

AMENDMENTS TO LB 579

(Amendments to Standing Committee amendments, AM1323)

Introduced by Cornett, 45.

1 1. Strike the original sections and all amendments
2 thereto and insert the following new sections:

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

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

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

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

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

21 (a) The professional employer organization is entitled to
22 enforce only such employer rights and is subject to only those

1 employer obligations specifically allocated to the professional
2 employer organization by the professional employer agreement or the
3 act;

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

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

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

26 (5) Department means the Department of Labor;

27 (6) Direct-hire employee means an individual who is

1 an employee of the professional employer organization within the
2 meaning of the Nebraska Workers' Compensation Act and who is not an
3 employee of a client and who is not a covered employee;

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

13 (8) Multiple coordinated policy means a workers'
14 compensation insurance policy that provides coverage for only a
15 single client or group of clients under common ownership but with
16 payment obligations and certain policy communications coordinated
17 through the professional employer organization;

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

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

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

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

1 (c) That the professional employer organization and the
2 client assume the responsibilities required by the act;

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

10 The following are not professional employer organizations
11 or professional employment services for purposes of the act:

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

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

24 (c) Providing temporary help services;

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

27 (13) Registrant means a professional employer

1 organization registered under the act;

2 (14) Temporary help services means services consisting of
3 a person:

4 (a) Recruiting and hiring its own employees;

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

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

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

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

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

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

27 (i) Diminish, abolish, or remove rights of covered

1 employees as to a client or obligations of such client to a
2 covered employee existing prior to the effective date of the
3 professional employer agreement;

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

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

19 (iv) Diminish, abolish, or remove rights of covered
20 employees as to a client or obligations of a client to covered
21 employees, including, but not limited to, rights and obligations
22 arising from civil rights laws guaranteeing non-discrimination in
23 employment practices. For purposes of this subdivision, notice
24 served to either co-employer shall be considered notice to both
25 co-employers. Notice served to a co-employer shall be immediately
26 transmitted to the other co-employer.

27 (b) (i) Nothing contained in the act or any professional

1 employer agreement shall affect, modify, or amend any state, local,
2 or federal licensing, registration, or certification requirement
3 applicable to any client or covered employee.

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

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

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

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

1 uses the services of a professional employer organization.

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

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

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

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

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

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

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

26 (e) A statement of ownership, which shall include the
27 name and evidence of the business experience of any person that,

1 individually or acting in concert with one or more other persons,
2 owns or controls, directly or indirectly, twenty-five percent
3 or more of the equity interest of the professional employer
4 organization;

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

10 (g) A financial statement setting forth the financial
11 condition of the professional employer organization. At the time of
12 initial registration, the applicant shall submit the most recent
13 audit of the applicant, which audit may not be older than thirteen
14 months. Thereafter, a professional employer organization shall file
15 on an annual basis, within one hundred eighty days after the end of
16 the professional employer organization's fiscal year, a succeeding
17 audit. An applicant may apply for an extension with the department,
18 but any such request shall be accompanied by a letter from the
19 auditor stating the reasons for the delay and the anticipated audit
20 completion date.

21 The financial statement shall be prepared in accordance
22 with generally accepted accounting principles and audited by an
23 independent certified public accountant licensed to practice in
24 the jurisdiction in which such accountant is located and shall
25 be without qualification as to the going concern status of
26 the professional employer organization. A professional employer
27 organization that has not had sufficient operating history to have

1 audited financials based upon at least twelve months of operating
2 history shall meet the financial responsibility requirements of
3 section 5 of this act and present financial statements reviewed by
4 a certified public accountant.

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

12 (b) Each professional employer organization not operating
13 within this state as of the operative date of this act shall
14 complete its initial registration prior to initiating operations
15 within this state. If a professional employer organization not
16 registered in this state becomes aware that an existing client
17 not based in this state has employees and operations in this
18 state, the professional employer organization shall either decline
19 to provide professional employer organization services for those
20 employees or notify the department within five business days of its
21 knowledge of this fact and file a limited registration application
22 under subsection (6) of this section or a full registration if
23 there are more than fifty covered employees. The department may
24 issue an interim operating permit for the period the registration
25 application is pending if the professional employer organization
26 is currently registered or licensed by another state and the
27 department determines it to be in the best interests of the

1 potential covered employees.

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

8 (6) (a) A professional employer organization is eligible
9 for a limited registration under the act if such professional
10 employer organization:

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

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

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

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

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

23 (c) A professional employer organization seeking limited
24 registration under this section shall provide the department
25 with information and documentation necessary to show that the
26 professional employer organization qualifies for a limited
27 registration.

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

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

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

8 (9) The department shall, to the extent practical, permit
9 by rule and regulation the acceptance of electronic filings,
10 including applications, documents, reports, and other filings
11 required by the act. Such rule and regulation may provide for
12 the acceptance of electronic filings and other assurance by
13 an independent and qualified assurance organization approved by
14 the department that provides satisfactory assurance of compliance
15 acceptable to the department consistent with or in lieu of the
16 requirements of this section and section 5 of this act and other
17 requirements of the act or the rules and regulations adopted
18 and promulgated pursuant to the act. Such rule and regulation
19 shall permit a professional employer organization to authorize an
20 assurance organization approved by the department to act on the
21 professional employer organization's behalf in complying with the
22 registration requirements of the act, including electronic filings
23 of information and payment of registration fees. Use of such an
24 approved assurance organization shall be optional and not mandatory
25 for a registrant. Nothing in this subsection shall limit or change
26 the department's authority to register or terminate registration of
27 a professional employer organization or to investigate or enforce

1 any provision of the act.

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

8 Sec. 5. (1) Except as provided in subsections (6) and (9)
9 of section 4 of this act, each professional employer organization
10 shall submit, with an application for initial registration,
11 annual registration renewal, or limited registration, proof of
12 financial responsibility to secure payment upon nonpayment by the
13 professional employer organization of all taxes, wages, benefits,
14 or other entitlements due to or with respect to covered employees
15 as determined by rule and regulation of the department.

16 (2) Proof of financial responsibility may be in the
17 form of: (a) The maintenance of minimum cash balance deposits in
18 a financial institution; (b) a letter of credit; (c) a deposit
19 the equivalent of cash; or (d) such other proof of financial
20 responsibility as may be determined under the rules and regulations
21 adopted and promulgated by the department.

22 (3) The department shall determine the amount of proof
23 of financial responsibility required, except that such amount
24 shall not exceed the greater of two hundred thousand dollars
25 or one third of the annual payroll of the professional employer
26 organization for covered employees actually performing services in
27 the State of Nebraska during the calendar year immediately prior to

1 registration.

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

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

10 (a) The client shall be entitled to exercise all rights
11 and shall be obligated to perform all duties and responsibilities
12 otherwise applicable to an employer in an employment relationship;

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

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

1 applicable to the client or to the covered employees.

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

7 Each professional employer agreement shall include the following:

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

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

24 (c) A provision that the professional employer
25 organization shall have a right to hire, discipline, and terminate
26 a covered employee as may be necessary to fulfill the professional
27 employer organization's responsibilities under the act and the

1 professional employer agreement. The client shall have a right to
2 hire, discipline, and terminate a covered employee; and

3 (d) A provision that the responsibility to obtain
4 workers' compensation coverage for covered employees and for
5 other employees of the client, and from an insurer licensed to
6 do business in this state and otherwise in compliance with all
7 applicable requirements, shall be specifically allocated to either
8 the client or the professional employer organization. The client
9 shall not be relieved of its obligations under the Nebraska
10 Workers' Compensation Act to provide workers' compensation coverage
11 in the event that the professional employer organization fails to
12 obtain workers' compensation insurance for which it has assumed
13 responsibility.

14 (4) With respect to each professional employer agreement
15 entered into by a professional employer organization, such
16 professional employer organization shall provide written notice to
17 each covered employee affected by such agreement and require the
18 client to post in a conspicuous place at the client's worksite
19 notice of the general nature of the co-employment relationship
20 between and among the professional employer organization, the
21 client, and such covered employees.

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

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

27 (b) A client shall be solely responsible for directing,

1 supervising, training, and controlling the work of the covered
2 employees with respect to the business activities of the client
3 and solely responsible for the acts, errors, or omissions of the
4 covered employees with regard to such activities;

5 (c) A client shall not be liable for the acts, errors, or
6 omissions of a professional employer organization or of any covered
7 employee of the client and a professional employer organization
8 when such covered employee is acting under the express direction
9 and control of the professional employer organization;

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

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

23 (6) A professional employer organization shall not sell,
24 solicit, or negotiate insurance for a client, co-employee, or
25 other employee of a client, unless such professional employer
26 organization is licensed pursuant to the Insurance Producers
27 Licensing Act.

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

8 (8) Except as provided in subsection (7) of this
9 act, nothing in the act shall exempt a professional employer
10 organization from compliance with the insurance laws of this state.

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

13 (a) Covered employees whose services are subject to sales
14 tax shall be deemed the employees of the client for purposes of
15 collecting and levying sales tax on the services performed by the
16 covered employee. Nothing contained in the act shall relieve a
17 client of any sales tax liability with respect to its goods or
18 services;

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

1 professional employer agreement;

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

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

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

21 Sec. 7. If charges and premiums are collected on behalf
22 of more than one client, the professional employer organization
23 shall keep records clearly recording the deposits in and
24 withdrawals from an account which shall be held in a fiduciary
25 capacity on behalf of each client. The professional employer
26 organization shall keep copies of all the records pertaining to
27 such deposits and withdrawals and, upon request of a client, shall

1 furnish the client with an accounting and copies of the records.

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

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

13 (3) For purposes of the Small Employer Health Insurance
14 Availability Act, a professional employer organization shall not
15 be considered the employer of its covered employees and no covered
16 employees of any client participating in a health benefit plan
17 sponsored by a single professional employer organization shall be
18 considered an employee of the professional employer organization.

19 Sec. 9. (1) The responsibility to obtain workers'
20 compensation coverage for employees covered by the professional
21 employer agreement and for other employees of the client shall
22 be allocated in the professional employer agreement to the client
23 or the professional employer organization. If the professional
24 employer organization assumes any responsibility to provide
25 workers' compensation coverage, then the agreement shall also
26 specify the manner in which insurance will be provided. If any
27 such responsibility is allocated to the professional employer

1 organization, the professional employer organization shall advise
2 the client of the provisions of subdivisions (9) and (10) of
3 section 48-115.

