

1 SB41
2 78608-4
3 By Senator Means
4 RFD: Business and Labor
5 First Read: 10-JAN-06
6 PFD: 12/08/2005

1 SB41

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4 ENROLLED, An Act,

5 To create the Alabama Professional Employer
6 Organization Registration Act; to establish requirements for
7 registration, including registration fees and annual renewal
8 fees; to provide responsibilities of professional employer
9 organizations; to allow the Director of the Department of
10 Industrial Relations to establish requirements for the
11 submission of securities or guarantees securing the payment of
12 unemployment compensation taxes and workers' compensation for
13 employees of professional employer organizations; to provide
14 for disciplinary actions against registrants and
15 nonregistrants by the Director of the Department of Industrial
16 Relations and to establish civil and criminal penalties for
17 violations of this act; to authorize the Director of the
18 Department of Industrial Relations to perform investigations,
19 audits, or reviews of any registered professional employer
20 organization as necessary to carry out the provisions of this
21 act; and in connection therewith would have as its purpose or
22 effect the requirement of a new or increased expenditure of
23 local funds within the meaning of Amendment 621 of the
24 Constitution of Alabama of 1901.

25 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

1 Section 1. This act shall be known and may be cited
2 as the "Alabama Professional Employer Organization
3 Registration Act."

4 Section 2. The Legislature finds and declares the
5 following:

6 (1) That employee leasing is a growing industry in
7 the State of Alabama and that professional employer
8 organizations provide increased opportunities for employers to
9 develop cost-effective methods of satisfying their personnel
10 requirements and providing employees with access to certain
11 employment benefits which might otherwise not be available to
12 them.

13 (2) The Legislature deems it necessary, however, in
14 the interest of the welfare of workers and employers to
15 establish standards for the operation, regulation, and
16 registration of professional employer organizations in Alabama
17 to be administered by the Workers' Compensation Division of
18 the Department of Industrial Relations, and it is the intent
19 of the Legislature that this be accomplished pursuant to the
20 Alabama Professional Employer Organization Registration Act.

21 (3) That any allocation of the employer duties and
22 responsibilities pursuant to this act will preserve all rights
23 to which covered employees would be entitled under a
24 traditional employment relationship.

1 Section 3. As used in this act, the following terms
2 shall have the following meanings:

3 (1) ADMINISTRATIVE FEE. The fee charged to a client
4 by a professional employer organization for professional
5 employer services. The term does not include any amount of a
6 fee by the professional employer organization that is for
7 wages and salaries, benefits, workers' compensation, payroll
8 taxes, withholding, or other assessments paid by the
9 professional employer organization to or on behalf of covered
10 employees under the professional employer agreement.

11 (2) CLIENT. A person or entity that enters into a
12 professional employer agreement with a professional employer
13 organization, including a worksite employer.

14 (3) CONTROLLING PERSON. Any of the following:

15 a. An officer or director of a corporation operating
16 as a professional employer organization, a shareholder holding
17 25 percent or more of the voting stock of a corporation
18 operating as a professional employer organization, or a
19 partner of a partnership operating as a professional employer
20 organization.

21 b. An individual who possesses, directly or
22 indirectly, the power to direct or cause the direction of the
23 management or policies of a company operating as a
24 professional employer organization through the ownership of

1 voting securities, by contract or otherwise, and who is
2 actively involved in the day-to-day management of the company.

3 (4) COVERED EMPLOYEE. An individual having a
4 relationship with a professional employer organization and a
5 client who meets all of the following criteria:

6 a. The individual has executed a written employment
7 agreement with the professional employer organization.

8 b. The individual is a co-employee of both the
9 professional employer organization and the client.

10 c. The individual's relationship with a professional
11 employer organization and a client pursuant to a professional
12 employer agreement is subject to this act. Individuals who are
13 officers, directors, shareholders, partners, and managers of
14 the client are covered employees to the extent the
15 professional employer organization and the client have
16 expressly agreed in the professional employer agreement that
17 the individuals would be covered employees and provided the
18 individuals meet the criteria of this subdivision and act as
19 operational managers or perform services for the client.

