, or other paid time off pay, unless the professional employer organization has expressly agreed to assume liability for such payments in the professional employer agreement;

(c) A provision that the professional employer organization shall have a right to hire, discipline, and terminate a covered employee as may be necessary to fulfill the professional employer organization's responsibilities under the act and the professional employer agreement. The client shall have a right to hire, discipline, and terminate a covered employee; and

(d) A provision that the responsibility to obtain workers' compensation coverage for covered employees and for other employees of the client from an insurer licensed to do business in this state and otherwise in compliance with all applicable requirements shall be specified in the professional employer agreement in accordance with section 9 of this act. The client shall not be relieved of its obligations under the Nebraska Workers' Compensation Act to provide workers' compensation coverage in the event that the professional employer organization fails to obtain workers' compensation insurance for which it has assumed responsibility.

(4) With respect to each professional employer agreement entered into by a professional employer organization, such professional employer organization shall provide written notice to each covered employee affected by such agreement. The professional employer organization shall provide, and the client shall post in a conspicuous place at the client's worksite, the following:

(a) Notice of the general nature of the co-employment relationship between and among the professional employer organization, the client, and any covered employees; and

(b) Any notice required by the state relating to unemployment compensation and the minimum wage.

(5) Except to the extent otherwise expressly provided by the applicable professional employer agreement:

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

(b) A client shall be solely responsible for (i) directing, supervising, training, and controlling the work of the covered employees with respect to the business activities of the client or when such employees are otherwise acting under the express direction and control of the client and (ii) the acts, errors, or omissions of the covered employees with regard to such activities or when such employees are otherwise acting under the express direction and control of the client;

(c) A client shall not be liable for the acts, errors, or omissions

of a professional employer organization or of any covered employee of the client and a professional employer organization when such covered employee is acting under the express direction and control of the professional employer organization;

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

(e) A covered employee is not, solely as the result of being a covered employee of a professional employer organization, an employee of the professional employer organization for purposes of general liability insurance, fidelity bonds, surety bonds, employer's liability which is not covered by workers' compensation, or liquor liability insurance carried by the professional employer organization unless the covered employee is included for such purposes by specific reference in the professional employer agreement and in any applicable prearranged employment contract, insurance contract, or bond.

(6) When a professional employer organization obtains workers' compensation coverage for its clients that is written by an authorized insurer, it shall not be considered to be an insurer based on its provision of workers' compensation insurance coverage to a client, even if the professional employer organization charges the client a different amount than it is charged by the authorized insurer.

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

(a) Covered employees whose services are subject to sales tax shall be deemed the employees of the client for purposes of collecting and levying sales tax on the services performed by the covered employee. Nothing contained in the Professional Employer Organization Registration Act shall relieve a client of any sales tax liability with respect to its goods or services;

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

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

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

(8) A professional employer organization shall not offer its covered employees any health benefit plan which is not fully insured by an authorized insurer.

Sec. 7. Any funds held by the professional employer organization in a fiduciary capacity shall be recorded separately and held in a fiduciary capacity on behalf of each client. The professional employer organization shall keep copies of all the records pertaining to such deposits and withdrawals and, upon request of a client, shall furnish the client with an accounting and copies of the records.

Sec. 8. (1) A client and a professional employer organization shall each be deemed an employer under the laws of this state for purposes of sponsoring retirement and employee welfare benefit plans for its covered employees.

(2) A fully insured employee welfare benefit plan offered to the covered employees of a single professional employer organization shall be for purposes of state law a single employee welfare benefit plan and shall not be considered a multiple employer welfare arrangement, as defined in section 44-7603, and shall be exempt from the registration requirements of the Multiple Employer Welfare Arrangement Act.

(3) For purposes of the Small Employer Health Insurance Availability Act, a professional employer organization shall be considered the employer of all of its covered employees and all covered employees of any client

participating in a health benefit plan sponsored by a single professional employer organization shall be considered employees of the professional employer organization. Subject to any eligibility requirements imposed by the plan or policy, the insurer shall accept and insure all employees of the client and all beneficiaries of those employees.

Sec. 9. (1) The responsibility to obtain workers' compensation coverage for employees covered by the professional employer agreement and for other employees of the client shall be allocated in the professional employer agreement to the client, the professional employer organization, or both, in accordance with this section. If any such responsibility is allocated to the professional employer organization, the professional employer organization shall:

(a) Advise the client of the provisions of subdivisions (9) and (10) of section 48-115;

(b) Advise the client of its obligation to obtain an additional workers' compensation insurance policy if the professional employer organization's policy limits coverage to co-employees as specified in the professional employer agreement; and

(c) Provide the client with the name of the insurer providing coverage, the policy number, claim notification instructions, and any itemized charges that are to be made for workers' compensation coverage within ten days after enrollment.

(2) (a) If all employees of the client are not covered employees under the professional employer agreement, then a workers' compensation insurance policy obtained by the professional employer organization to cover employees of the client may be written to limit coverage to those employees who are co-employees of the professional employer organization and the client. If a professional employer organization's policy limits coverage to co-employees as specified in the professional employer agreement, then the client shall obtain an additional workers' compensation insurance policy. The policy obtained by the client shall be written to cover any and all employees not covered by the professional employer organization's policy, including any potential new or unknown employees. All insurance policies issued pursuant to this subsection shall be subject to and shall comply with the requirements of this subsection and any rule or regulation adopted by the Department of Insurance.

(b) If all employees of the client are covered employees under the professional employer agreement, then a workers' compensation insurance policy obtained by the professional employer organization to cover employees of the client must be written to cover any and all employees of the client, including potential new or unknown employees that may not be covered employees under the agreement.

(c) A professional employer organization shall not split coverage that it obtains for a client between two or more policies.

(d) A professional employer organization shall not split coverage for its direct-hire employees between two or more policies.

(e) The Department of Insurance may adopt and promulgate rules and regulations to implement this subsection.

(3) If the professional employer agreement allocates responsibility to the professional employer organization to obtain workers' compensation coverage only for co-employees, then the professional employer organization shall provide the following information to the administrator of the Nebraska Workers' Compensation Court. Such information shall be provided for any such professional employer agreement in effect on the operative date of this section and prior to the effective date of any new professional employer agreement or any amendment of an agreement adding such a provision after the operative date of this section and shall be provided in a form and manner prescribed by the administrator:

(a) The names and addresses of the client and the professional employer organization;

(b) The effective date of the professional employer agreement;

(c) A description of the employees covered under the professional employer agreement;

(d) Evidence that any and all other employees of the client are covered by a valid workers' compensation insurance policy; and

(e) Any other information the administrator may require regarding workers' compensation coverage of the professional employer organization, the client, or the covered employees.

(4) If workers' compensation coverage for a client's employees covered by the professional employer agreement and for other employees of the client is not entirely available in the voluntary market, then assigned risk workers' compensation coverage written subject to section 44-3,158 may only

be written on a single policy that covers all employees and co-employees of the client. Assigned risk workers' compensation insurance for the professional employer organization may also be written, but only on a basis that covers its direct-hire employees and excludes employees and co-employees of its clients. The Department of Insurance may adopt and promulgate rules and regulations to implement this subsection.