4 (2) (a) If all employees of the client are not covered
5 employees under the professional employer agreement, then a
6 workers' compensation insurance policy obtained by the professional
7 employer organization to cover employees of the client may be
8 written to limit coverage to those employees who are co-employees
9 of the professional employer organization and the client. If a
10 professional employer organization's policy limits coverage to
11 co-employees as specified in the professional employer agreement,
12 then the client shall obtain an additional workers' compensation
13 insurance policy. The policy obtained by the client shall be
14 written to cover any and all employees not covered by the
15 professional employer organization's policy. All insurance policies
16 issued pursuant to this subsection shall be subject to and shall
17 comply with the requirements of this subsection and any rule or
18 regulation adopted by the Department of Insurance.

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

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

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

4 (e) If responsibility to obtain workers' compensation
5 coverage is allocated between the client and the professional
6 employer organization and if one of the required policies is
7 not in force, then the insurer writing the policy which is in
8 force shall administer and pay all claims arising under the
9 Nebraska Workers' Compensation Act for injury to any employee
10 of the client in accordance with the act. In such event, the
11 insurer may assign all of the client's exposures and losses
12 to its policy which is in force and it shall be entitled to
13 charge premiums for the exposures that it had not previously been
14 allocated. As an alternative, the insurer may seek reimbursement
15 from the uninsured client or professional employer organization
16 for otherwise uninsured losses that it became obligated to pay.
17 If an insurer obtains reimbursement for such losses, it may not
18 also collect a premium from the client or professional employer
19 organization for the uninsured allocation of employees for the
20 period of time during which valid workers' compensation insurance
21 was not in force.

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

24 (3) If the professional employer agreement allocates
25 responsibility to the professional employer organization to
26 obtain workers' compensation coverage only for co-employees,
27 then the professional employer organization shall provide the

1 following information to the administrator of the Nebraska Workers'
2 Compensation Court. Such information shall be provided prior to the
3 effective date of the professional employer agreement and prior to
4 any amendment of an agreement adding such provisions and shall be
5 provided in a form and manner prescribed by the administrator:

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

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

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

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

15 (e) Any other information the administrator may require.

16 (4) If workers' compensation coverage for a client's
17 employees covered by the professional employer agreement and for
18 other employees of the client is not entirely available in the
19 voluntary market, then assigned risk workers' compensation coverage
20 written subject to section 44-3,158 may only be written on a single
21 policy that covers all employees and co-employees of the client.
22 Assigned risk workers' compensation insurance for the professional
23 employer organization may also be written, but only on a basis
24 that covers its direct-hire employees and excludes employees and
25 co-employees of its clients.

26 (5) If a master policy or multiple coordinated policy
27 providing coverage to a client is obtained by a professional

1 employer organization, then the professional employer organization
2 shall, at the request of a client or an employee of the client
3 covered under the policy, notify the client or the employee of the
4 name of the insurer providing coverage, the policy number, and the
5 effective and expiration dates of the policy.

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

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

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

25 (9) The professional employer organization shall
26 not make any materially inaccurate, misleading, or fraudulent
27 representations to the client regarding the cost of workers'

1 compensation coverage. If the professional employer organization
2 charges the client a specified amount for workers' compensation
3 coverage, the professional employer organization shall provide
4 the client with an accurate and concise description of the
5 basis upon which it was calculated and the services that are
6 included. A professional employer organization shall not charge
7 a client a specified amount for workers' compensation coverage
8 that is materially inconsistent with the actual amounts that the
9 professional employer organization is charged by the insurer,
10 given reasonably anticipated loss-sensitive charges, if applicable,
11 reasonable recognition of the professional employer organization's
12 costs, and a margin for profit.

13 (10) The name and address of the workers' compensation
14 insurer and the individual to whom claims shall be directed shall
15 be conspicuously posted at the client's workplace. If more than one
16 workers' compensation insurer provides coverage for employees and
17 co-employees of the client, such information shall be posted for
18 all such workers' compensation insurers.

19 Sec. 10. The Department of Insurance shall adopt a
20 schedule of fees for initial registration, annual registration
21 renewal, and limited registration, not to exceed two thousand
22 five hundred dollars for initial registration, one thousand five
23 hundred dollars for annual registration renewal, and one thousand
24 dollars for limited registration. Such fees shall not exceed those
25 reasonably necessary for the administration of the Professional
26 Employer Organization Registration Act.

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

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

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

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

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

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

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

19 (b) Against a professional employer organization or a
20 controlling person of a professional employer organization upon the
21 conviction of a professional employer organization or a controlling
22 person of a professional employer organization of a crime that
23 relates to the operation of the professional employer organization
24 or the ability of a registrant or a controlling person of a
25 registrant to operate a professional employer organization;

26 (c) Against a professional employer organization or a
27 controlling person of a professional employer organization for

1 knowingly making a material misrepresentation to an insurer, an
2 insurance producer, the department, or other governmental agency;
3 or

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

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

14 (i) Deny an application for registration;

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

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

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

20 (v) Issue a cease and desist order.

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

24 (4) The department may adopt and promulgate rules
25 and regulations reasonably necessary for the administration and
26 enforcement of the Professional Employer Organization Registration
27 Act.

1 Sec. 12. Section 44-5702, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 44-5702 For purposes of the Producer-Controlled Property
4 and Casualty Insurer Act:

5 (1) Accredited state shall mean a state in which
6 the insurance department or regulatory agency has qualified as
7 meeting the minimum financial regulatory standards established and
8 promulgated from time to time by the National Association of
9 Insurance Commissioners;

10 (2) Captive insurers shall mean insurance companies owned
11 by another organization the exclusive purpose of which is to insure
12 risks of the parent organization and affiliated companies or, in
13 the case of groups and associations, insurance organizations owned
14 by the insureds the exclusive purpose of which is to insure risks
15 to member organizations or group members and their affiliates;

16 (3) Control or controlled shall have the same meaning as
17 in section 44-2121;

18 (4) Controlled insurer shall mean an insurer which is
19 controlled, directly or indirectly, by a producer;

20 (5) Controlling producer shall mean a producer which,
21 directly or indirectly, controls an insurer;

22 (6) Director shall mean the Director of Insurance;

23 (7) Insurer shall mean any person, firm, association, or
24 corporation holding a certificate of authority to transact property
25 and casualty insurance business in this state. Insurer shall not
26 include:

27 (a) Risk retention groups as defined in the Superfund

1 Amendments Reauthorization Act of 1986, Public Law 99-499, the Risk
2 Retention Act, 15 U.S.C. 3901 et seq., and the Risk Retention Act;

3 (b) Residual market pools and joint underwriting
4 authorities or associations; and

5 (c) Captive insurers; and

6 (8) Producer shall mean an insurance broker or any
7 other person, firm, association, or corporation when, for any
8 compensation, commission, or other thing of value, such person,
9 firm, association, or corporation acts or aids in any manner in
10 soliciting, negotiating, or procuring the making of any insurance
11 contract on behalf of an insured other than the person, firm,
12 association, or corporation. Producer includes a professional
13 employer organization that obtains workers' compensation or
14 employee benefits for employees of client employers or for workers
15 which it co-employs with client employers.

16 Sec. 13. Section 44-7504, Revised Statutes Cumulative
17 Supplement, 2008, is amended to read:

18 44-7504 For purposes of the Property and Casualty
19 Insurance Rate and Form Act:

20 (1) Advisory organization means any entity, including its
21 affiliates or subsidiaries, which (a) has majority ownership or
22 control by two or more insurers and assists two or more insurers
23 in activities related to ratemaking, the promulgation of policy
24 forms, or related matters or (b) makes the same prospective loss
25 cost or policy form filings on behalf of or to be available for
26 two or more insurers. For purposes of this subdivision, a group
27 of insurers under common ownership or control shall be considered

1 a single insurer. Advisory organization does not include joint
2 reinsurance pools, joint underwriting pools, or insurers engaged in
3 joint underwriting;

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

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

9 ~~(3)~~ (4) Director means the Director of Insurance;

10 ~~(4)~~ (5) Exempt commercial policyholder means an entity to
11 which specific aspects of rate or policy form regulation do not
12 apply or have been relaxed in accordance with rules and regulations
13 adopted and promulgated pursuant to section 44-7515;

14 ~~(5)~~ (6) Expense means that portion of a rate attributable
15 to acquisition, field supervision, collection expense, general
16 expense, taxes, licenses, and fees. Expense does not include loss
17 adjustment expense;

18 ~~(6)~~ (7) Experience rating plan means a rating formula
19 and related procedures that use past loss experience of an
20 individual policyholder to forecast future losses by measuring
21 the policyholder's loss experience against the expected losses
22 for policyholders in that classification to produce a prospective
23 premium credit, debit, or unity modification;

24 ~~(7)~~ (8) Joint reinsurance pool means an ongoing voluntary
25 arrangement pursuant to which two or more insurers participate in
26 the reinsurance of risks written by one or more member insurers
27 and reinsured by one or more other member insurers. For purposes

1 of this subdivision, a group of insurers under common ownership or
2 control shall be considered a single insurer. A joint reinsurance
3 pool may operate through an association, syndicate, or other
4 arrangement;

5 ~~(8)~~ (9) Joint underwriting means a voluntary arrangement
6 established on an individual risk basis by which two or more
7 insurers jointly contract to provide coverage for an insured.
8 For purposes of this subdivision, a group of insurers under
9 common ownership or control shall be considered a single insurer.
10 Joint underwriting does not include any arrangement by which
11 the participants are reinsuring the direct obligation of another
12 risk-assuming entity;

13 ~~(9)~~ (10) Joint underwriting pool means an ongoing
14 voluntary arrangement pursuant to which two or more insurers
15 participate in the sharing of risks written as their direct
16 obligations according to a predetermined basis and the insurance
17 remains the direct obligation of the pool participants. For
18 purposes of this subdivision, a group of insurers under common
19 ownership or control shall be considered a single insurer. A joint
20 underwriting pool may operate through an association, syndicate,
21 or other arrangement;

22 ~~(10)~~ (11) Loss adjustment expense means the expense
23 incurred by an insurer in the course of settling claims;