20 (5) DEPARTMENT. The Alabama Department of Industrial
21 Relations.

22 (6) DIRECTOR. The Director of the Alabama Department
23 of Industrial Relations.

24 (7) PERSON. An individual, sole proprietorship,
25 business, partnership, corporation, limited liability company,

1 association, firm, or any other form of legally recognized
2 entity.

3 (8) PROFESSIONAL EMPLOYER ORGANIZATION. A person
4 engaged in the business of providing professional employer
5 services through one or more professional employer
6 organization arrangements. A person engaged in the business of
7 providing professional employer services shall be subject to
8 registering under this act regardless of its use of the term
9 professional employer organization, PEO, staff leasing
10 company, registered staff leasing company, employee leasing
11 company, or any other name. The term does not include:

12 a. Arrangements where a person, whose principal
13 business activity is not entering into professional employer
14 arrangements and which does not hold itself out as a
15 professional employer organization, shares employees with a
16 commonly owned company within the meaning of Section 414(b)
17 and (c) of the Internal Revenue Code of 1986.

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

24 c. Temporary help services, which consist only of:
25 (i) recruiting and hiring their own employees; (ii) finding

1 other organizations that need the services of those employees;
2 (iii) assigning those employees to perform work at or services
3 for the other organizations to support or supplement the other
4 organizations' workforces, or to provide assistance in special
5 work situations such as, but not limited to, employee
6 absences, skill shortages, seasonal workloads, or to perform
7 special assignments or projects, and (iv) customarily
8 attempting to reassign the employees to other organizations
9 when they finish each assignment. However, notwithstanding any
10 provision to the contrary, a temporary help service entity
11 shall annually, at no cost, certify on a form approved by the
12 director that the temporary help service is not providing PEO
13 services.

14 (9) PROFESSIONAL EMPLOYER ORGANIZATION ARRANGEMENTS.

15 An arrangement under contract where an employee of a
16 professional employer organization is assigned or leased, or
17 both, to work at a client company. The assignment of the
18 covered employee is intended to be of a long-term or
19 continuing nature, rather than temporary or seasonal in
20 nature. The term shall be liberally construed to include any
21 and all arrangements meeting the criteria set forth by this
22 act, by whatever term known.

23 (10) PROFESSIONAL EMPLOYER SERVICES. The service of
24 entering into relationships under this act in which all or a
25 majority of the employees providing services to a client or to

1 a division or work unit of clients are covered employees. More
2 specifically, professional employer services may include, but
3 are not limited to, the payment of payroll, payment of payroll
4 taxes, payment of unemployment compensation taxes, providing
5 for workers' compensation coverage, providing for health
6 insurance coverage and any and all other additional services
7 as may be contracted for under the professional employer
8 organization agreement. Exclusively providing, selling, or
9 administering workers' compensation and/or health insurance
10 plans to one or more clients is not the provision of
11 professional employer services.

12 (11) REGISTRANT. A person or entity registered as a
13 professional employer organization under this act or renewing
14 a registration under this act.

15 (12) TEMPORARY EMPLOYEE. A person employed either
16 through a staffing service or directly by an employer to
17 support or supplement the existing work force in special
18 situations such as employee absences, temporary skill
19 shortages, seasonal workloads, and special assignments and
20 projects with the expectation that the position of the person
21 shall be terminated upon the completion of the task or
22 function.

23 Section 4. (a) Neither this act nor a professional
24 employer agreement may affect, modify, or amend any collective
25 bargaining agreement, or the rights or obligations of any

1 client, professional employer organization, or covered
2 employee under the Federal National Labor Relations Act, or
3 any other similar law.

4 (b) Neither this act nor a professional employer
5 agreement may affect, modify, or amend any state, local, or
6 federal licensing, registration, or certification requirement
7 applicable to any professional employer organization, client,
8 or covered employee.

9 (c) A covered employee who is required to be
10 licensed, registered, or certified according to law or
11 regulation is solely an employee of the client for purposes of
12 the license, registration, or certification requirement.