(5) If a master policy or multiple coordinated policy providing coverage to a client is obtained by a professional employer organization, then the professional employer organization shall provide the client with a notice that the client shall conspicuously post at its workplace. Such notice shall provide the name and address of the workers' compensation insurer and the individual to whom claims shall be directed. If more than one workers' compensation insurer provides coverage for employees and co-employees of the client, the client shall post such information for all such workers' compensation insurers.

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

(7) If a client receives notice of the cancellation, nonrenewal, or termination of workers' compensation coverage obtained by the professional employer organization, then the client may withdraw from the professional employer agreement without penalty unless the client is notified by the professional employer organization of replacement coverage within fifteen days after the notice.

(8) A professional employer organization shall not impose any fee increase on a client based on the actual or anticipated cost of workers' compensation coverage without giving the client at least thirty days' advance notice and an opportunity to withdraw from the professional employer agreement without penalty.

(9) The professional employer organization shall not make any materially inaccurate, misleading, or fraudulent representations to the client regarding the cost of workers' compensation coverage. If the professional employer organization charges the client an itemized amount for workers' compensation coverage, the professional employer organization shall provide the client with an accurate and concise description of the basis upon which it was calculated and the services that are included. A professional employer organization shall not charge a client an itemized amount for workers' compensation coverage that is materially inconsistent with the actual amounts that the professional employer organization is charged by the insurer, given reasonably anticipated loss-sensitive charges, if applicable, reasonable recognition of the professional employer organization's costs, and a margin for profit.

Sec. 10. (1) The department shall adopt a schedule of fees for initial registration, annual registration renewal, and limited registration, not to exceed two thousand five hundred dollars for initial registration, one thousand five hundred dollars for annual registration renewal, and one thousand dollars for limited registration. Such fees shall not exceed those reasonably necessary for the administration of the Professional Employer Organization Registration Act.

(2) There is hereby created the Professional Employer Organization Cash Fund to be administered by the department. Fees imposed pursuant to this section shall be remitted to the State Treasurer for credit to the fund. Money in the fund may be used for the administration of the Professional Employer Organization Registration Act. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

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

(i) Offer or provide professional employer services in this state or use the names PEO, professional employer organization, staff leasing, employee leasing, administrative employer, or other title representing professional employer services unless such person is registered under the Professional Employer Organization Registration Act;

(ii) Provide false or fraudulent information to the department in conjunction with any registration, renewal, or report required under the act;
or

(iii) Enter into a co-employment relationship in which less than a majority of the employees of the client in this state are covered employees or in which less than one-half of the payroll of the client in this state is attributable to covered employees.

(b) Any person violating this subsection is guilty of a Class I misdemeanor.

(2) Disciplinary action may be taken by the department:

(a) Against a person for violation of subsection (1) of this section;

(b) Against a professional employer organization or a controlling person of a professional employer organization upon the conviction of a professional employer organization or a controlling person of a professional employer organization of a crime that relates to the operation of the professional employer organization or the ability of a registrant or a controlling person of a registrant to operate a professional employer organization;

(c) Against a professional employer organization or a controlling person of a professional employer organization for knowingly making a material misrepresentation to an insurer, an insurance producer, the department, or other governmental agency; or

(d) Against a professional employer organization or a controlling person of a professional employer organization for a willful violation of the act or any order or regulation issued by the department under the act.

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

(i) Deny an application for registration;

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

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

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

(v) Issue a cease and desist order.

(b) A decision by the department under this subsection may be appealed in accordance with the Administrative Procedure Act.

(4) The department may adopt and promulgate rules and regulations reasonably necessary for the administration and enforcement of this section and sections 4, 5, and 10 of this act.

Sec. 12. Section 44-7504, Revised Statutes Cumulative Supplement, 2008, is amended to read:

44-7504 For purposes of the Property and Casualty Insurance Rate and Form Act:

(1) Advisory organization means any entity, including its affiliates or subsidiaries, which (a) has majority ownership or control by two or more insurers and assists two or more insurers in activities related to ratemaking, the promulgation of policy forms, or related matters or (b) makes the same prospective loss cost or policy form filings on behalf of or to be available for two or more insurers. For purposes of this subdivision, a group of insurers under common ownership or control shall be considered a single insurer. Advisory organization does not include joint reinsurance pools, joint underwriting pools, or insurers engaged in joint underwriting;

(2) Classification means the process of grouping insureds with similar loss or expense characteristics so that differences in losses and expenses may be recognized;

(3) Client means client as defined in section 2 of this act;

~~(4) Director means the Director of Insurance;~~

~~(5) Exempt commercial policyholder means an entity to which specific aspects of rate or policy form regulation do not apply or have been relaxed in accordance with rules and regulations adopted and promulgated pursuant to section 44-7515;~~

~~(6) Expense means that portion of a rate attributable to acquisition, field supervision, collection expense, general expense, taxes, licenses, and fees. Expense does not include loss adjustment expense;~~

~~(7) Experience rating plan means a rating formula and related procedures that use past loss experience of an individual policyholder to forecast future losses by measuring the policyholder's loss experience against the expected losses for policyholders in that classification to produce a prospective premium credit, debit, or unity modification;~~

~~(8) Joint reinsurance pool means an ongoing voluntary arrangement pursuant to which two or more insurers participate in the reinsurance of risks written by one or more member insurers and reinsured by one or more other member insurers. For purposes of this subdivision, a group of insurers under common ownership or control shall be considered a single insurer. A joint reinsurance pool may operate through an association,~~

syndicate, or other arrangement;

~~(8)~~ (9) Joint underwriting means a voluntary arrangement established on an individual risk basis by which two or more insurers jointly contract to provide coverage for an insured. For purposes of this subdivision, a group of insurers under common ownership or control shall be considered a single insurer. Joint underwriting does not include any arrangement by which the participants are reinsuring the direct obligation of another risk-assuming entity;

~~(9)~~ (10) Joint underwriting pool means an ongoing voluntary arrangement pursuant to which two or more insurers participate in the sharing of risks written as their direct obligations according to a predetermined basis and the insurance remains the direct obligation of the pool participants. For purposes of this subdivision, a group of insurers under common ownership or control shall be considered a single insurer. A joint underwriting pool may operate through an association, syndicate, or other arrangement;

~~(10)~~ (11) Loss adjustment expense means the expense incurred by an insurer in the course of settling claims;

(12) Master policy means master policy as defined in section 2 of this act;

(13) Multiple coordinated policy means multiple coordinated policy as defined in section 2 of this act;

~~(11)~~ (14) Policy form means all policies, certificates, or other contracts providing insurance coverage. Policy form includes bonds and includes riders, endorsements, or other amendments to the policy form;

~~(12)~~ (15) Premium means the cost of insurance to the policyholder after all audit adjustments have been made and any dividends payable have been subtracted;

(16) Professional employer organization means professional employer organization as defined in section 2 of this act;

~~(13)~~ (17) Prospective loss cost means that portion of a rate intended to provide for expected losses and loss adjustment expenses. Prospective loss costs may provide for anticipated special assessments. Prospective loss costs do not include provisions for profits, dividends, or expenses other than loss adjustment expenses;