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

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

1 ~~(11)~~ (14) Policy form means all policies, certificates,
2 or other contracts providing insurance coverage. Policy form
3 includes bonds and includes riders, endorsements, or other
4 amendments to the policy form;

5 ~~(12)~~ (15) Premium means the cost of insurance to the
6 policyholder after all audit adjustments have been made and any
7 dividends payable have been subtracted;

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

11 ~~(13)~~ (17) Prospective loss cost means that portion of a
12 rate intended to provide for expected losses and loss adjustment
13 expenses. Prospective loss costs may provide for anticipated
14 special assessments. Prospective loss costs do not include
15 provisions for profits, dividends, or expenses other than loss
16 adjustment expenses;

17 ~~(14)~~ (18) Rating system means the information needed
18 to determine the applicable rate or premium including rates, any
19 manual or plan of rates, classifications, rating schedules, minimum
20 premiums, policy fees, payment plans, rating plans or rules,
21 anniversary rating date rules, and other similar information.
22 Rating system does not include dividend rating plans or other
23 provisions for the possible payment of dividends if such dividends
24 are declared by the insurer's board of directors and are not
25 guaranteed;

26 ~~(15)~~ (19) Special assessments means guaranty fund
27 assessments made pursuant to section 44-2407, Workers' Compensation

1 Trust Fund assessments made pursuant to section 48-162.02, residual
2 market assessments made pursuant to section 44-3,158 or 44-7528,
3 and similar assessments. Special assessments are not expenses or
4 losses;

5 ~~(16)~~ (20) Statistical agent means an entity that, for the
6 purpose of fulfilling the statistical reporting obligations of two
7 or more insurers under the act, collects or compiles statistics
8 from two or more insurers or provides reports developed from these
9 statistics to the director. For purposes of this subdivision,
10 a group of insurers under common ownership or control shall be
11 considered a single insurer; and

12 ~~(17)~~ (21) Supporting information means the experience
13 and judgment of the filer and the experience or data of other
14 insurers or advisory organizations relied upon by the filer,
15 the interpretation of any other data relied upon by the filer,
16 descriptions of methods used in developing a rating system, and any
17 other information required by the director to be filed.

18 Sec. 14. Section 44-7515, Reissue Revised Statutes of
19 Nebraska, is amended to read:

20 44-7515 (1) The director shall adopt and promulgate rules
21 and regulations to modify or eliminate requirements for insurers to
22 use filed rates and policy forms for commercial policyholders under
23 common ownership identified through the application of subsection
24 (4) of this section. Unless set forth by rules and regulations,
25 eligibility for a professional employer organization shall be
26 based upon the professional employer organization's total premiums,
27 including premiums for multiple coordinated policies written for

1 the professional employer organization's clients. Unless otherwise
2 set forth in the rules and regulations, the rules and regulations
3 apply to multiple coordinated policies written on behalf of an
4 eligible professional employer organization.

5 (2) The rules and regulations adopted and promulgated
6 pursuant to this section may establish requirements and thresholds
7 that differ by line or type of insurance or that differ for rates
8 and policy forms.

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

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

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

24 (b) For modification or elimination of the applicability
25 of filed rates, characteristics of insureds for which filed rates
26 and rating plans are less likely to provide the lowest premiums
27 otherwise consistent with the provisions of the Property and

1 Casualty Insurance Rate and Form Act;

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

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

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

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

18 (g) Any other relevant factor.

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

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

26 (a) The rules and regulations may not allow any reduction
27 of the benefits payable under workers' compensation or excess

1 workers' compensation policies or any alteration of provisions for
2 the handling and settlement of claims under such policies, but
3 the rules and regulations may allow exempt commercial policyholders
4 to negotiate workers' compensation or excess workers' compensation
5 premiums and premium payment provisions;

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

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

17 (d) The rules and regulations may not reduce the rate
18 regulatory requirements applying to ~~any policyholder~~ a professional
19 employer organization or to any individual policyholder that is
20 not a client of a professional employer organization with total
21 premiums of less than twenty-five thousand dollars for lines of
22 insurance subject to the Property and Casualty Insurance Rate and
23 Form Act; and

24 (e) The rules and regulations may not reduce the form
25 regulatory requirements applying to ~~any policyholder~~ a professional
26 employer organization or to any individual policyholder that is
27 not a client of a professional employer organization with total

1 premiums of less than fifty thousand dollars for lines of insurance
2 subject to the Property and Casualty Insurance Rate and Form Act;
3 and-

4 (f) The rules and regulations shall not be interpreted to
5 allow any form of workers' compensation deductible policy, except
6 for those otherwise specifically allowed by section 48-146.03, but
7 this shall not be interpreted to prohibit an insurer from writing
8 a retrospectively rated workers' compensation insurance policy with
9 rating characteristics similar to a deductible policy.

10 (7) Policy forms for commercial risks exempted by the
11 rules and regulations adopted and promulgated pursuant to this
12 section may include language that conflicts with section 44-501. If
13 a conflict results between a policy form and the requirements of
14 section 44-501, the language in the policy form shall apply to the
15 extent that it is inconsistent with such section.

16 (8) For workers' compensation insurance, an insurer may
17 not reduce its premium based upon a reinsurance contract with an
18 insurer affiliated with the policyholder that provides reinsurance
19 coverage at a price materially lower than would be available in the
20 competitive market.

21 Sec. 15. Section 44-7524, Reissue Revised Statutes of
22 Nebraska, is amended to read:

23 44-7524 (1) Every workers' compensation insurer shall
24 adhere to a uniform classification system and shall report its
25 experience in accordance with statistical plans and other reporting
26 requirements to ensure that data is combined for all insurers for
27 the development of prospective loss costs and the application of

1 experience rating.

2 (2) Every workers' compensation insurer shall utilize
3 experience rating plan modifiers developed by an advisory
4 organization pursuant to an experience rating plan approved by the
5 director. This subsection does not require than an insurer writing
6 workers' compensation coverage on a master policy for clients of a
7 professional employer organization use experience rating modifiers
8 developed or that could be developed for individual clients of that
9 professional employer organization.

10 (3) Experience rating modifiers determined for an
11 employer shall use all information reported to the advisory
12 organization that identifies that employer, including information
13 reported for that employer's co-employees when it is a client of a
14 professional employer organization.

15 ~~(3)~~ (4) A workers' compensation insurer may develop
16 subclassifications of the uniform classification system upon which
17 a rate may be made. Such subclassifications and the filing shall
18 be subject to the provisions of the Property and Casualty Insurance
19 Rate and Form Act applicable to rating system filings generally.

20 ~~(4)~~ (5) The director shall disapprove subclassifications,
21 rating plans, or other variations from manual rules filed by
22 a workers' compensation insurer or advisory organization if the
23 insurer or advisory organization fails to demonstrate that the
24 data produced can be reported consistently with the uniform
25 classification system and experience rating system and will allow
26 for the application of experience rating.

27 ~~(5)~~ (6) Workers' compensation premiums shall be

1 calculated on a basis that, as nearly as is practicable, after the
2 effects of experience rating and other applicable rating plans have
3 been considered, the sum of expected losses and expected expenses
4 as a percentage of premium shall be the same for high-wage-paying
5 and low-wage-paying employers in the same job classification.

6 (7) For workers' compensation policies with effective
7 dates on or after July 1, 2011, an insurer writing master policies
8 for a professional employer organization or multiple coordinated
9 policies to cover a client shall report all exposure, premium, and
10 loss data in a form that identifies both the professional employer
11 organization and the client and that:

12 (a) Is in compliance with the advisory organization's
13 statistical plans;

14 (b) Will allow experience rating to be available to
15 any client of the professional employer organization that is
16 eligible for experience rating without the necessity, after the
17 request is made, to obtain additional data from the insurer or the
18 professional employer organization; and

19 (c) Will allow the advisory organization to which
20 the insurer reports to provide proof-of-coverage reporting to
21 the Nebraska Workers' Compensation Court that will fulfill the
22 requirements of sections 48-144.02 and 48-144.03 and section 9 of
23 this act.

24 (8) Upon request to the advisory organization by
25 an employer having sufficient data to meet the eligibility
26 requirements of the experience rating plan, including an employer
27 that is a client of a professional employer organization, the

1 advisory organization shall provide the employer with an experience
2 rating modifier and related information based upon the experience
3 that has been reported to the advisory organization from all
4 insurers, including insurers that have written policies directly
5 for the employer as well as insurers that have covered the
6 employer's co-employees when the employer was the client of a
7 professional employer organization. This subsection and subsection
8 (7) of this section do not require the insurer to report additional
9 data arising from policies with effective dates prior to July 1,
10 2011.

11 Sec. 16. Section 48-115, Revised Statutes Cumulative
12 Supplement, 2008, is amended to read:

13 48-115 The terms employee and worker are used
14 interchangeably and have the same meaning throughout the Nebraska
15 Workers' Compensation Act. Such terms include the plural and all
16 ages and both sexes. For purposes of the act, employee or worker
17 shall be construed to mean:

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

23 (2) Every person in the service of an employer who
24 is engaged in any trade, occupation, business, or profession as
25 described in section 48-106 under any contract of hire, expressed
26 or implied, oral or written, including aliens and also including
27 minors. Minors for the purpose of making election of remedies under

1 the Nebraska Workers' Compensation Act shall have the same power of
2 contracting and electing as adult employees.

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

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

18 (3) Volunteer firefighters of any fire department of
19 any rural or suburban fire protection district, city, village, or
20 nonprofit corporation, which fire department is organized under the
21 laws of the State of Nebraska. Such volunteers shall be deemed
22 employees of such rural or suburban fire protection district, city,
23 village, or nonprofit corporation while in the performance of their
24 duties as members of such department and shall be considered as
25 having entered and as acting in the regular course and scope of
26 their employment from the instant such persons commence responding
27 to a call to active duty, whether to a fire station or other

1 place where firefighting equipment that their company or unit
2 is to use is located or to any activities that the volunteer
3 firefighters may be directed to do by the chief of the fire
4 department or some person authorized to act for such chief. Such
5 volunteers shall be deemed employees of such rural or suburban fire
6 protection district, city, village, or nonprofit corporation until
7 their return to the location from which they were initially called
8 to active duty or until they engage in any activity beyond the
9 scope of the performance of their duties, whichever occurs first.