13 (d) A professional employer organization does not
14 engage in any occupation, trade, profession, or other activity
15 which is subject to licensing, registration, or certification
16 requirements, or is otherwise regulated by a governmental
17 entity solely by entering into and maintaining a professional
18 employer organization arrangement with a covered employee who
19 is subject to the requirement or regulation.

20 (e) Unless otherwise expressly agreed to by the
21 client in the professional employer agreement, a client shall
22 have the sole right to direct and control the professional or
23 licensed activities of covered employees and of the business
24 of the client.

1 (f) (1) After the effective date of this act, for the
2 purpose of qualifying for the income tax capital credit
3 allowed under Title 40, Chapter 18, Article 7, Code of Alabama
4 1975, and for the purpose of determining other economic
5 incentives based on employment as provided or administered by
6 the State of Alabama or its political subdivisions, covered
7 employees actually working full-time in the business
8 operations of the client shall be deemed employees solely of
9 the client. A client shall be entitled to the benefit of any
10 tax credit, economic incentive, or other benefit arising as
11 the result of the employment of covered employees of the
12 client, subject to all other state and local laws controlling
13 any benefit addressed in this sentence. When determining the
14 Alabama apportionment factor, a client company shall include
15 in the payroll factor the amount paid to the professional
16 employer organization that is due to be paid to covered
17 employees as wages earned.

18 (2) Any tax or fee upon professional employer
19 services may only be imposed on the revenue from
20 administrative fees.

21 (3) The tax assessed on a per capita or per employee
22 basis shall be assessed against the client for covered
23 employees and against the professional employer organization
24 for its employees who are not a covered employee of a client.

1 (g) A bid, contract, purchase order, or agreement
2 entered into with the state or a political subdivision of the
3 state, a client company's status or certification as a small,
4 minority-owned, disadvantaged, or woman-owned business
5 enterprise or as a historically under-utilized business is not
6 affected because the client company has entered into an
7 agreement with a professional employer organization or uses
8 the services of a professional employer organization.

9 (h) Each professional employer organization shall
10 provide, upon request by a client or an agency or department
11 of this state, all employment information reasonably required
12 by an agency or department of this state.

13 Section 5. (a) (1) A person may not provide,
14 advertise, or otherwise hold itself out as providing
15 professional employer services in this state unless the person
16 is registered under this act to operate a professional
17 employer organization.

18 (2) Each person desiring to operate as a
19 professional employer organization shall file with the
20 director a completed registration form to include the
21 following information:

22 a. The name or names under which the PEO conducts
23 business.

1 b. The address of the principal place of business of
2 the PEO and the address of each office it maintains in this
3 state.

4 c. The PEO's taxpayer or employer identification
5 number.

6 d. A list by jurisdiction of each name under which
7 the PEO has operated in the preceding five years, including
8 any alternative names, names of predecessors and, if known,
9 successor business entities.

10 e. A statement of ownership, which shall include the
11 name and evidence of the business experience of any person
12 that, individually or acting in concert with one or more other
13 persons, owns or controls, directly or indirectly, 25 percent
14 or more of the equity interests of the PEO.

15 f. A statement of management, which shall include
16 the name and evidence of the business experience of any person
17 who serves as president, chief executive officer, or otherwise
18 has the authority to act as senior executive officer of the
19 PEO.

20 g. A financial statement setting forth the financial
21 condition of the PEO, as of a date not earlier than 180 days
22 prior to the date submitted to the department, prepared in
23 accordance with generally accepted accounting principles, and
24 audited or reviewed by an independent certified public
25 accountant licensed to practice in the jurisdiction in which

1 such accountant is located. The director, by rule, may allow
2 for a waiver of the audit or review procedures for new PEOs in
3 business for less than one year. In no event shall a PEO be
4 allowed a renewal of the waiver after its first year of
5 existence.

6 (3) In addition to the completed registration form,
7 the applicant shall also file any reasonable form, material,
8 and information as is necessary to enable the director to
9 ascertain whether individuals affiliated with the registrant
10 are qualified to serve as controlling persons.