~~(14)~~ (18) Rating system means the information needed to determine the applicable rate or premium including rates, any manual or plan of rates, classifications, rating schedules, minimum premiums, policy fees, payment plans, rating plans or rules, anniversary rating date rules, and other similar information. Rating system does not include dividend rating plans or other provisions for the possible payment of dividends if such dividends are declared by the insurer's board of directors and are not guaranteed;

~~(15)~~ (19) Special assessments means guaranty fund assessments made pursuant to section 44-2407, Workers' Compensation Trust Fund assessments made pursuant to section 48-162.02, residual market assessments made pursuant to section 44-3,158 or 44-7528, and similar assessments. Special assessments are not expenses or losses;

~~(16)~~ (20) Statistical agent means an entity that, for the purpose of fulfilling the statistical reporting obligations of two or more insurers under the act, collects or compiles statistics from two or more insurers or provides reports developed from these statistics to the director. For purposes of this subdivision, a group of insurers under common ownership or control shall be considered a single insurer; and

~~(17)~~ (21) Supporting information means the experience and judgment of the filer and the experience or data of other insurers or advisory organizations relied upon by the filer, the interpretation of any other data relied upon by the filer, descriptions of methods used in developing a rating system, and any other information required by the director to be filed.

Sec. 13. Section 44-7515, Reissue Revised Statutes of Nebraska, is amended to read:

44-7515 (1) The director shall adopt and promulgate rules and regulations to modify or eliminate requirements for insurers to use filed rates and policy forms for commercial policyholders under common ownership identified through the application of subsection (4) of this section. Unless set forth by rules and regulations, on and after January 1, 2012, eligibility for a professional employer organization shall be based upon the professional employer organization's total premiums, including premiums for multiple coordinated policies written for the professional employer organization's clients. Unless otherwise set forth in the rules and regulations, the rules and regulations apply to multiple coordinated policies written on behalf of an eligible professional employer organization.

(2) The rules and regulations adopted and promulgated pursuant to

this section may establish requirements and thresholds that differ by line or type of insurance or that differ for rates and policy forms.

(3) The rules and regulations adopted and promulgated pursuant to this section shall require insurers to inform exempt commercial policyholders at the earliest practical date, but no later than thirty days after the inception of coverage, of those policy forms applying to them that have not been approved by the director.

(4) The director shall consider the following factors in determining those commercial policyholders to which the rules and regulations adopted and promulgated pursuant to this section shall apply:

(a) For modification or elimination of the applicability of filed rates, characteristics of insureds that are likely to avail themselves of regular price comparisons between competing insurers and are likely to study and understand the differences and details of pricing proposals that they receive;

(b) For modification or elimination of the applicability of filed rates, characteristics of insureds for which filed rates and rating plans are less likely to provide the lowest premiums otherwise consistent with the provisions of the Property and Casualty Insurance Rate and Form Act;

(c) Modification or elimination of the applicability of filed rates for commercial insureds that are primarily located in another jurisdiction where they are subject to similar exemptions or waivers in that jurisdiction;

(d) For modification or elimination of the applicability of filed policy forms, characteristics of insureds that are likely to study and understand the details of their business risks and insurance coverages and exclusions;

(e) For modification or elimination of the applicability of filed policy forms, characteristics of insureds that are likely to require individually written policies, as contrasted to insureds that can customarily have their coverage needs met using policy forms that could also be used for other insureds;

(f) For both rates and policy forms, favorable or adverse experiences with the modification or elimination of regulatory requirements, especially the experience in this state; and

(g) Any other relevant factor.

(5) For exempt commercial policyholders to which rating system regulation is made otherwise inapplicable, insurers shall allocate premiums between policies, exposures, and states in proportion to the expected losses and expenses for those policies, exposures, and states.

(6) The following restrictions apply to rules and regulations adopted and promulgated pursuant to this section:

(a) The rules and regulations may not allow any reduction of the benefits payable under workers' compensation or excess workers' compensation policies or any alteration of provisions for the handling and settlement of claims under such policies, but the rules and regulations may allow exempt commercial policyholders to negotiate workers' compensation or excess workers' compensation premiums and premium payment provisions;

(b) The rules and regulations may not allow any reduction of automobile insurance coverage limits to less than those required by Nebraska law, but the rules and regulations may allow exempt commercial policyholders to negotiate automobile insurance premiums and premium payment provisions;

(c) The rules and regulations may not allow any limitation of the coverage provisions necessary for health care providers to qualify under the Nebraska Hospital-Medical Liability Act, but the rules and regulations may allow exempt commercial policyholders to negotiate medical professional liability insurance premiums and premium payment provisions;

(d) The rules and regulations may not reduce the rate regulatory requirements applying to any policyholder insurance written for a professional employer organization on or after January 1, 2012, or to any insurance written for an individual policyholder that is not a client of a professional employer organization with total premiums of less than twenty-five thousand dollars for lines of insurance subject to the Property and Casualty Insurance Rate and Form Act; and

(e) The rules and regulations may not reduce the form regulatory requirements applying to any policyholder insurance written for a professional employer organization on or after January 1, 2012, or to any insurance written for an individual policyholder that is not a client of a professional employer organization with total premiums of less than fifty thousand dollars for lines of insurance subject to the Property and Casualty Insurance Rate and Form Act.

(7) Policy forms for commercial risks exempted by the rules and regulations adopted and promulgated pursuant to this section may include language that conflicts with section 44-501. If a conflict results between a

policy form and the requirements of section 44-501, the language in the policy form shall apply to the extent that it is inconsistent with such section.

Sec. 14. Section 48-115, Revised Statutes Cumulative Supplement, 2008, is amended to read:

48-115 The terms employee and worker are used interchangeably and have the same meaning throughout the Nebraska Workers' Compensation Act. Such terms include the plural and all ages and both sexes. For purposes of the act, employee or worker shall be construed to mean:

(1) Every person in the service of the state or of any governmental agency created by it, including the Nebraska National Guard and members of the military forces of the State of Nebraska, under any appointment or contract of hire, expressed or implied, oral or written;

(2) Every person in the service of an employer who is engaged in any trade, occupation, business, or profession as described in section 48-106 under any contract of hire, expressed or implied, oral or written, including aliens and also including minors. Minors for the purpose of making election of remedies under the Nebraska Workers' Compensation Act shall have the same power of contracting and electing as adult employees.

As used in subdivisions (1) through (11) of this section, the terms employee and worker shall not be construed to include any person whose employment is not in the usual course of the trade, business, profession, or occupation of his or her employer.

If an employee subject to the Nebraska Workers' Compensation Act suffers an injury on account of which he or she or, in the event of his or her death, his or her dependents would otherwise have been entitled to the benefits provided by such act, the employee or, in the event of his or her death, his or her dependents shall be entitled to the benefits provided under such act, if the injury or injury resulting in death occurred within this state, or if at the time of such injury (a) the employment was principally localized within this state, (b) the employer was performing work within this state, or (c) the contract of hire was made within this state;

(3) Volunteer firefighters of any fire department of any rural or suburban fire protection district, city, village, or nonprofit corporation, which fire department is organized under the laws of the State of Nebraska. Such volunteers shall be deemed employees of such rural or suburban fire protection district, city, village, or nonprofit corporation while in the performance of their duties as members of such department and shall be considered as having entered and as acting in the regular course and scope of their employment from the instant such persons commence responding to a call to active duty, whether to a fire station or other place where firefighting equipment that their company or unit is to use is located or to any activities that the volunteer firefighters may be directed to do by the chief of the fire department or some person authorized to act for such chief. Such volunteers shall be deemed employees of such rural or suburban fire protection district, city, village, or nonprofit corporation until their return to the location from which they were initially called to active duty or until they engage in any activity beyond the scope of the performance of their duties, whichever occurs first.