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

1 person authorized to act for such chief;

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

10 (5) Any person fulfilling conditions of probation, or
11 community service as defined in section 29-2277, pursuant to
12 any order of any court of this state who shall be working for
13 a governmental body, or agency as defined in section 29-2277,
14 pursuant to any condition of probation, or community service as
15 defined in section 29-2277. Such person shall be deemed an employee
16 of the governmental body or agency for the purposes of the Nebraska
17 Workers' Compensation Act;

18 (6) Volunteer ambulance drivers and attendants and
19 out-of-hospital emergency care providers who are members of an
20 emergency medical service for any county, city, village, rural
21 or suburban fire protection district, nonprofit corporation, or
22 any combination of such entities under the authority of section
23 13-303. Such volunteers shall be deemed employees of such entity
24 or combination thereof while in the performance of their duties
25 as ambulance drivers or attendants or out-of-hospital emergency
26 care providers and shall be considered as having entered into and
27 as acting in the regular course and scope of their employment

1 from the instant such persons commence responding to a call to
2 active duty, whether to a hospital or other place where the
3 ambulance they are to use is located or to any activities that
4 the volunteer ambulance drivers or attendants or out-of-hospital
5 emergency care providers may be directed to do by the chief or
6 some person authorized to act for such chief of the volunteer
7 ambulance service or out-of-hospital emergency care service. Such
8 volunteers shall be deemed employees of such county, city, village,
9 rural or suburban fire protection district, nonprofit corporation,
10 or combination of such entities until their return to the location
11 from which they were initially called to active duty or until
12 they engage in any activity beyond the scope of the performance
13 of their duties, whichever occurs first. Before such volunteer
14 ambulance drivers or attendants or out-of-hospital emergency care
15 providers are entitled to benefits under the Nebraska Workers'
16 Compensation Act, they shall be recommended by the chief or some
17 person authorized to act for such chief of the volunteer ambulance
18 service or out-of-hospital emergency care service for membership
19 therein to the board of directors of the rural or suburban
20 fire protection district or nonprofit corporation, the governing
21 body of the county, city, or village, or combination thereof,
22 as the case may be, and upon such confirmation shall be deemed
23 employees of such entity or combination thereof. Members of such
24 volunteer ambulance or out-of-hospital emergency care service after
25 confirmation to membership may be removed by majority vote of the
26 entity's board of directors or governing body and thereafter shall
27 not be considered employees of such entity. Volunteer ambulance

1 drivers and attendants and out-of-hospital emergency care providers
2 for any county, city, village, rural or suburban fire protection
3 district, nonprofit corporation, or any combination thereof shall
4 be considered as acting in the performance and within the course
5 and scope of their employment when performing activities outside of
6 the corporate limits of their respective county, city, village, or
7 district, but only if directed to do so by the chief or some person
8 authorized to act for such chief;

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

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

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

27 An executive officer of a corporation who owns

1 twenty-five percent or more of the common stock of such corporation
2 or an executive officer of a nonprofit corporation who receives
3 annual compensation of one thousand dollars or less from such
4 corporation shall not be construed to be an employee of the
5 corporation under the Nebraska Workers' Compensation Act unless
6 such executive officer elects to bring himself or herself within
7 the provisions of the act. Such election shall be in writing
8 and filed with the secretary of the corporation and with the
9 workers' compensation insurer. Such election shall be effective
10 upon receipt by the insurer for the current policy and subsequent
11 policies issued by such insurer and shall remain in effect until
12 the election is terminated, in writing, by the officer and the
13 termination is filed with the insurer or until the insurer ceases
14 to provide coverage for the corporation, whichever occurs first.
15 Any such termination of election shall also be filed with the
16 secretary of the corporation. If insurance is provided through a
17 master policy or a multiple coordinated policy pursuant to the
18 Professional Employer Organization Registration Act, then such
19 election or termination of election shall also be filed with
20 the professional employer organization. If coverage under the
21 master policy or multiple coordinated policy ceases, then such
22 election shall also be effective for a replacement master policy or
23 multiple coordinated policy obtained by the professional employer
24 organization and shall remain in effect for the new policy as
25 provided in this subdivision. If such an executive officer has
26 not elected to bring himself or herself within the provisions of
27 the act pursuant to this subdivision and a health, accident, or

1 other insurance policy covering such executive officer contains
2 an exclusion of coverage if the executive officer is otherwise
3 entitled to workers' compensation coverage, such exclusion is null
4 and void as to such executive officer.

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

10 (10) Each individual employer, partner, limited liability
11 company member, or self-employed person who is actually engaged
12 in the individual employer's, partnership's, limited liability
13 company's, or self-employed person's business on a substantially
14 full-time basis who elects to bring himself or herself within the
15 provisions of the Nebraska Workers' Compensation Act. Such election
16 shall be in writing and filed with the workers' compensation
17 insurer. Such election shall be effective upon receipt by the
18 insurer for the current policy and subsequent policies issued by
19 such insurer and shall remain in effect until the election is
20 terminated, in writing, by such person and the termination is filed
21 with the insurer or until the insurer ceases to provide coverage
22 for the business, whichever occurs first. If insurance is provided
23 through a master policy or a multiple coordinated policy pursuant
24 to the Professional Employer Organization Registration Act, then
25 such election or termination of election shall also be filed
26 with the professional employer organization. If coverage under the
27 master policy or multiple coordinated policy ceases, then such

1 election shall also be effective for a replacement master policy or
2 multiple coordinated policy obtained by the professional employer
3 organization and shall remain in effect for the new policy as
4 provided in this subdivision. If any such person who is actually
5 engaged in the business on a substantially full-time basis has not
6 elected to bring himself or herself within the provisions of the
7 Nebraska Workers' Compensation Act pursuant to this subdivision and
8 a health, accident, or other insurance policy covering such person
9 contains an exclusion of coverage if such person is otherwise
10 entitled to workers' compensation coverage, such exclusion shall be
11 null and void as to such person; and

12 (11) An individual lessor of a commercial motor vehicle
13 leased to a motor carrier and driven by such individual lessor who
14 elects to bring himself or herself within the provisions of the
15 Nebraska Workers' Compensation Act. Such election is made if he
16 or she agrees in writing with the motor carrier to have the same
17 rights as an employee only for purposes of workers' compensation
18 coverage maintained by the motor carrier. For an election under
19 this subdivision, the motor carrier's principal place of business
20 must be in this state and the motor carrier must be authorized
21 to self-insure liability under the Nebraska Workers' Compensation
22 Act. Such an election shall (a) be effective from the date of
23 such written agreement until such agreement is terminated, (b) be
24 enforceable against such self-insured motor carrier in the same
25 manner and to the same extent as claims arising under the Nebraska
26 Workers' Compensation Act by employees of such self-insured motor
27 carrier, and (c) not be deemed to be a contract of insurance

1 for purposes of Chapter 44. Section 48-111 shall apply to the
2 individual lessor and the self-insured motor carrier with respect
3 to personal injury or death caused to such individual lessor by
4 accident or occupational disease arising out of and in the course
5 of performing services for such self-insured motor carrier in
6 connection with such lease while such election is effective.

7 Sec. 17. Section 48-144.03, Revised Statutes Supplement,
8 2009, is amended to read:

9 48-144.03 (1) Notwithstanding policy provisions that
10 stipulate a workers' compensation insurance policy to be a contract
11 with a fixed term of coverage that expires at the end of the
12 term, coverage under a workers' compensation insurance policy
13 shall continue in full force and effect until notice is given in
14 accordance with this section.

15 ~~(2) No cancellation of a workers' compensation insurance~~
16 ~~policy within the policy period shall be effective unless notice~~
17 ~~of the cancellation is given by the workers' compensation insurer~~
18 ~~to the Nebraska Workers' Compensation Court and to the employer.~~
19 ~~No such cancellation shall be effective until thirty days after~~
20 ~~the giving of such notices, except that the cancellation may~~
21 ~~be effective ten days after the giving of such notices if such~~
22 ~~cancellation is based on (a) notice from the employer to the~~
23 ~~insurer to cancel the policy, (b) nonpayment of premium due the~~
24 ~~insurer under any policy written by the insurer for the employer,~~
25 ~~(c) failure of the employer to reimburse deductible losses as~~
26 ~~required under any policy written by the insurer for the employer,~~
27 ~~or (d) failure of the employer, if covered pursuant to section~~

1 ~~44-3,158, to comply with sections 48-443 to 48-445.~~

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

16 (2) (a) This subsection applies to workers' compensation
17 policies other than master policies or multiple coordinated
18 policies obtained by a professional employer organization pursuant
19 to the Professional Employer Organization Registration Act. No
20 cancellation of a policy within the policy period shall be
21 effective unless notice of the cancellation is given by the
22 workers' compensation insurer to the compensation court and to the
23 employer. No such cancellation shall be effective until thirty
24 days after giving such notices, except that the cancellation may
25 be effective ten days after the giving of such notices if such
26 cancellation is based on (i) notice from the employer to the
27 insurer to cancel the policy, (ii) nonpayment of premium due the

1 insurer under any policy written by the insurer for the employer,
2 (iii) failure of the employer to reimburse deductible losses as
3 required under any policy written by the insurer for the employer,
4 or (iv) failure of the employer, if covered pursuant to section
5 44-3,158, to comply with sections 48-443 to 48-445.

6 (b) No policy shall expire or lapse at the end of the
7 policy period unless notice of nonrenewal is given by the workers'
8 compensation insurer to the compensation court and to the employer.
9 No policy shall expire or lapse until thirty days after giving
10 such notices, except that a policy may expire or lapse ten days
11 after the giving of such notices if the nonrenewal is based on (i)
12 notice from the employer to the insurer to not renew the policy,
13 (ii) nonpayment of premium due the insurer under any policy written
14 by the insurer for the employer, (iii) failure of the employer to
15 reimburse deductible losses as required under any policy written
16 by the insurer for the employer, of (iv) failure of the employer,
17 if covered pursuant to section 44-3,158, to comply with sections
18 48-443 to 48-445.

19 (3) (a) This subsection applies to workers' compensation
20 master policies obtained by a professional employer organization
21 pursuant to the Professional Employer Organization Registration
22 Act. No cancellation of a master policy within the policy period
23 shall be effective unless notice of the cancellation is given by
24 the workers' compensation insurer to the compensation court, to
25 the professional employer organization, and to the clients covered
26 under the master policy. No such cancellation shall be effective
27 until thirty days after giving such notices. If notice is given to

1 some, but not all, clients covered under the master policy, then
2 the cancellation shall be effective only for those clients who have
3 been given notice.