11 (4) The director shall determine, by rule, the
12 registration process.

13 (5) Each professional employer organization
14 operating within this state shall immediately, upon request by
15 the director, furnish a complete and current listing of all
16 client employers.

17 (b) The director shall determine, by rule, the
18 financial requirements for a registrant or renewal of
19 registration. The rule may require the submission of
20 securities or guarantees securing the payment of all
21 unemployment taxes and workers' compensation claims payments
22 due to or with respect to covered employees and may require
23 that the security or assets to secure such payments be
24 maintained by a financial institution located in the State of
25 Alabama. The director may accept net worth based upon audited

1 financial statements in whole or in part for the financial
2 requirements. The financial requirements shall not exceed one
3 hundred thousand dollars (\$100,000).

4 (c) The rules may provide and may establish fees for
5 the consolidated application and licensing of professional
6 employer organizations that are majority owned by the same
7 parent, entity, or persons provided that: (1) the department
8 may require an application fee for each professional employer
9 organization, and (2) the multiple professional employer
10 organizations may file reports and meet financial requirements
11 on a consolidated basis if each company that is a part of the
12 multiple employer organization group guarantees the
13 obligations of each.

14 (d) A professional employer organization may be
15 eligible for limited registration under this act if the
16 professional employer organization:

17 (1) Is domiciled outside this state and is licensed
18 or registered as a professional employer organization in
19 another state that has substantially the same or greater
20 requirements as this act.

21 (2) Does not maintain an office in this state or
22 solicit clients located or domiciled within this state.

23 (3) Does not have more than 50 covered employees
24 employed or domiciled in this state on any given day.

1 (4) The director shall determine, by rule, the
2 limited registration requirements and process.

3 (e) The department, by rule, may provide for the
4 reciprocal acceptance of a professional employer organization
5 license or registration from another state if the licensing,
6 operational, financial, and reporting requirements are
7 substantially similar to those of this state. Neither this
8 subsection nor a rule may be construed to relieve a registrant
9 of the requirement of paying a fee required by this act or
10 from any requirement to provide additional securities.

11 (f) (1) The director shall determine, by rule or
12 regulation, the fees allowed by this act. The fees may not
13 exceed those reasonably necessary for the administration and
14 regulation of professional employer organizations in this
15 state.

16 (2) The fee for any initial registration may not
17 exceed one thousand dollars (\$1,000), and the fee for a
18 renewal registration may not exceed five hundred dollars
19 (\$500). The fee for any limited registration may not exceed
20 five hundred dollars (\$500), and the fee for a renewal of a
21 limited registration may not exceed two hundred fifty dollars
22 (\$250). Fees for an initial or renewal registration shall be
23 submitted at the time of registration and made payable to the
24 Professional Employer Organization Registration Administrative
25 Trust Fund. All registration fees shall be nonrefundable.

1 (g) (1) Each professional employer organization
2 operating within this state on the effective date of this act
3 shall complete its initial registration not later than 180
4 days after the effective date.

5 (2) Each professional employer organization not
6 operating within this state on the effective date of this act
7 shall complete its initial registration prior to commencement
8 of operations within this state.

9 (3) Any transfer or sale of stock or other ownership
10 interest in a registrant that results in a change in the
11 ownership of a majority of voting power over the stock or
12 other ownership interest within a 12-month period shall
13 require a new registration.

14 (4) A notice shall be posted in each business office
15 maintained within the state which states that the professional
16 employer organization is registered and regulated by the
17 department and that any questions or complaints should be
18 directed to the director.

19 (5) A notice shall be maintained in the
20 administrative office of a client employer maintained within
21 the state and shall be made available to any covered employee
22 or the department's representative upon request which states
23 the name of the professional employer organization the
24 employer is associated with, that the professional employer
25 organization is registered and regulated by the department,

1 and that any questions or complaints should be directed to the
2 director.

3 (6) Each professional employer organization shall
4 maintain an agent within the state for service of process.