Members of such volunteer fire department, before they are entitled to benefits under the Nebraska Workers' Compensation Act, shall be recommended by the chief of the fire department or some person authorized to act for such chief for membership therein to the board of directors of the rural or suburban fire protection district or nonprofit corporation, the mayor and city commission, the mayor and council, or the chairperson and board of trustees, as the case may be, and upon confirmation shall be deemed employees of such entity. Members of such fire department after confirmation to membership may be removed by a majority vote of the entity's board of directors or governing body and thereafter shall not be considered employees of such entity. Firefighters of any fire department of any rural or suburban fire protection district, nonprofit corporation, city, or village shall be considered as acting in the performance and within the course and scope of their employment when performing activities outside of the corporate limits of their respective districts, cities, or villages, but only if directed to do so by the chief of the fire department or some person authorized to act for such chief;

(4) Members of the Nebraska Emergency Management Agency, any city, village, county, or interjurisdictional emergency management organization, or any state emergency response team, which agency, organization, or team is regularly organized under the laws of the State of Nebraska. Such members shall be deemed employees of such agency, organization, or team while in the performance of their duties as members of such agency, organization, or team;

(5) Any person fulfilling conditions of probation, or community

service as defined in section 29-2277, pursuant to any order of any court of this state who shall be working for a governmental body, or agency as defined in section 29-2277, pursuant to any condition of probation, or community service as defined in section 29-2277. Such person shall be deemed an employee of the governmental body or agency for the purposes of the Nebraska Workers' Compensation Act;

(6) Volunteer ambulance drivers and attendants and out-of-hospital emergency care providers who are members of an emergency medical service for any county, city, village, rural or suburban fire protection district, nonprofit corporation, or any combination of such entities under the authority of section 13-303. Such volunteers shall be deemed employees of such entity or combination thereof while in the performance of their duties as ambulance drivers or attendants or out-of-hospital emergency care providers and shall be considered as having entered into and as acting in the regular course and scope of their employment from the instant such persons commence responding to a call to active duty, whether to a hospital or other place where the ambulance they are to use is located or to any activities that the volunteer ambulance drivers or attendants or out-of-hospital emergency care providers may be directed to do by the chief or some person authorized to act for such chief of the volunteer ambulance service or out-of-hospital emergency care service. Such volunteers shall be deemed employees of such county, city, village, rural or suburban fire protection district, nonprofit corporation, or combination of such entities until their return to the location from which they were initially called to active duty or until they engage in any activity beyond the scope of the performance of their duties, whichever occurs first. Before such volunteer ambulance drivers or attendants or out-of-hospital emergency care providers are entitled to benefits under the Nebraska Workers' Compensation Act, they shall be recommended by the chief or some person authorized to act for such chief of the volunteer ambulance service or out-of-hospital emergency care service for membership therein to the board of directors of the rural or suburban fire protection district or nonprofit corporation, the governing body of the county, city, or village, or combination thereof, as the case may be, and upon such confirmation shall be deemed employees of such entity or combination thereof. Members of such volunteer ambulance or out-of-hospital emergency care service after confirmation to membership may be removed by majority vote of the entity's board of directors or governing body and thereafter shall not be considered employees of such entity. Volunteer ambulance drivers and attendants and out-of-hospital emergency care providers for any county, city, village, rural or suburban fire protection district, nonprofit corporation, or any combination thereof shall be considered as acting in the performance and within the course and scope of their employment when performing activities outside of the corporate limits of their respective county, city, village, or district, but only if directed to do so by the chief or some person authorized to act for such chief;

(7) Members of a law enforcement reserve force appointed in accordance with section 81-1438. Such members shall be deemed employees of the county or city for which they were appointed;

(8) Any offender committed to the Department of Correctional Services who is employed pursuant to section 81-1827. Such offender shall be deemed an employee of the Department of Correctional Services solely for purposes of the Nebraska Workers' Compensation Act;

(9) An executive officer of a corporation elected or appointed under the provisions or authority of the charter, articles of incorporation, or bylaws of such corporation who owns less than twenty-five percent of the common stock of such corporation or an executive officer of a nonprofit corporation elected or appointed under the provisions or authority of the charter, articles of incorporation, or bylaws of such corporation who receives annual compensation of more than one thousand dollars from such corporation. Such executive officer shall be an employee of such corporation under the Nebraska Workers' Compensation Act.

An executive officer of a corporation who owns twenty-five percent or more of the common stock of such corporation or an executive officer of a nonprofit corporation who receives annual compensation of one thousand dollars or less from such corporation shall not be construed to be an employee of the corporation under the Nebraska Workers' Compensation Act unless such executive officer elects to bring himself or herself within the provisions of the act. Such election shall be in writing and filed with the secretary of the corporation and with the workers' compensation insurer. Such election shall be effective upon receipt by the insurer for the current policy and subsequent policies issued by such insurer and shall remain in effect until the election is terminated, in writing, by the officer and the termination

is filed with the insurer or until the insurer ceases to provide coverage for the corporation, whichever occurs first. Any such termination of election shall also be filed with the secretary of the corporation. If insurance is provided through a master policy or a multiple coordinated policy pursuant to the Professional Employer Organization Registration Act on or after January 1, 2012, then such election or termination of election shall also be filed with the professional employer organization. If coverage under the master policy or multiple coordinated policy ceases, then such election shall also be effective for a replacement master policy or multiple coordinated policy obtained by the professional employer organization and shall remain in effect for the new policy as provided in this subdivision. If such an executive officer has not elected to bring himself or herself within the provisions of the aet Nebraska Workers' Compensation Act pursuant to this subdivision and a health, accident, or other insurance policy covering such executive officer contains an exclusion of coverage if the executive officer is otherwise entitled to workers' compensation coverage, such exclusion is null and void as to such executive officer.