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

16 (c) No master policy shall expire or lapse at the end
17 of the policy period unless notice of nonrenewal is given by
18 the workers' compensation insurer to the compensation court, to
19 the professional employer organization, and to the clients covered
20 under the master policy. No master policy shall expire or lapse
21 until thirty days after giving such notices. If notice is given to
22 some, but not all, clients covered under the master policy, then
23 the nonrenewal shall be effective only for those clients who have
24 been given notice.

25 (d) An insurer may refrain from sending notices required
26 by this subsection to a professional employer organization's
27 clients based upon the professional employer organization's

1 representation that coverage has been or will be replaced,
2 but such representation shall not absolve the insurer of its
3 responsibilities to continue coverage if such representation proves
4 inaccurate.

5 (4) (a) This subsection applies to workers' compensation
6 multiple coordinated policies obtained by a professional employer
7 organization pursuant to the Professional Employer Organization
8 Registration Act. No cancellation of a policy within the policy
9 period shall be effective unless notice of the cancellation is
10 given by the workers' compensation insurer to the compensation
11 court, to the professional employer organization, and to the client
12 employer. No such cancellation shall be effective until thirty days
13 after giving such notices, except that the cancellation may be
14 effective ten days after giving such notices if such cancellation
15 is based on (i) notice from the client to the professional employer
16 organization or the insurer to cancel the policy, (ii) notice from
17 the professional employer organization of the client's nonpayment
18 of premium or failure to reimburse deductibles for policies issued
19 pursuant to section 48-146.03, (iii) failure of the client, if
20 covered pursuant to section 44-3,158, to comply with sections
21 48-443 to 48-445, or (iv) for policies issued pursuant to section
22 44-3,158, nonpayment of premium or failure to reimburse deductibles
23 for policies issued pursuant to section 48-146.03.

24 (b) No termination of coverage for any employees of the
25 client during the policy period shall be effective unless notice
26 is given by the workers' compensation insurer to the compensation
27 court, to the professional employer organization, and to the

1 client. No such termination of coverage shall be effective until
2 thirty days after giving such notices, except that the termination
3 of coverage may be effective ten days after the giving of such
4 notices if such termination is based on (i) notice from the
5 client to the professional employer organization or the insurer
6 to terminate the coverage or (ii) notice from the professional
7 employer organization of the client's nonpayment of premium or
8 failure to reimburse deductibles for policies issued pursuant to
9 section 48-146.03.

10 (c) No policy shall expire or lapse at the end of the
11 policy period unless notice of nonrenewal is given by the workers'
12 compensation insurer to the compensation court, the professional
13 employer organization, and to the client. No policy shall expire
14 or lapse until thirty days after giving such notices, except
15 that a policy may expire or lapse ten days after the giving of
16 such notices if the nonrenewal is based on (i) notice from the
17 client to the professional employer organization or the insurer to
18 not renew the policy, (ii) notice from the professional employer
19 organization of the client's nonpayment of premium or failure
20 to reimburse deductibles for policies issued pursuant to section
21 48-146.03, (iii) failure of the client, if covered pursuant to
22 section 44-3,158, to comply with sections 48-443 to 48-445, or
23 (iv) for policies issued pursuant to section 44-3,158, nonpayment
24 of premium or failure to reimburse deductibles for policies issued
25 pursuant to section 48-146.03.

26 (d) An insurer may refrain from sending notices required
27 by this subsection to a professional employer organization's client

1 based upon the professional employer organization's representation
2 that coverage has been or will be replaced. Such representation
3 shall not absolve the insurer of its responsibility to continue
4 coverage if such representation proves inaccurate.

5 ~~(4)~~ (5) Notwithstanding other provisions of this section,
6 if ~~the employer has secured~~ replacement workers' compensation
7 insurance coverage has been secured with another workers'
8 compensation insurer, then the cancellation or nonrenewal of the
9 policy or the termination of coverage for a client or employees of
10 a client under the policy shall be effective as of the effective
11 date of such other insurance coverage.

12 ~~(5)~~ (6) The notices required by this section shall state
13 the reason for the cancellation or nonrenewal of the policy or
14 termination of coverage for a client or employees of a client under
15 a policy.

16 ~~(6)~~ (7) The notices required by this section shall be
17 provided in writing and shall be deemed given upon the mailing of
18 such notices by certified mail, except that notices from insurers
19 to the compensation court may be provided by electronic means
20 if such electronic means is approved by the administrator of the
21 compensation court. If notice is provided by electronic means
22 pursuant to such an approval, it shall be deemed given upon receipt
23 and acceptance by the compensation court.

24 Sec. 18. Section 48-145, Revised Statutes Cumulative
25 Supplement, 2008, is amended to read:

26 48-145 To secure the payment of compensation under the
27 Nebraska Workers' Compensation Act:

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

16 An employer seeking approval to self-insure shall make
17 application to the compensation court in the form and manner as
18 the compensation court may prescribe, meet such minimum standards
19 as the compensation court shall adopt and promulgate by rule and
20 regulation, and furnish to the compensation court satisfactory
21 proof of financial ability to pay direct the compensation in the
22 amount and manner when due as provided for in the Nebraska Workers'
23 Compensation Act. Approval is valid for the period prescribed by
24 the compensation court unless earlier revoked pursuant to this
25 subdivision or subsection (1) of section 48-146.02. Notwithstanding
26 subdivision (1)(d) of this section, a professional employer
27 organization shall not be eligible to self-insure its workers'

1 compensation liability. The compensation court may by rule
2 and regulation require the deposit of an acceptable security,
3 indemnity, trust, or bond to secure the payment of compensation
4 liabilities as they are incurred. The agreement or document
5 creating a trust for use under this section shall contain a
6 provision that the trust may only be terminated upon the consent
7 and approval of the compensation court. Any beneficial interest
8 in the trust principal shall be only for the benefit of the past
9 or present employees of the self-insurer and any persons to whom
10 the self-insurer has agreed to pay benefits under subdivision (11)
11 of section 48-115 and section 48-115.02. Any limitation on the
12 termination of a trust and all other restrictions on the ownership
13 or transfer of beneficial interest in the trust assets contained in
14 such agreement or document creating the trust shall be enforceable,
15 except that any limitation or restriction shall be enforceable
16 only if authorized and approved by the compensation court and
17 specifically delineated in the agreement or document.

18 Notwithstanding any other provision of the Nebraska
19 Workers' Compensation Act, a three-judge panel of the compensation
20 court may, after notice and hearing, revoke approval as a
21 self-insurer if it finds that the financial condition of the
22 self-insurer or the failure of the self-insurer to comply with
23 an obligation under the act poses a serious threat to the public
24 health, safety, or welfare. The Attorney General, when requested
25 by the administrator of the compensation court, may file a motion
26 pursuant to section 48-162.03 for an order directing a self-insurer
27 to appear before a three-judge panel of the compensation court

1 and show cause as to why the panel should not revoke approval
2 as a self-insurer pursuant to this subdivision. The Attorney
3 General shall be considered a party for purposes of such motion.
4 The Attorney General may appear before the three-judge panel and
5 present evidence that the financial condition of the self-insurer
6 or the failure of the self-insurer to comply with an obligation
7 under the act poses a serious threat to the public health, safety,
8 or welfare. The presiding judge shall rule on a motion of the
9 Attorney General pursuant to this subdivision and, if applicable,
10 shall appoint judges of the compensation court to serve on the
11 three-judge panel. The presiding judge shall not serve on such
12 panel. Appeal from a revocation pursuant to this subdivision
13 shall be in accordance with section 48-185. No such appeal shall
14 operate as a supersedeas unless the self-insurer executes to the
15 compensation court a bond with one or more sureties authorized to
16 do business within the State of Nebraska in an amount determined by
17 the three-judge panel to be sufficient to satisfy the obligations
18 of the self-insurer under the act;

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

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

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

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

17 Sec. 19. Section 48-146, Revised Statutes Cumulative
18 Supplement, 2008, is amended to read:

19 48-146 No policy of insurance against liability arising
20 under the Nebraska Workers' Compensation Act shall be issued
21 and no agreement pursuant to section 44-4304 providing group
22 self-insurance coverage of workers' compensation liability by a
23 risk management pool shall have any force or effect unless it
24 contains the agreement of the workers' compensation insurer or risk
25 management pool that it will promptly pay to the person entitled to
26 the same all benefits conferred by such act, and all installments
27 of the compensation that may be awarded or agreed upon, and

1 that the obligation shall not be affected by the insolvency or
2 bankruptcy of the employer or his or her estate or discharge
3 therein or by any default of the insured after the injury, or
4 by any default in the giving of any notice required by such
5 policy, or otherwise. Such agreement shall be construed to be
6 a direct promise by the workers' compensation insurer or risk
7 management pool to the person entitled to compensation enforceable
8 in his or her name. Each workers' compensation insurance policy
9 and each agreement forming a risk management pool shall be deemed
10 to be made subject to the Nebraska Workers' Compensation Act.
11 No corporation, association, or organization shall enter into a
12 workers' compensation insurance policy unless copies of such forms
13 have been filed with and approved by the Department of Insurance.
14 Each workers' compensation insurance policy and each agreement
15 pursuant to section 44-4304 providing group self-insurance coverage
16 of workers' compensation liability by a risk management pool shall
17 contain a clause to the effect (1) that as between the employer
18 and the workers' compensation insurer or risk management pool the
19 notice to or knowledge of the occurrence of the injury on the part
20 of the insured employer shall be deemed notice or knowledge, as the
21 case may be, on the part of the insurer or risk management pool,
22 (2) that jurisdiction of the insured employer for the purpose of
23 such act shall be jurisdiction of the insurer or risk management
24 pool, and (3) that the insurer or risk management pool shall in
25 all things be bound by the awards, judgments, or decrees rendered
26 against such insured. Each employer. Except when the Professional
27 Employer Organization Registration Act allows coverage to be split

1 between two policies, each workers' compensation insurance policy
2 and each agreement providing such group self-insurance coverage
3 shall include within its terms the payment of compensation to all
4 employees who are within the scope and purview of the Nebraska
5 Workers' Compensation Act.