5 (7) Any registration or limited registration shall
6 remain valid for a period of one year from the date of
7 registration. Each professional employer organization
8 continuing to operate within this state shall renew its
9 registration every year. The registrant must demonstrate each
10 year continued compliance with all requirements of this act,
11 including, without limitation, all requirements set forth for
12 the initial registration.

13 (h) All records, client listings, client reports,
14 financial statements, and other information obtained from a
15 professional employer organization under this act, except to
16 the extent necessary for the proper administration of this act
17 by the department, shall be confidential and shall not be
18 published or open to public inspection.

19 Section 6. The following acts and omissions are
20 deemed to constitute deceptive practices and are prohibited
21 for a professional employer organization and its controlling
22 person:

23 (1) Making, issuing, circulating, or causing to be
24 made an estimate, illustration, circular, statement,
25 advertisement, sales presentation, omission, or comparison

1 which intentionally misleads, deceives, or misrepresents the
2 benefits, advantages, disadvantages, conditions, or terms of
3 any professional employer organization arrangement.

4 (2) Filing with the director or other public
5 official, or making, publishing, disseminating, circulating,
6 or delivering to a person any false statement of financial
7 condition of a person or business with the intent to deceive.

8 (3) Knowingly making a false entry of a material
9 fact in any book, report, or statement of any person or
10 business or knowingly omitting to make a true entry of any
11 material fact pertaining to the business of the person in any
12 book, report, or statement of that person.

13 (4) Any other practice or behavior that is deemed to
14 be deceptive by law.

15 Section 7. The following acts constitute grounds for
16 which disciplinary action against a registrant or controlling
17 person(s) may be taken by the director:

18 (1) Being convicted of or entering a guilty plea or
19 a plea of nolo contendere to, any of the following:

20 a. A crime in any jurisdiction which relates to the
21 operation of a professional employer organization or the
22 ability to engage in business as a professional employer
23 organization.

1 b. Fraud, deceit, or misconduct in the
2 classification of employees and reporting of employee wages
3 under the workers' compensation laws of this state.

4 c. Fraud, deceit, or misconduct in the establishment
5 of or maintenance of workers' compensation coverage,
6 regardless of whether self-insured or otherwise.

7 d. Fraud, deceit, or misconduct in the operation of
8 a professional employer organization.

9 (2) Failing to maintain evidence of the workers'
10 compensation insurance coverage required in accordance with
11 this act.

12 (3) Violating this act or any lawful order or rule
13 issued under this act.

14 (4) Failing to notify the director in writing of any
15 change of the primary business address or the addresses of any
16 of the registrant's offices in the state.

17 (5) Being found guilty by a court of competent
18 jurisdiction of a course of conduct or practices which show
19 that the registrant is so incompetent, negligent, dishonest,
20 or untruthful that the money, property, transactions, and
21 rights of investors, or those with whom the registrant may
22 sustain a confidential relation, may not safely be entrusted
23 to the registrant.

24 (6) Failing to inform the director in writing within
25 30 days after being convicted, pleading guilty, or entering a

1 plea of nolo contendere to a felony, regardless of
2 adjudication.

3 (7) Found liable for civil fraud by any court of
4 competent jurisdiction in any state.

5 (8) Failure to inform the director in writing within
6 30 days of an adverse material action by a state or federal
7 regulatory agency.

8 Section 8. (a) (1) Upon a finding that a registrant
9 has violated a provision of Section 6 or 7, the director may:

10 a. Impose an administrative fine not to exceed one
11 thousand dollars (\$1,000) for every count or separate offense.

12 b. Impose upon the registrant the cost of
13 investigation and prosecution, including reasonable attorney
14 fees.

15 c. Refuse to register or renew the registration of
16 an offending professional employer organization.

17 (2) The director may make, or cause to be made,
18 investigations, audits, or reviews within or without the state
19 as the director deems necessary to determine whether a person
20 has violated or is in danger of violating this act, including
21 any regulation or rule to aid in the enforcement of this act,
22 including any regulation or rule promulgated pursuant to this
23 act.

1 (3) All civil penalties collected under this act
2 shall be deposited in the Professional Employer Organization
3 Registration Administrative Trust Fund.