It is the intent of the Legislature that the changes made to this subdivision by Laws 2002, LB 417, shall apply to policies of insurance against liability arising under the act with an effective date on or after January 1, 2003, but shall not apply to any such policy with an effective date prior to January 1, 2003;

(10) Each individual employer, partner, limited liability company member, or self-employed person who is actually engaged in the individual employer's, partnership's, limited liability company's, or self-employed person's business on a substantially full-time basis who elects to bring himself or herself within the provisions of the Nebraska Workers' Compensation Act. Such election shall be in writing and filed with the workers' compensation insurer. Such election shall be effective upon receipt by the insurer for the current policy and subsequent policies issued by such insurer and shall remain in effect until the election is terminated, in writing, by such person and the termination is filed with the insurer or until the insurer ceases to provide coverage for the business, whichever occurs first. If insurance is provided through a master policy or a multiple coordinated policy pursuant to the Professional Employer Organization Registration Act on or after January 1, 2012, then such election or termination of election shall also be filed with the professional employer organization. If coverage under the master policy or multiple coordinated policy ceases, then such election shall also be effective for a replacement master policy or multiple coordinated policy obtained by the professional employer organization and shall remain in effect for the new policy as provided in this subdivision. If any such person who is actually engaged in the business on a substantially full-time basis has not elected to bring himself or herself within the provisions of the Nebraska Workers' Compensation Act pursuant to this subdivision and a health, accident, or other insurance policy covering such person contains an exclusion of coverage if such person is otherwise entitled to workers' compensation coverage, such exclusion shall be null and void as to such person; and

(11) An individual lessor of a commercial motor vehicle leased to a motor carrier and driven by such individual lessor who elects to bring himself or herself within the provisions of the Nebraska Workers' Compensation Act. Such election is made if he or she agrees in writing with the motor carrier to have the same rights as an employee only for purposes of workers' compensation coverage maintained by the motor carrier. For an election under this subdivision, the motor carrier's principal place of business must be in this state and the motor carrier must be authorized to self-insure liability under the Nebraska Workers' Compensation Act. Such an election shall (a) be effective from the date of such written agreement until such agreement is terminated, (b) be enforceable against such self-insured motor carrier in the same manner and to the same extent as claims arising under the Nebraska Workers' Compensation Act by employees of such self-insured motor carrier, and (c) not be deemed to be a contract of insurance for purposes of Chapter 44. Section 48-111 shall apply to the individual lessor and the self-insured motor carrier with respect to personal injury or death caused to such individual lessor by accident or occupational disease arising out of and in the course of performing services for such self-insured motor carrier in connection with such lease while such election is effective.

Sec. 15. Section 48-144.03, Revised Statutes Supplement, 2009, is amended to read:

48-144.03 (1) Notwithstanding policy provisions that stipulate a workers' compensation insurance policy to be a contract with a fixed term of coverage that expires at the end of the term, coverage under a workers'

compensation insurance policy shall continue in full force and effect until notice is given in accordance with this section.

(2) No cancellation of a workers' compensation insurance policy within the policy period shall be effective unless notice of the cancellation is given by the workers' compensation insurer to the Nebraska Workers' Compensation Court and to the employer. No such cancellation shall be effective until thirty days after the giving of such notices, except that the cancellation may be effective ten days after the giving of such notices if such cancellation is based on (a) notice from the employer to the insurer to cancel the policy, (b) nonpayment of premium due the insurer under any policy written by the insurer for the employer, (c) failure of the employer to reimburse deductible losses as required under any policy written by the insurer for the employer, or (d) failure of the employer, if covered pursuant to section 44-3,158, to comply with sections 48-443 to 48-445.

(3) No workers' compensation insurance policy shall expire or lapse at the end of the policy period unless notice of nonrenewal is given by the workers' compensation insurer to the compensation court and to the employer. No workers' compensation insurance policy shall expire or lapse until thirty days after the giving of such notices, except that a policy may expire or lapse ten days after the giving of such notices if the nonrenewal is based on (a) notice from the employer to the insurer to not renew the policy, (b) nonpayment of premium due the insurer under any policy written by the insurer for the employer, (c) failure of the employer to reimburse deductible losses as required under any policy written by the insurer for the employer, or (d) failure of the employer, if covered pursuant to section 44-3,158, to comply with sections 48-443 to 48-445.

(4) Subsections (2) and (3) of this section terminate on January 1, 2012. Subsections (5), (6), and (7) of this section apply beginning on January 1, 2012.

(5)(a) This subsection applies to workers' compensation policies other than master policies or multiple coordinated policies obtained by a professional employer organization.

(b) No cancellation of a policy within the policy period shall be effective unless notice of the cancellation is given by the workers' compensation insurer to the compensation court and to the employer. No such cancellation shall be effective until thirty days after giving such notices, except that the cancellation may be effective ten days after the giving of such notices if such cancellation is based on (i) notice from the employer to the insurer to cancel the policy, (ii) nonpayment of premium due the insurer under any policy written by the insurer for the employer, (iii) failure of the employer to reimburse deductible losses as required under any policy written by the insurer for the employer, or (iv) failure of the employer, if covered pursuant to section 44-3,158, to comply with sections 48-443 to 48-445.

(c) No policy shall expire or lapse at the end of the policy period unless notice of nonrenewal is given by the workers' compensation insurer to the compensation court and to the employer. No policy shall expire or lapse until thirty days after giving such notices, except that a policy may expire or lapse ten days after the giving of such notices if the nonrenewal is based on (i) notice from the employer to the insurer to not renew the policy, (ii) nonpayment of premium due the insurer under any policy written by the insurer for the employer, (iii) failure of the employer to reimburse deductible losses as required under any policy written by the insurer for the employer, or (iv) failure of the employer, if covered pursuant to section 44-3,158, to comply with sections 48-443 to 48-445.

(6)(a) This subsection applies to workers' compensation master policies obtained by a professional employer organization.

(b) No cancellation of a master policy within the policy period shall be effective unless notice of the cancellation is given by the workers' compensation insurer to the compensation court and to the professional employer organization. No such cancellation shall be effective until thirty days after giving such notices.

(c) No termination of coverage for a client or any employees of a client under a master policy within the policy period shall be effective unless notice is given by the workers' compensation insurer to the compensation court and to the professional employer organization. No such termination of coverage shall be effective until thirty days after giving such notices, except that the termination of coverage may be effective ten days after the giving of such notices if such termination is based on (i) notice from the client to the professional employer organization or the insurer to terminate the coverage or (ii) notice from the professional employer organization of the client's nonpayment of premium.

(d) No master policy shall expire or lapse at the end of

the policy period unless notice of nonrenewal is given by the workers' compensation insurer to the compensation court and to the professional employer organization. No master policy shall expire or lapse until thirty days after giving such notices.

(e) Notice of the cancellation or nonrenewal of a master policy or the termination of coverage for a client or the employees of a client under such a policy shall be given by the professional employer organization to the client within fifteen days after the cancellation, nonrenewal, or termination unless replacement coverage has been obtained.

(7) (a) This subsection applies to workers' compensation multiple coordinated policies obtained by a professional employer organization.

(b) No cancellation of a policy within the policy period shall be effective unless notice of the cancellation is given by the workers' compensation insurer to the compensation court, to the professional employer organization, and to the client employer. No such cancellation shall be effective until thirty days after giving such notices, except that the cancellation may be effective ten days after giving such notices if such cancellation is based on (i) notice from the client to the professional employer organization or the insurer to cancel the policy, (ii) notice from the professional employer organization of the client's nonpayment of premium or failure to reimburse deductibles for policies issued pursuant to section 48-146.03, (iii) failure of the client, if covered pursuant to section 44-3,158, to comply with sections 48-443 to 48-445, or (iv) for policies issued pursuant to section 44-3,158, nonpayment of premium or failure to reimburse deductibles for policies issued pursuant to section 48-146.03.