6 Sec. 20. Section 48-146.03, Revised Statutes Cumulative
7 Supplement, 2008, is amended to read:

8 48-146.03 (1) ~~Each~~ Except as provide in subsection (6) of
9 this section, each workers' compensation insurance policy issued by
10 an insurer pursuant to the Nebraska Workers' Compensation Act:

11 (a) ~~Shall offer, at the option of the insured employer,~~
12 be written, if requested in advance by the insured employer with a
13 deductible ~~for~~ applying to medical benefits in the amount of five
14 hundred dollars to two thousand five hundred dollars per claim in
15 increments of five hundred dollars; or

16 (b) ~~May offer, at the option of~~ if agreed to in advance
17 by the insured employer and the workers' compensation insurer,
18 with a deductible ~~for~~ applying to all amounts paid by the
19 insurer as long as the deductible is not more than forty percent
20 of the insured employer's otherwise applicable annual workers'
21 compensation insurance premium at rates approved for the insurer
22 but not less than fifty thousand dollars.

23 The insured employer, if choosing to exercise one of such
24 options listed in this subsection, may choose only one of the
25 amounts as the deductible. The provisions of this section shall be
26 fully disclosed to each prospective purchaser in writing.

27 (2) The deductible form shall provide that the workers'

1 compensation insurer shall remain liable for and shall pay the
2 entire cost of medical benefits for each claim directly to the
3 medical provider, shall remain liable for and pay the entire cost
4 of benefits, claims, and expenses as required by the policy
5 irrespective of the deductible provision, and shall then be
6 reimbursed by the employer for any deductible amounts paid by
7 the workers' compensation insurer. The employer shall be liable for
8 reimbursement up to the limit of the deductible.

9 (3) A workers' compensation insurer shall not be required
10 to offer a deductible if, as a result of a credit investigation,
11 the insurer determines that the employer does not have the
12 financial ability to be responsible for the payment of deductible
13 amounts.

14 (4) A workers' compensation insurer shall service and,
15 if necessary, defend all claims that arise during the policy
16 period, including those claims payable in whole or in part
17 from the deductible amount, and shall make such reports to the
18 compensation court of payments made, including payments made under
19 the deductible provisions, as may be required by the compensation
20 court.

21 (5) A person who is employed by a policyholder which
22 chooses to exercise the option of a deductible policy shall not
23 be required to pay any of the deductible amount, and any such
24 policyholder shall not require or attempt to require the employee
25 to give up his or her right of selection of physician set out in
26 section 48-120. Any violation of this subsection shall be a Class
27 II misdemeanor.

1 (6) No workers' compensation insurance master policy
2 shall be written with a deductible applying to amounts paid under
3 the Nebraska Workers' Compensation Act.

4 Sec. 21. Section 48-151, Reissue Revised Statutes of
5 Nebraska, is amended to read:

6 48-151 Throughout the Nebraska Workers' Compensation Act,
7 the following words and phrases shall be considered to have
8 the following meaning, respectively, unless the context clearly
9 indicates a different meaning in the construction used:

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

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

22 (3) Occupational disease means only a disease which is
23 due to causes and conditions which are characteristic of and
24 peculiar to a particular trade, occupation, process, or employment
25 and excludes all ordinary diseases of life to which the general
26 public is exposed;

27 (4) Injury and personal injuries mean only violence to

1 the physical structure of the body and such disease or infection
2 as naturally results therefrom. The terms include disablement
3 resulting from occupational disease arising out of and in the
4 course of the employment in which the employee was engaged and
5 which was contracted in such employment. The terms include an
6 aggravation of a preexisting occupational disease, the employer
7 being liable only for the degree of aggravation of the preexisting
8 occupational disease. The terms do not include disability or death
9 due to natural causes but occurring while the employee is at work
10 and do not include an injury, disability, or death that is the
11 result of a natural progression of any preexisting condition;

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

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

27 (7) Willful negligence consists of (a) a deliberate act,

1 (b) such conduct as evidences reckless indifference to safety, or
2 (c) intoxication at the time of the injury, such intoxication being
3 without the consent, knowledge, or acquiescence of the employer or
4 the employer's agent;

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

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

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

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

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

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

21 ~~(10)~~ (14) Whenever in the Nebraska Workers' Compensation
22 Act the singular is used, the plural is considered included; when
23 the masculine gender is used, the feminine is considered included.

24 Sec. 22. Section 48-443, Reissue Revised Statutes of
25 Nebraska, is amended to read:

26 48-443 ~~(1)~~ (1)(a) Not later than January 1, 1994, every
27 public and private employer subject to the Nebraska Workers'

1 Compensation Act shall establish a safety committee. Such committee
2 shall adopt and maintain an effective written injury prevention
3 program.

4 (b) A client of a professional employer organization is
5 not absolved from its obligation to establish a safety committee
6 based on its workers being co-employees of the professional
7 employer organization. A professional employer agreement shall
8 not allocate the client's responsibility to establish a safety
9 committee to the professional employer organization. For purposes
10 of this subdivision, the terms client, professional employer
11 organization, and professional employer agreement shall have the
12 same meaning as in section 2 of this act.

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

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

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

24 (3) An employer shall compensate employee members of the
25 safety committee at their regular hourly wage plus their regular
26 benefits while the employees are attending committee meetings or
27 otherwise engaged in committee duties.

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

8 Sec. 23. Section 48-602, Revised Statutes Cumulative
9 Supplement, 2008, is amended to read:

10 48-602 For purposes of the Employment Security Law,
11 unless the context otherwise requires:

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

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

20 (3) Benefit year, with respect to any individual, means
21 the one-year period beginning with the first day of the first week
22 with respect to which the individual first files a valid claim
23 for benefits, and thereafter the one-year period beginning with the
24 first day of the first week with respect to which the individual
25 next files a valid claim for benefits after the termination of his
26 or her last preceding benefit year. Any claim for benefits made in
27 accordance with section 48-629 shall be deemed to be a valid claim

1 for the purpose of this subdivision if the individual has been
2 paid the wages for insured work required under section 48-627. For
3 the purposes of this subdivision a week with respect to which an
4 individual files a valid claim shall be deemed to be in, within,
5 or during that benefit year which includes the greater part of such
6 week;

7 (4) Calendar quarter means the period of three
8 consecutive calendar months ending on March 31, June 30, September
9 30, or December 31, or the equivalent thereof as the Commissioner
10 of Labor may by rule and regulation prescribe;

11 (5) Client means ~~any individual, partnership, limited~~
12 ~~liability company, corporation, or other legally recognized entity~~
13 ~~that contracts with a professional employer organization to obtain~~
14 ~~professional employer services relating to worksite employees~~
15 ~~through a professional employer agreement;~~ has the same meaning
16 as in section 2 of this act;

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

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

21 (8) Commissioner means the Commissioner of Labor;

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

25 (10) Contributions means that portion of the combined tax
26 based upon the contribution rate portion of the combined tax rate
27 which is deposited in the state Unemployment Compensation Fund as

1 required by sections 48-648 and 48-649;

2 (11) Covered employee has the same meaning as in section
3 2 of this act;

4 ~~(11)~~ (12) Department means the Department of Labor;

5 ~~(12)~~ (13) Employment office means a free public
6 employment office or branch thereof, operated by this state or
7 maintained as a part of a state-controlled system of public
8 employment offices, including public employment offices operated by
9 an agency of a foreign government;

10 ~~(13)~~ (14) Fund means the Unemployment Compensation Fund
11 established by section 48-617 to which all contributions and
12 payments in lieu of contributions required and from which all
13 benefits provided shall be paid;

14 ~~(14)~~ (15) Hospital means an institution which has been
15 licensed, certified, or approved by the Department of Health and
16 Human Services as a hospital;

17 ~~(15)~~ (16) Institution of higher education means an
18 institution which: (a) Admits as regular students only individuals
19 having a certificate of graduation from a high school or the
20 recognized equivalent of such a certificate; (b) is legally
21 authorized in this state to provide a program of education beyond
22 high school; (c) provides an educational program for which it
23 awards a bachelor's degree or higher or provides a program which
24 is acceptable for full credit toward such a degree, a program of
25 postgraduate or postdoctoral studies, or a program of training to
26 prepare students for gainful employment in a recognized occupation;
27 and (d) is a public or other nonprofit institution; notwithstanding

1 any of the foregoing provisions of this subdivision, all colleges
2 and universities in this state are institutions of higher education
3 for purposes of this section;

4 ~~(16)~~ (17) Insured work means employment for employers;

5 ~~(17)~~ (18) Leave of absence means any absence from work:

6 (a) Mutually and voluntarily agreed to by the employer and the
7 employee; (b) mutually and voluntarily agreed to between the
8 employer and the employee's bargaining agent; or (c) to which the
9 employee is entitled to as a matter of state or federal law;

10 ~~(18)~~ (19) Paid vacation leave means a period of time
11 while employed or following separation from employment in which the
12 individual renders no services to the employer but is entitled to
13 receive vacation pay equal to or exceeding his or her base weekly
14 wage;

15 ~~(19)~~ (20) Payments in lieu of contributions means the
16 money payments to the Unemployment Compensation Fund required by
17 sections 48-649, 48-652, 48-660.01, and 48-661;

18 ~~(20)~~ (21) Professional employer agreement has the same
19 meaning as in section 2 of this act; means a written professional
20 employer services contract whereby:

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

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

27 (c) Employer responsibilities for worksite employees;

1 including those of hiring, firing, and disciplining, are shared
2 between the professional employer organization and the client
3 by contract. The term professional employer agreement shall not
4 include a contract between a parent corporation, company, or other
5 entity and a wholly owned subsidiary;

6 ~~(21)~~ (22) Professional employer organization means any
7 individual, partnership, limited liability company, corporation, or
8 other legally recognized entity that enters into a professional
9 employer agreement with a client or clients for a majority of
10 a client's workforce at a client worksite. The term professional
11 employer organization does not include an insurer as defined in
12 section 44-103 or a temporary help firm, has the same meaning as in
13 section 2 of this act;

14 ~~(22)~~ (23) State includes, in addition to the states of
15 the United States of America, any dependency of the United States,
16 the Commonwealth of Puerto Rico, the Virgin Islands, and the
17 District of Columbia;