4 (b) A person who engages in the business of or acts
5 as a professional employer organization without first
6 registering with the department, or otherwise violates this
7 act or any rules and regulations promulgated by the director
8 in accordance with this act, shall be liable for a civil
9 penalty for each offense of one hundred dollars (\$100) for
10 each count or separate offense. Each day of continued
11 violation shall constitute a separate offense.

12 (c) In addition to the penalties provided for in
13 this act, the director may take whatever regulatory or legal
14 action necessary to enjoin or restrain any person engaging in
15 the business of or acts as a professional employer
16 organization without having first registered with the
17 department.

18 (d) The controlling person(s) of a professional
19 employer organization who collects payments from a client
20 representing wages, taxes, benefit payments, or insurance
21 payments and fails to remit the funds to the appropriate
22 governmental or private entity shall be guilty of a Class C
23 felony.

24 (e) The controlling person of a client of a
25 professional employer organization who fraudulently or falsely

1 procures payroll checks without having adequate funds to
2 compensate and reimburse the professional employer
3 organization shall be guilty of a Class C felony.

4 Section 9. (a) All professional employer
5 organization arrangements shall have a written contract
6 between the client and the professional employer organization
7 recognizing the rights, responsibilities, and duties of each
8 party. The contract shall disclose to the client the services
9 to be rendered by the professional employer organization,
10 including the total administrative fees charged for
11 professional employer organization services, the respective
12 rights and obligations of the parties, and shall provide the
13 following:

14 (1) The professional employer organization reserves
15 a right of direction and control over contract employees and
16 exercises that right in the context of the need to do so
17 according to the terms and conditions of the professional
18 employment agreement. The client, however, as an employer, may
19 retain sufficient direction and control over covered employees
20 necessary to conduct its business, and, without which, the
21 client would be unable to conduct its business, discharge any
22 fiduciary responsibility, or comply with any applicable
23 licensure, regulatory, or statutory requirement.

24 (2) The professional employer organization assumes
25 responsibility to pay wages to covered employees, withhold,

1 collect, report, and remit payroll-related and unemployment
2 taxes to the extent that the client employer has funded the
3 obligations; and, to the extent the professional employer
4 organization has assumed responsibility in the professional
5 employer agreement to make payments for employee benefits for
6 covered employees. As used in this section, the term wages
7 does not include any obligation between a client and a covered
8 employee for payments beyond or in addition to the covered
9 employee's salary, draw, or regular rate of pay, such as
10 bonuses, commissions, severance pay, deferred compensation,
11 profit sharing, vacation, sick leave, or other paid time off
12 pay, unless the professional employer organization has
13 expressly agreed to assume liability for the payments in the
14 professional employer agreement.

15 (3) Under the terms and conditions of the
16 professional employment agreement, the professional employer
17 organization and the client shall both have a right to hire,
18 terminate, and discipline the covered employees subject to the
19 terms of any collective bargaining agreements which may exist.

20 (4) The responsibility to obtain workers'
21 compensation coverage for covered employees, from a carrier
22 licensed to do business in this state and otherwise in
23 compliance with all applicable requirements, shall be
24 specifically allocated to either the client or the

1 professional employer organization in the professional
2 employer agreement.

3 (b) A professional employer organization shall
4 provide written notice to each covered employee affected by
5 any such professional employer agreement of the general nature
6 of the co-employment relationship between and among the
7 professional employer organization, the client, and the
8 covered employee.

9 (c) (1) Except as specifically provided in this act
10 or in the professional employer agreement, the client shall be
11 entitled to exercise all rights, and shall be obligated to
12 perform all duties and responsibilities otherwise applicable
13 to an employer in an employment relationship.

14 (2) Unless otherwise expressly agreed by the
15 professional employer organization and the client in a
16 professional employer agreement, the client retains the
17 exclusive right to direct and control the covered employees as
18 is necessary to conduct the business of the client, to
19 discharge the fiduciary responsibilities of the client, or to
20 comply with any licensure requirements applicable to client or
21 to the covered employees.