(c) No termination of coverage for any employees of the client during the policy period shall be effective unless notice is given by the workers' compensation insurer to the compensation court, to the professional employer organization, and to the client. No such termination of coverage shall be effective until thirty days after giving such notices, except that the termination of coverage may be effective ten days after the giving of such notices if such termination is based on (i) notice from the client to the professional employer organization or the insurer to terminate the coverage or (ii) notice from the professional employer organization of the client's nonpayment of premium or failure to reimburse deductibles for policies issued pursuant to section 48-146.03.

(d) No policy shall expire or lapse at the end of the policy period unless notice of nonrenewal is given by the workers' compensation insurer to the compensation court, to the professional employer organization, and to the client. No policy shall expire or lapse until thirty days after giving such notices, except that a policy may expire or lapse ten days after the giving of such notices if the nonrenewal is based on (i) notice from the client to the professional employer organization or the insurer to not renew the policy, (ii) notice from the professional employer organization of the client's nonpayment of premium or failure to reimburse deductibles for policies issued pursuant to section 48-146.03, (iii) failure of the client, if covered pursuant to section 44-3,158, to comply with sections 48-443 to 48-445, or (iv) for policies issued pursuant to section 44-3,158, nonpayment of premium or failure to reimburse deductibles for policies issued pursuant to section 48-146.03.

(e) An insurer may refrain from sending notices required by this subsection to a professional employer organization's client based upon the professional employer organization's representation that coverage has been or will be replaced. Such representation shall not absolve the insurer of its responsibility to continue coverage if such representation proves inaccurate.

~~(4)~~ (8) Notwithstanding other provisions of this section, if the employer has secured replacement workers' compensation insurance coverage has been secured with another workers' compensation insurer, then the cancellation or nonrenewal of the policy or the termination of coverage for a client or employees of a client under the policy shall be effective as of the effective date of such other insurance coverage.

~~(5)~~ (9) The notices required by this section shall state the reason for the cancellation or nonrenewal of the policy or termination of coverage for a client or employees of a client under a policy.

~~(6)~~ (10) The notices required by this section shall be provided in writing and shall be deemed given upon the mailing of such notices by certified mail, except that notices from insurers to the compensation court may be provided by electronic means if such electronic means is approved by the administrator of the compensation court. If notice is provided by electronic means pursuant to such an approval, it shall be deemed given upon receipt and acceptance by the compensation court.

Sec. 16. Section 48-145, Revised Statutes Cumulative Supplement,

2008, is amended to read:

48-145 To secure the payment of compensation under the Nebraska Workers' Compensation Act:

(1) Every employer in the occupations described in section 48-106, except the State of Nebraska and any governmental agency created by the state, shall either (a) insure and keep insured its liability under such act in some corporation, association, or organization authorized and licensed to transact the business of workers' compensation insurance in this state, (b) in the case of an employer who is a lessor of one or more commercial vehicles leased to a self-insured motor carrier, be a party to an effective agreement with the self-insured motor carrier under section 48-115.02, (c) be a member of a risk management pool authorized and providing group self-insurance of workers' compensation liability pursuant to the Intergovernmental Risk Management Act, or (d) with approval of the Nebraska Workers' Compensation Court, self-insure its workers' compensation liability.

An employer seeking approval to self-insure shall make application to the compensation court in the form and manner as the compensation court may prescribe, meet such minimum standards as the compensation court shall adopt and promulgate by rule and regulation, and furnish to the compensation court satisfactory proof of financial ability to pay direct the compensation in the amount and manner when due as provided for in the Nebraska Workers' Compensation Act. Approval is valid for the period prescribed by the compensation court unless earlier revoked pursuant to this subdivision or subsection (1) of section 48-146.02. Notwithstanding subdivision (1)(d) of this section, a professional employer organization shall not be eligible to self-insure its workers' compensation liability. The compensation court may by rule and regulation require the deposit of an acceptable security, indemnity, trust, or bond to secure the payment of compensation liabilities as they are incurred. The agreement or document creating a trust for use under this section shall contain a provision that the trust may only be terminated upon the consent and approval of the compensation court. Any beneficial interest in the trust principal shall be only for the benefit of the past or present employees of the self-insurer and any persons to whom the self-insurer has agreed to pay benefits under subdivision (11) of section 48-115 and section 48-115.02. Any limitation on the termination of a trust and all other restrictions on the ownership or transfer of beneficial interest in the trust assets contained in such agreement or document creating the trust shall be enforceable, except that any limitation or restriction shall be enforceable only if authorized and approved by the compensation court and specifically delineated in the agreement or document.

Notwithstanding any other provision of the Nebraska Workers' Compensation Act, a three-judge panel of the compensation court may, after notice and hearing, revoke approval as a self-insurer if it finds that the financial condition of the self-insurer or the failure of the self-insurer to comply with an obligation under the act poses a serious threat to the public health, safety, or welfare. The Attorney General, when requested by the administrator of the compensation court, may file a motion pursuant to section 48-162.03 for an order directing a self-insurer to appear before a three-judge panel of the compensation court and show cause as to why the panel should not revoke approval as a self-insurer pursuant to this subdivision. The Attorney General shall be considered a party for purposes of such motion. The Attorney General may appear before the three-judge panel and present evidence that the financial condition of the self-insurer or the failure of the self-insurer to comply with an obligation under the act poses a serious threat to the public health, safety, or welfare. The presiding judge shall rule on a motion of the Attorney General pursuant to this subdivision and, if applicable, shall appoint judges of the compensation court to serve on the three-judge panel. The presiding judge shall not serve on such panel. Appeal from a revocation pursuant to this subdivision shall be in accordance with section 48-185. No such appeal shall operate as a supersedeas unless the self-insurer executes to the compensation court a bond with one or more sureties authorized to do business within the State of Nebraska in an amount determined by the three-judge panel to be sufficient to satisfy the obligations of the self-insurer under the act;

(2) An approved self-insurer shall furnish to the State Treasurer an annual amount equal to two and one-half percent of the prospective loss costs for like employment but in no event less than twenty-five dollars. Prospective loss costs is defined in section 48-151. The compensation court is the sole judge as to the prospective loss costs that shall be used. All money which a self-insurer is required to pay to the State Treasurer, under this subdivision, shall be computed and tabulated under oath as of January 1 and paid to the State Treasurer immediately thereafter. The compensation court

or designee of the compensation court may audit the payroll of a self-insurer at the compensation court's discretion. All money paid by a self-insurer under this subdivision shall be credited to the General Fund;

(3) Every employer who fails, neglects, or refuses to comply with the conditions set forth in subdivision (1) or (2) of this section shall be required to respond in damages to an employee for personal injuries, or when personal injuries result in the death of an employee, then to his or her dependents; and

(4) Any security, indemnity, trust, or bond provided by a self-insurer pursuant to subdivision (1) of this section shall be deemed a surety for the purposes of the payment of valid claims of the self-insurer's employees and the persons to whom the self-insurer has agreed to pay benefits under the Nebraska Workers' Compensation Act pursuant to subdivision (11) of section 48-115 and section 48-115.02 as generally provided in the act.