18 ~~(23)~~ (24) State unemployment insurance tax means that
19 portion of the combined tax which is based upon the state
20 unemployment insurance tax rate portion of the combined tax rate
21 and which is deposited in the State Unemployment Insurance Trust
22 Fund as required by sections 48-648 and 48-649;

23 ~~(24)~~ (25) State unemployment insurance tax rate means the
24 percentage of the combined tax rate used to determine the state
25 unemployment insurance tax portion of the combined tax;

26 ~~(25)~~ (26) Temporary employee means an employee of a
27 temporary help firm assigned to work for the clients of such

1 temporary help firm;

2 ~~(26)~~ (27) Temporary help firm means a firm that hires
3 its own employees and assigns them to clients to support or
4 supplement the client's work force in work situations such as
5 employee absences, temporary skill shortages, seasonal workloads,
6 and special assignments and projects;

7 ~~(27)~~ (28) Unemployed means an individual during any week
8 in which the individual performs no service and with respect to
9 which no wages are payable to the individual or any week of less
10 than full-time work if the wages payable with respect to such week
11 are less than the individual's weekly benefit amount, but does not
12 include any individual on a leave of absence or on paid vacation
13 leave. When an agreement between the employer and a bargaining unit
14 representative does not allocate vacation pay allowance or pay in
15 lieu of vacation to a specified period of time during a period of
16 temporary layoff or plant shutdown, the payment by the employer or
17 his or her designated representative will be deemed to be wages
18 as defined in this section in the week or weeks the vacation is
19 actually taken;

20 ~~(28)~~ (29) Unemployment Trust Fund means the trust fund
21 in the Treasury of the United States of America established under
22 section 904 of the federal Social Security Act, 42 U.S.C. 1104, as
23 such section existed on March 2, 2001, which receives credit from
24 the state Unemployment Compensation Fund;

25 ~~(29)~~ (30) Wages, except with respect to services
26 performed in employment as provided in subdivisions (4)(c) and (d)
27 of section 48-604, means all remuneration for personal services,

1 including commissions and bonuses, remuneration for personal
2 services paid under a contract of hire, and the cash value of
3 all remunerations in any medium other than cash. The reasonable
4 cash value of remuneration in any medium other than cash shall be
5 estimated and determined in accordance with rules and regulations
6 prescribed by the commissioner. After December 31, 1985, wages
7 includes tips which are received while performing services which
8 constitute employment and which are included in a written statement
9 furnished to the employer pursuant to section 6053(a) of the
10 Internal Revenue Code as defined in section 49-801.01.

11 With respect to services performed in employment in
12 agricultural labor as is provided in subdivision (4)(c) of section
13 48-604, wages means cash remuneration and the cash value of
14 commodities not intended for personal consumption by the worker
15 and his or her immediate family for such services. With respect
16 to services performed in employment in domestic service as is
17 provided in subdivision (4)(d) of section 48-604, wages means cash
18 remuneration for such services.

19 The term wages does not include:

20 (a) The amount of any payment, including any amount paid
21 by an employer for insurance or annuities or into a fund to
22 provide for such payment, made to, or on behalf of, an individual
23 in employment or any of his or her dependents under a plan
24 or system established by an employer which makes provision for
25 such individuals generally or for a class or classes of such
26 individuals, including any amount paid by an employer for insurance
27 or annuities or into a fund to provide for any such payment, on

1 account of (i) sickness or accident disability, except, in the case
2 of payments made to an employee or any of his or her dependents,
3 this subdivision (i) shall exclude from wages only payments which
4 are received under a workers' compensation law, (ii) medical and
5 hospitalization expenses in connection with sickness or accident
6 disability, or (iii) death;

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

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

17 (d) Any payment made to, or on behalf of, an individual
18 or his or her beneficiary (i) from or to a trust described in
19 section 401(a) of the Internal Revenue Code as defined in section
20 49-801.01 which is exempt from tax under section 501(a) of the
21 Internal Revenue Code as defined in section 49-801.01 at the time
22 of such payment unless such payment is made to an employee of the
23 trust as remuneration for services rendered as such employee and
24 not as a beneficiary of the trust or (ii) under or to an annuity
25 plan which, at the time of such payment, meets the requirements
26 of section 401 of the Internal Revenue Code as defined in section
27 49-801.01;

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

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

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

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

27 ~~(30)~~ (31) Week means such period of seven consecutive

1 days as the commissioner may by rule and regulation prescribe;

2 ~~(31)~~ (32) Week of unemployment with respect to any
3 individual means any week during which he or she performs less than
4 full-time work and the wages payable to him or her with respect to
5 such week are less than his or her weekly benefit amount; and

6 ~~(32)~~ (33) Wholly owned subsidiary means a corporation,
7 company, or other entity which has eighty percent or more of
8 its outstanding voting stock or membership owned or controlled,
9 directly or indirectly, by the parent entity. ~~and~~

10 ~~(33)~~ Worksite employee means a person receiving wages or
11 benefits from a professional employer organization pursuant to the
12 terms of a professional employer agreement for work performed at a
13 client's worksite.

14 Sec. 24. Section 48-628, Revised Statutes Cumulative
15 Supplement, 2008, is amended to read:

16 48-628 An individual shall be disqualified for benefits:

17 (1)(a) For the week in which he or she has left work
18 voluntarily without good cause, if so found by the commissioner,
19 and for the twelve weeks which immediately follow such week.
20 A temporary employee of a temporary help firm has left work
21 voluntarily without good cause if the temporary employee does not
22 contact the temporary help firm for reassignment upon completion
23 of an assignment and the temporary employee has been advised by
24 the temporary help firm of his or her obligation to contact the
25 temporary help firm upon completion of assignments and has been
26 advised by the temporary help firm that the temporary employee may
27 be denied benefits for failure to do so; or

1 (b) For the week in which he or she has left work
2 voluntarily for the sole purpose of accepting previously secured,
3 permanent, full-time, insured work, which he or she does accept,
4 which offers a reasonable expectation of betterment of wages or
5 working conditions, or both, and for which he or she earns wages
6 payable to him or her, if so found by the commissioner, and for not
7 more than one week which immediately follows such week;

8 (2) For the week in which he or she has been discharged
9 for misconduct connected with his or her work, if so found by
10 the commissioner, and for the twelve weeks which immediately
11 follow such week. If the commissioner finds that such individual's
12 misconduct was gross, flagrant, and willful, or was unlawful,
13 the commissioner shall totally disqualify such individual from
14 receiving benefits with respect to wage credits earned prior to
15 discharge for such misconduct. In addition to the twelve-week
16 benefit disqualification assessed under this subdivision, the
17 commissioner shall cancel all wage credits earned as a result
18 of employment with the discharging employer if the commissioner
19 finds that the individual was discharged for misconduct in
20 connection with the work which was not gross, flagrant, and
21 willful or unlawful but which included being under the influence
22 of any intoxicating beverage or being under the influence of any
23 controlled substance listed in section 28-405 not prescribed by
24 a physician licensed to practice medicine or surgery when the
25 individual is so under the influence on the worksite or while
26 engaged in work for the employer;

27 (3) (a) For any week of unemployment in which he or she

1 has failed, without good cause, to apply for available, suitable
2 work when so directed by the employment office or the commissioner,
3 to accept suitable work offered him or her, or to return to his
4 or her customary self-employment, if any, and the commissioner so
5 finds, and for the twelve weeks which immediately follow such week,
6 and his or her total benefit amount to which he or she is then
7 entitled shall be reduced by an amount equal to the number of weeks
8 for which he or she has been disqualified by the commissioner.

9 (b) In determining whether or not any work is suitable
10 for an individual, the commissioner shall consider the degree of
11 risk involved to the individual's health, safety, and morals, his
12 or her physical fitness and prior training, his or her experience
13 and prior earnings, his or her length of unemployment and prospects
14 for securing local work in his or her customary occupation, and the
15 distance of the available work from his or her residence.

16 (c) Notwithstanding any other provisions of the
17 Employment Security Law, no work shall be deemed suitable and
18 benefits shall not be denied under such law to any otherwise
19 eligible individual for refusing to accept new work under any of
20 the following conditions: (i) If the position offered is vacant
21 due directly to a strike, lockout, or other labor dispute; (ii)
22 if the wages, hours, or other conditions of the work offered
23 are substantially less favorable to the individual than those
24 prevailing for similar work in the locality; or (iii) if, as a
25 condition of being employed, the individual would be required to
26 join a company union or to resign from or refrain from joining any
27 bona fide labor organization.

1 (d) Notwithstanding any other provisions in subdivision
2 (3) of this section, no otherwise eligible individual shall be
3 denied benefits with respect to any week in which he or she is in
4 training with the approval of the commissioner, by reason of the
5 application of the provisions in subdivision (3) of this section
6 relating to failure to apply for or a refusal to accept suitable
7 work;

8 (4) For any week with respect to which the commissioner
9 finds that his or her total unemployment is due to a stoppage
10 of work which exists because of a labor dispute at the factory,
11 establishment, or other premises at which he or she is or was
12 last employed, except that this subdivision shall not apply if
13 it is shown to the satisfaction of the commissioner that (a)
14 the individual is not participating in, financing, or directly
15 interested in the labor dispute which caused the stoppage of work
16 and (b) he or she does not belong to a grade or class of workers of
17 which, immediately before the commencement of the stoppage, there
18 were members employed at the premises at which the stoppage occurs,
19 any of whom are participating, financing, or directly interested in
20 the dispute. If in any case, separate branches of work, which are
21 commonly conducted as separate businesses in separate premises, are
22 conducted in separate departments of the same premises, each such
23 department shall, for the purposes of this subdivision, be deemed
24 to be a separate factory, establishment, or other premises;

25 (5) For any week with respect to which he or she
26 is receiving or has received remuneration in the form of (a)
27 wages in lieu of notice, or a dismissal or separation allowance,