22 (3) Except to the extent otherwise expressly
23 provided by the applicable professional employer agreement, a
24 client shall be solely responsible for the quality, adequacy,

1 or safety of the goods or services produced or sold in a
2 client's business.

3 (4) A client shall be solely responsible for
4 directing, supervising, training, and controlling the work of
5 the covered employees with respect to the business activities
6 of the client and shall be solely responsible for the acts,
7 errors, or omissions of the covered employees with regard to
8 those activities.

9 (5) A client shall not be liable for the acts,
10 errors, or omissions of a professional employer organization
11 or of any covered employee of the client and a professional
12 employer organization when the covered employee is acting
13 under the express direction and control of the professional
14 employer organization.

15 (d) Neither a professional employer agreement nor
16 this act may be construed to diminish, abolish, or remove
17 rights of covered employees as to clients or obligations of
18 the client as to a covered employee existing prior to the
19 effective date of a professional employer agreement.

20 (e) A covered employee is not, solely as the result
21 of being a covered employee of a professional employer
22 organization, an employee of the professional employer
23 organization for purposes of general liability insurance,
24 employment practices liability insurance, fidelity bonds,
25 surety bonds, employer's liability which is not covered by

1 workers' compensation, or liquor liability insurance carried
2 by the professional employer organization unless the covered
3 employees are included by specific reference in the
4 professional employer agreement and applicable prearranged
5 employment contract, insurance contract, or bond.

6 (f) (1) A professional employer organization shall be
7 entitled to exercise only those rights and obligated to
8 perform only those duties and responsibilities specifically
9 required by this act and/or set forth in the professional
10 employer agreement.

11 (2) A professional employer organization shall be
12 deemed an employer of its worksite employees and perform the
13 responsibilities designated in the professional employer
14 organization arrangement and this act. A professional employer
15 organization may not be liable for the acts, errors, or
16 omissions of a client, or of any covered employee of the
17 client and a professional employer organization when the
18 covered employee is acting under the express direction and
19 control of the client.

20 (3) A client and a professional employer
21 organization shall each be deemed an employer for purposes of
22 sponsoring retirement and welfare benefit plans for their
23 covered employees, however, in no case shall a health care
24 benefit plan be deemed to be jointly sponsored by both the
25 client and the professional employer organization. The

1 professional employer agreement shall identify whether the
2 client or the professional employer organization is the
3 sponsor of any given health care benefit plan.

4 a. Any single employer health care plan sponsored by
5 a professional employer organization that is required under
6 the federal Employee Retirement Income Security Act "ERISA" to
7 be governed exclusively by federal law shall not be subject to
8 this act.

9 b. Any health care plan sponsored by the
10 professional employer organization that is not required under
11 the federal Employee Retirement Income Security Act "ERISA" to
12 be governed exclusively by federal law shall be governed by
13 the laws of the State of Alabama.

14 (4) A professional employer organization shall pay
15 wages and collect, report, and pay employment related taxes
16 and report and pay unemployment taxes for covered employees to
17 the extent that the client employer has funded those
18 obligations.

19 (5)a. For purposes of unemployment compensation,
20 covered employees of a professional employer organization are
21 considered the employees of the professional employer
22 organization, which shall be responsible for the payment of
23 contributions, penalties, and interest on wages paid by the
24 professional employer organization to its covered employees

1 during the term of the applicable professional employer
2 agreement.

3 b. The professional employer organization shall
4 report by client and pay all required contributions to the
5 Unemployment Compensation Trust Fund using the state employer
6 account number and the contribution rate of the professional
7 employer organization.

8 c. On the termination of a contract between a
9 professional employer organization and a client or the failure
10 by a professional employer organization to submit reports or
11 make tax payments as required by this act, the client shall be
12 treated as a new employer without a previous experience record
13 unless that client is otherwise eligible for an experience
14 rating.

15 (6)a. A professional employer organization shall
16 assure to the satisfaction of the director that workers'
17 compensation coverage is provided for all covered employees
18 employed in this state pursuant to the laws of this state.
19 Failure to provide the director with proof of workers'
20 compensation coverage shall subject the professional employer
21 organization to a civil penalty of one thousand dollars
22 (\$1,000). In the event individual coverage is obtained for
23 each client employer, failure to provide proof of coverage for
24 each client employer shall constitute a separate finable
25 offense.