Sec. 17. Section 48-146, Revised Statutes Cumulative Supplement, 2008, is amended to read:

48-146 No policy of insurance against liability arising under the Nebraska Workers' Compensation Act shall be issued and no agreement pursuant to section 44-4304 providing group self-insurance coverage of workers' compensation liability by a risk management pool shall have any force or effect unless it contains the agreement of the workers' compensation insurer or risk management pool that it will promptly pay to the person entitled to the same all benefits conferred by such act, and all installments of the compensation that may be awarded or agreed upon, and that the obligation shall not be affected by the insolvency or bankruptcy of the employer or his or her estate or discharge therein or by any default of the insured employer after the injury, or by any default in the giving of any notice required by such policy, or otherwise. Such agreement shall be construed to be a direct promise by the workers' compensation insurer or risk management pool to the person entitled to compensation enforceable in his or her name. Each workers' compensation insurance policy and each agreement forming a risk management pool shall be deemed to be made subject to the Nebraska Workers' Compensation Act. No corporation, association, or organization shall enter into a workers' compensation insurance policy unless copies of such forms have been filed with and approved by the Department of Insurance. Each workers' compensation insurance policy and each agreement pursuant to section 44-4304 providing group self-insurance coverage of workers' compensation liability by a risk management pool shall contain a clause to the effect (1) that as between the employer and the workers' compensation insurer or risk management pool the notice to or knowledge of the occurrence of the injury on the part of the insured employer shall be deemed notice or knowledge, as the case may be, on the part of the insurer or risk management pool, (2) that jurisdiction of the insured employer for the purpose of such act shall be jurisdiction of the insurer or risk management pool, and (3) that the insurer or risk management pool shall in all things be bound by the awards, judgments, or decrees rendered against such insured. Each employer. Except when the Professional Employer Organization Registration Act allows coverage to be limited to co-employees as specified in a professional employer agreement, each workers' compensation insurance policy and each agreement providing such group self-insurance coverage shall include within its terms the payment of compensation to all employees who are within the scope and purview of the Nebraska Workers' Compensation Act, including potential new or unknown employees.

Sec. 18. Section 48-151, Reissue Revised Statutes of Nebraska, is amended to read:

48-151 Throughout the Nebraska Workers' Compensation Act, the following words and phrases shall be considered to have the following meaning, respectively, unless the context clearly indicates a different meaning in the construction used:

(1) Physician means any person licensed to practice medicine and surgery, osteopathic medicine, chiropractic, podiatry, or dentistry in the State of Nebraska or in the state in which the physician is practicing;

(2) Accident means an unexpected or unforeseen injury happening suddenly and violently, with or without human fault, and producing at the time objective symptoms of an injury. The claimant has the burden of proof to establish by a preponderance of the evidence that such unexpected or unforeseen injury was in fact caused by the employment. There is no presumption from the mere occurrence of such unexpected or unforeseen injury that the injury was in fact caused by the employment;

(3) Occupational disease means only a disease which is due to causes and conditions which are characteristic of and peculiar to a particular trade, occupation, process, or employment and excludes all ordinary diseases of life

to which the general public is exposed;

(4) Injury and personal injuries mean only violence to the physical structure of the body and such disease or infection as naturally results therefrom. The terms include disablement resulting from occupational disease arising out of and in the course of the employment in which the employee was engaged and which was contracted in such employment. The terms include an aggravation of a preexisting occupational disease, the employer being liable only for the degree of aggravation of the preexisting occupational disease. The terms do not include disability or death due to natural causes but occurring while the employee is at work and do not include an injury, disability, or death that is the result of a natural progression of any preexisting condition;

(5) Death, when mentioned as a basis for the right to compensation, means only death resulting from such violence and its resultant effects or from occupational disease;

(6) Without otherwise affecting either the meaning or the interpretation of the abridged clause, personal injuries arising out of and in the course of employment, it is hereby declared not to cover workers except while engaged in, on, or about the premises where their duties are being performed or where their service requires their presence as a part of such service at the time of the injury and during the hours of service as such workers, and not to cover workers who on their own initiative leave their line of duty or hours of employment for purposes of their own. Property maintained by an employer is considered the premises of such employer for purposes of determining whether the injury arose out of employment;

(7) Willful negligence consists of (a) a deliberate act, (b) such conduct as evidences reckless indifference to safety, or (c) intoxication at the time of the injury, such intoxication being without the consent, knowledge, or acquiescence of the employer or the employer's agent;

(8) Intoxication includes, but is not limited to, being under the influence of a controlled substance not prescribed by a physician;

(9) Prospective loss costs means prospective loss costs as defined in section 44-7504 and prepared, filed, or distributed by an advisory organization which has been issued a certificate of authority pursuant to section 44-7518; and

(10) Client means client as defined in section 2 of this act;

(11) Professional employer organization means professional employer organization as defined in section 2 of this act;

(12) Multiple coordinated policy means multiple coordinated policy as defined in section 2 of this act;

(13) Master policy means master policy as defined in section 2 of this act; and

~~(10)~~ (14) Whenever in the Nebraska Workers' Compensation Act the singular is used, the plural is considered included; when the masculine gender is used, the feminine is considered included.

Sec. 19. Section 48-443, Reissue Revised Statutes of Nebraska, is amended to read:

48-443 ~~(1)~~ (1)(a) Not later than January 1, 1994, every public and private employer subject to the Nebraska Workers' Compensation Act shall establish a safety committee. Such committee shall adopt and maintain an effective written injury prevention program.

(b) A client of a professional employer organization is not relieved of its obligation to establish a safety committee based on its workers being co-employees of the professional employer organization. A professional employer agreement shall not allocate the client's responsibility to establish a safety committee to the professional employer organization. For purposes of this subdivision, the terms client, professional employer organization, and professional employer agreement shall have the same meaning as in section 2 of this act. This subdivision becomes operative on January 1, 2012.

(2)(a) For employers subject to collective-bargaining agreements, the establishment of the safety committee shall be accomplished through the collective-bargaining process.

(b) For employers not subject to collective-bargaining agreements, the safety committee shall be composed of an equal number of members representing employees and the employer. Employee members shall not be selected by the employer but shall be selected pursuant to procedures prescribed in rules and regulations adopted and promulgated by the Commissioner of Labor.

(c) The cost of maintaining and operating the safety committee shall be minimal to the employer.

(3) An employer shall compensate employee members of the safety committee at their regular hourly wage plus their regular benefits while the

employees are attending committee meetings or otherwise engaged in committee duties.

(4) An employee shall not be discharged or discriminated against by his or her employer because he or she makes any oral or written complaint to the safety committee or any governmental agency having regulatory responsibility for occupational safety and health, and any employee so discharged or discriminated against shall be reinstated and shall receive reimbursement for lost wages and work benefits caused by the employer's action.