1 (b) compensation for temporary disability under the workers'
2 compensation law of any state or under a similar law of the
3 United States, (c) retirement or retired pay, pension, annuity,
4 or other similar periodic payment under a plan maintained or
5 contributed to by a base period or chargeable employer, or (d)
6 a gratuity or bonus from an employer, paid after termination of
7 employment, on account of prior length of service, or disability
8 not compensated under the workers' compensation law. Such payments
9 made in lump sums shall be prorated in an amount which is
10 reasonably attributable to such week. If the prorated remuneration
11 is less than the benefits which would otherwise be due, he or she
12 shall be entitled to receive for such week, if otherwise eligible,
13 benefits reduced by the amount of such remuneration. The prorated
14 remuneration shall be considered wages for the quarter to which it
15 is attributable. Military service-connected disability compensation
16 payable under 38 U.S.C. chapter 11 and primary insurance benefits
17 payable under Title II of the Social Security Act, as amended,
18 or similar payments under any act of Congress shall not be deemed
19 to be disqualifying or deductible from the benefit amount. No
20 deduction shall be made for the part of any retirement pension
21 which represents return of payments made by the individual. In the
22 case of a transfer by an individual or his or her employer of an
23 amount from one retirement plan to a second qualified retirement
24 plan under the Internal Revenue Code, the amount transferred shall
25 not be deemed to be received by the claimant until actually paid
26 from the second retirement plan to the claimant. No deduction shall
27 be made for any benefit received under a supplemental unemployment

1 benefit plan described in subdivision ~~(29)(g)~~ (30)(g) of section
2 48-602;

3 (6) For any week with respect to which or a part of which
4 he or she has received or is seeking unemployment benefits under an
5 unemployment compensation law of any other state or of the United
6 States, except that if the appropriate agency of such other state
7 or of the United States finally determines that he or she is not
8 entitled to such unemployment benefits, this disqualification shall
9 not apply;

10 (7) For any week of unemployment if such individual is
11 a student. For the purpose of this subdivision, student shall
12 mean an individual registered for full attendance at and regularly
13 attending an established school, college, or university, unless the
14 major portion of his or her wages for insured work during his or
15 her base period was for services performed while attending school,
16 except that attendance for training purposes under a plan approved
17 by the commissioner for such individual shall not be disqualifying;

18 (8) For any week of unemployment if benefits claimed are
19 based on services performed:

20 (a) In an instructional, research, or principal
21 administrative capacity for an educational institution, if such
22 week commences during the period between two successive academic
23 years or terms, or when an agreement provides instead for a similar
24 period between two regular, but not successive, terms during such
25 period, if such individual performs such services in the first
26 of such academic years or terms and if there is a contract or
27 reasonable assurance that such individual will perform services in

1 any such capacity for any educational institution in the second of
2 such academic years or terms;

3 (b) In any other capacity for an educational institution,
4 if such week commences during a period between two successive
5 academic years or terms, if such individual performs such services
6 in the first of such academic years or terms, and if there is
7 a reasonable assurance that such individual will perform such
8 services in the second of such academic years or terms, except
9 that if benefits are denied to any individual for any week under
10 subdivision (8)(b) of this section and such individual was not
11 offered an opportunity to perform such services for the educational
12 institution for the second of such academic years or terms, such
13 individual shall be entitled to a retroactive payment of the
14 benefits for each week for which the individual filed a timely
15 claim for benefits and for which benefits were denied solely by
16 reason of subdivision (8)(b) of this section;

17 (c) In any capacity described in subdivision (8)(a) or
18 (b) of this section if such week commences during an established
19 and customary vacation period or holiday recess if such individual
20 performs such services in the period immediately before such
21 vacation period or holiday recess, and there is a reasonable
22 assurance that such individual will perform such services in
23 the period immediately following such vacation period or holiday
24 recess;

25 (d) In any capacity described in subdivision (8)(a) or
26 (b) of this section in an educational institution while in the
27 employ of an educational service agency, and such individual shall

1 be disqualified as specified in subdivisions (8)(a), (b), and (c)
2 of this section. As used in this subdivision, educational service
3 agency shall mean a governmental agency or governmental entity
4 which is established and operated exclusively for the purpose of
5 providing services to one or more educational institutions; and

6 (e) In any capacity described in subdivision (8)(a) or
7 (b) of this section in an educational institution if such services
8 are provided to or on behalf of the educational institution while
9 in the employ of an organization or entity described in section
10 3306(c)(7) or 3306(c)(8) of the Federal Unemployment Tax Act, 26
11 U.S.C. 3306(c)(7) or (8), and such individual shall be disqualified
12 as specified in subdivisions (8)(a), (b), and (c) of this section;

13 (9) For any week of unemployment benefits if
14 substantially all the services upon which such benefits are based
15 consist of participating in sports or athletic events or training
16 or preparing to so participate, if such week of unemployment begins
17 during the period between two successive sport seasons or similar
18 periods, if such individual performed such services in the first
19 of such seasons or similar periods, and if there is a reasonable
20 assurance that such individual will perform such services in the
21 later of such seasons or similar periods;

22 (10) For any week of unemployment benefits if the
23 services upon which such benefits are based are performed by an
24 alien unless such alien is an individual who was lawfully admitted
25 for permanent residence at the time such services were performed,
26 was lawfully present for purposes of performing such services, or
27 was permanently residing in the United States under color of law

1 at the time such services were performed, including an alien who
2 was lawfully present in the United States as a result of the
3 application of section 212(d)(5) of the Immigration and Nationality
4 Act, 8 U.S.C. 1182(d)(5). Any data or information required of
5 individuals applying for benefits to determine whether benefits
6 are not payable to them because of their alien status shall be
7 uniformly required from all applicants for benefits. In the case
8 of an individual whose application for benefits would otherwise be
9 approved, no determination that benefits to such individual are not
10 payable because of his or her alien status shall be made except
11 upon a preponderance of the evidence;

12 (11) Notwithstanding any other provisions of the
13 Employment Security Law, no otherwise eligible individual shall
14 be denied benefits for any week because he or she is in training
15 approved under section 236(a)(1) of the federal Trade Act of 1974,
16 19 U.S.C. 2296(a)(1), nor shall such individual be denied benefits
17 by reason of leaving work to enter such training, if the work left
18 is not suitable employment, or because of the application to any
19 such week in training of provisions of the Employment Security Law,
20 or any applicable federal unemployment compensation law, relating
21 to availability for work, active search for work, or refusal to
22 accept work. For purposes of this subdivision, suitable employment
23 shall mean, with respect to an individual, work of a substantially
24 equal or higher skill level than the individual's past adversely
25 affected employment, as defined for purposes of the federal Trade
26 Act of 1974, and wages for such work at not less than eighty
27 percent of the individual's average weekly wage as determined for

1 purposes of such act;

2 (12) For any week during which the individual is on a
3 leave of absence; and

4 (13) For any week of unemployment benefits or for waiting
5 week credit if he or she has been disqualified from the receipt
6 of benefits pursuant to section 48-663.01 two or more times in
7 the five-year period immediately prior to filing his or her most
8 recent claim. This subdivision shall not apply if the individual
9 has repaid in full any overpayments established in conjunction with
10 the disqualifications assessed under section 48-663.01 during that
11 five-year period.

12 Sec. 25. Section 48-648, Revised Statutes Supplement,
13 2009, is amended to read:

14 48-648 (1) Combined tax shall accrue and become payable
15 by each employer not otherwise entitled to make payments in lieu
16 of contributions for each calendar year in which he or she is
17 subject to the Employment Security Law, with respect to wages for
18 employment. Such combined tax shall become due and be paid by each
19 employer to the commissioner for the State Unemployment Insurance
20 Trust Fund and the Unemployment Trust Fund in such manner and
21 at such times as the commissioner may, by rule and regulation,
22 prescribe and shall not be deducted, in whole or in part, from the
23 wages of individuals in such employer's employ. For all tax years
24 beginning before January 1, 2010, the commissioner may require that
25 any employer whose annual payroll for either of the two preceding
26 calendar years has equaled or exceeded five hundred thousand
27 dollars to file combined tax returns and pay combined taxes owed

1 by an electronic method approved by the commissioner, except when
2 the employer establishes to the satisfaction of the commissioner
3 that filing the combined tax return or payment of the tax by an
4 electronic method would work a hardship on the employer. For all
5 tax years beginning on or after January 1, 2010, the commissioner
6 may require any employer whose annual payroll for either of the
7 two preceding calendar years has equaled or exceeded one hundred
8 thousand dollars to file combined tax returns and pay combined
9 taxes owed by an electronic method approved by the commissioner,
10 except when the employer establishes to the satisfaction of the
11 commissioner that filing the combined tax return or payment of the
12 tax by an electronic method would work a hardship on the employer.
13 In the payment of any combined tax, a fractional part of a cent
14 shall be disregarded unless it amounts to one-half cent or more,
15 in which case it shall be increased to one cent. If the combined
16 tax due for any reporting period is less than five dollars, the
17 employer need not remit the combined tax.

18 (2) If two or more related corporations or limited
19 liability companies concurrently employ the same individual and
20 compensate such individual through a common paymaster which is
21 one of such corporations or limited liability companies, each such
22 corporation or limited liability company shall be considered to
23 have paid as remuneration to such individual only the amounts
24 actually disbursed by it to such individual and shall not
25 be considered to have paid as remuneration to such individual
26 amounts actually disbursed to such individual by another of such
27 corporations or limited liability companies. An employee of a

1 wholly owned subsidiary shall be considered to be concurrently
2 employed by the parent corporation, company, or other entity
3 and the wholly owned subsidiary whether or not both companies
4 separately provide remuneration.

5 (3) The professional employer organization shall report
6 and pay combined tax, penalties, and interest owed upon wages
7 earned by ~~worksite~~ covered employees under the client's employer
8 account number using the client's combined tax rate. The client
9 is liable for the payment of unpaid combined tax, penalties, and
10 interest owed upon wages paid to ~~worksite~~ covered employees, and
11 the ~~worksite~~ covered employees shall be considered employees of the
12 client for purposes of the Employment Security Law.

13 Sec. 26. This act becomes operative on January 1, 2011.

14 Sec. 27. If any section in this act or any part of any
15 section is declared invalid or unconstitutional, the declaration
16 shall not affect the validity or constitutionality of the remaining
17 portions.

18 Sec. 28. Original sections 44-5702, 44-7515, 44-7524,
19 48-151, and 48-443, Reissue Revised Statutes of Nebraska, sections
20 44-7504, 48-115, 48-145, 48-146, 48-146.03, 48-602, and 48-628,
21 Revised Statutes Cumulative Supplement, 2008, and sections
22 48-144.03 and 48-648, Revised Statutes Supplement, 2009, are
23 repealed.