Sec. 20. Section 48-602, Revised Statutes Cumulative Supplement, 2008, is amended to read:

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

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

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

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

(4) Calendar quarter means the period of three consecutive calendar months ending on March 31, June 30, September 30, or December 31, or the equivalent thereof as the Commissioner of Labor may by rule and regulation prescribe;

(5) Client means any individual, partnership, limited liability company, corporation, or other legally recognized entity that contracts with a professional employer organization to obtain professional employer services relating to worksite employees through a professional employer agreement;

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

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

(8) Commissioner means the Commissioner of Labor;

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

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

(11) Department means the Department of Labor;

(12) Employment office means a free public employment office or branch thereof, operated by this state or maintained as a part of a state-controlled system of public employment offices, including public employment offices operated by an agency of a foreign government;

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

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

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

colleges and universities in this state are institutions of higher education for purposes of this section;

(16) Insured work means employment for employers;

(17) Leave of absence means any absence from work: (a) Mutually and voluntarily agreed to by the employer and the employee; (b) mutually and voluntarily agreed to between the employer and the employee's bargaining agent; or (c) to which the employee is entitled to as a matter of state or federal law;

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

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

(20) Professional employer agreement means a written professional employer services contract whereby:

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

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

(c) Employer responsibilities for worksite employees, including those of hiring, firing, and disciplining, are shared between the professional employer organization and the client by contract. The term professional employer agreement shall not include a contract between a parent corporation, company, or other entity and a wholly owned subsidiary;

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

(22) State includes, in addition to the states of the United States of America, any dependency of the United States, the Commonwealth of Puerto Rico, the Virgin Islands, and the District of Columbia;

(23) State unemployment insurance tax means that portion of the combined tax which is based upon the state unemployment insurance tax rate portion of the combined tax rate and which is deposited in the State Unemployment Insurance Trust Fund as required by sections 48-648 and 48-649;

(24) State unemployment insurance tax rate means the percentage of the combined tax rate used to determine the state unemployment insurance tax portion of the combined tax;

(25) Temporary employee means an employee of a temporary help firm assigned to work for the clients of such temporary help firm;

(26) Temporary help firm means a firm that hires its own employees and assigns them to clients to support or supplement the client's work force in work situations such as employee absences, temporary skill shortages, seasonal workloads, and special assignments and projects;

(27) Unemployed means an individual during any week in which the individual performs no service and with respect to which no wages are payable to the individual or any week of less than full-time work if the wages payable with respect to such week are less than the individual's weekly benefit amount, but does not include any individual on a leave of absence or on paid vacation leave. When an agreement between the employer and a bargaining unit representative does not allocate vacation pay allowance or pay in lieu of vacation to a specified period of time during a period of temporary layoff or plant shutdown, the payment by the employer or his or her designated representative will be deemed to be wages as defined in this section in the week or weeks the vacation is actually taken;

(28) Unemployment Trust Fund means the trust fund in the Treasury of the United States of America established under section 904 of the federal Social Security Act, 42 U.S.C. 1104, as such section existed on March 2, 2001, which receives credit from the state Unemployment Compensation Fund;

(29) Wages, except with respect to services performed in employment as provided in subdivisions (4)(c) and (d) of section 48-604, means all remuneration for personal services, including commissions and bonuses, remuneration for personal services paid under a contract of hire, and the cash value of all remunerations in any medium other than cash. The reasonable cash value of remuneration in any medium other than cash shall be estimated and determined in accordance with rules and regulations prescribed by the

commissioner. After December 31, 1985, wages includes tips which are received while performing services which constitute employment and which are included in a written statement furnished to the employer pursuant to section 6053(a) of the Internal Revenue Code as defined in section 49-801.01.

With respect to services performed in employment in agricultural labor as is provided in subdivision (4)(c) of section 48-604, wages means cash remuneration and the cash value of commodities not intended for personal consumption by the worker and his or her immediate family for such services. With respect to services performed in employment in domestic service as is provided in subdivision (4)(d) of section 48-604, wages means cash remuneration for such services.

The term wages does not include:

(a) The amount of any payment, including any amount paid by an employer for insurance or annuities or into a fund to provide for such payment, made to, or on behalf of, an individual in employment or any of his or her dependents under a plan or system established by an employer which makes provision for such individuals generally or for a class or classes of such individuals, including any amount paid by an employer for insurance or annuities or into a fund to provide for any such payment, on account of (i) sickness or accident disability, except, in the case of payments made to an employee or any of his or her dependents, this subdivision (i) shall exclude from wages only payments which are received under a workers' compensation law, (ii) medical and hospitalization expenses in connection with sickness or accident disability, or (iii) death;

(b) The payment by an employer, without deduction from the remuneration of the employee, of the tax imposed upon an employee under section 3101 of the Internal Revenue Code as defined in section 49-801.01;

(c) Any payment on account of sickness or accident disability, or medical or hospitalization expenses in connection with sickness or accident disability, made by an employer to, or on behalf of, an individual after the expiration of six calendar months following the last calendar month in which such individual worked for such employer;

(d) Any payment made to, or on behalf of, an individual or his or her beneficiary (i) from or to a trust described in section 401(a) of the Internal Revenue Code as defined in section 49-801.01 which is exempt from tax under section 501(a) of the Internal Revenue Code as defined in section 49-801.01 at the time of such payment unless such payment is made to an employee of the trust as remuneration for services rendered as such employee and not as a beneficiary of the trust or (ii) under or to an annuity plan which, at the time of such payment, meets the requirements of section 401 of the Internal Revenue Code as defined in section 49-801.01;

(e) Any payment made to, or on behalf of, an employee or his or her beneficiary (i) under a simplified employee pension as defined by the commissioner, (ii) under or to an annuity contract as defined by the commissioner, other than a payment for the purchase of such contract which is made by reason of a salary reduction agreement, whether evidenced by a written instrument or otherwise, (iii) under or to an exempt governmental deferred compensation plan as defined by the commissioner, (iv) to supplement pension benefits under a plan or trust, as defined by the commissioner, to take into account some portion or all of the increase in the cost of living since retirement, but only if such supplemental payments are under a plan which is treated as a welfare plan, or (v) under a cafeteria benefits plan;

(f) Remuneration paid in any medium other than cash to an individual for service not in the course of the employer's trade or business;

(g) Benefits paid under a supplemental unemployment benefit plan which satisfies the eight points set forth in Internal Revenue Service Revenue Ruling 56-249 as the ruling existed on March 2, 2001, and is in compliance with the standards set forth in Internal Revenue Service Revenue Rulings 58-128 and 60-330 as the rulings existed on March 2, 2001; and

(h) Remuneration for service performed in the employ of any state in the exercise of his or her duties as a member of the Army National Guard or Air National Guard or in the employ of the United States of America as a member of any military reserve unit;

(30) Week means such period of seven consecutive days as the commissioner may by rule and regulation prescribe;

(31) Week of unemployment with respect to any individual means any week during which he or she performs less than full-time work and the wages payable to him or her with respect to such week are less than his or her weekly benefit amount;

(32) Wholly owned subsidiary means a corporation, company, or other entity which has eighty percent or more of its outstanding voting stock or membership owned or controlled, directly or indirectly, by the parent entity;

and

~~(33) Worksite~~ (33)(a) Until January 1, 2012, worksite employee means a person receiving wages or benefits from a professional employer organization pursuant to the terms of a professional employer agreement for work performed at a client's worksite.

(b) On and after January 1, 2012, worksite employee has the same meaning as the term covered employee in section 2 of this act.

Sec. 21. Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, and 11 of this act become operative on January 1, 2012. The other sections of this act become operative on their effective date.

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

Sec. 23. Original sections 44-7515, 48-151, and 48-443, Reissue Revised Statutes of Nebraska, sections 44-7504, 48-115, 48-145, 48-146, and 48-602, Revised Statutes Cumulative Supplement, 2008, and section 48-144.03, Revised Statutes Supplement, 2009, are repealed.