1 b. If the responsibility to obtain workers'
2 compensation coverage for covered employees is allocated in
3 the professional employer agreement to the professional
4 employer organization, the agreement shall require that the
5 professional employer organization maintain and provide to
6 each client, at the termination of the agreement if requested
7 by the client, records regarding the loss experience related
8 to workers' compensation insurance provided to covered
9 employees pursuant to the agreement.

10 c. Each professional employer organization shall
11 within 30 days notify the director and the workers'
12 compensation insurance carrier, if applicable, of the
13 initiation of a new client or the termination of the
14 professional employer organization's relationship with any
15 client for which the professional employer organization
16 provides services for covered employees within this state.

17 d. Each professional employer organization shall
18 further notify the director and its clients within 10 days of
19 any notice of cancellation of workers' compensation coverage.
20 Failure to provide notices shall subject the registrant to an
21 administrative penalty of one hundred dollars (\$100) per day
22 for each day past the required notice.

23 e. Both client and the professional employer
24 organization shall be considered the employer for the purpose
25 of workers' compensation coverage, and shall each be entitled

1 to protection of the exclusive remedy provision of the
2 workers' compensation laws of this state.

3 (7)a. The sale and provision of professional
4 employer services in conformance with the provisions of this
5 act shall not constitute the sale of insurance. However, the
6 following activities shall not be considered the sale or
7 provision of professional employer services: (i) exclusively
8 providing, selling, or administering workers' compensation
9 and/or health insurance plans to one or more clients; (ii)
10 soliciting prospective clients based solely or primarily on
11 representations of insurance coverage or cost advantages; or
12 (iii) offering for sale or selling a policy of insurance to a
13 client or employee. No professional employer organization
14 shall function or hold itself out as an insurer, or insurance
15 producer unless appropriately licensed by this state. The
16 Alabama Department of Insurance shall have exclusive control
17 of determining what defines the sale of insurance.

18 b. A self-insured professional employer organization
19 may not extend the use of its self-insurance certificate to
20 any other person, firm, or corporation not specifically
21 authorized by such certificate.

22 Section 10. (a) There is established in the State
23 Treasury a fund entitled the Professional Employer
24 Organization Registration Administrative Trust Fund. Fees and
25 assessments provided by this act collected by the Department

1 of Industrial Relations shall be deposited in the fund. The
2 fund shall constitute a separate fund to be disbursed by the
3 state Comptroller on order of the director. All expenses
4 incurred by the department under this act, including the
5 salaries of all employees, travel costs, and any other cost of
6 administration and enforcement as may become necessary, either
7 within or without the state, shall be paid from the separate
8 fund in the State Treasury upon warrants of the state
9 Comptroller drawn upon the State Treasury from time to time
10 when vouchers therefore are approved by the director. The
11 State Treasurer shall pay monies from the separate fund upon
12 the order of the director. The total expense for every purpose
13 incurred may not exceed the total fees and assessments
14 collected and paid into the fund. All monies remaining
15 unexpended in the separate fund at the end of the fiscal year
16 shall remain in the State Treasury to be expended as provided
17 by this act.

18 No monies shall be withdrawn or expended from the
19 fund for any purpose unless the monies have been appropriated
20 by the Legislature and allocated pursuant to this chapter. Any
21 monies appropriated shall be budgeted and allotted pursuant to
22 the Budget Management Act in accordance with Article 4
23 (commencing with Section 41-4-80) of Chapter 4 of Title 41,
24 and only in the amounts provided by the Legislature in the
25 general appropriations act or other appropriations act.

1 (b) The State Treasurer shall determine if the money
2 in the trust fund shall be kept in cash or invested. The
3 moneys in the fund may be invested by the State Treasurer and
4 all moneys and interest remaining unexpended in the separate
5 fund provided at the end of the fiscal year shall remain in
6 the State Treasury to be expended as provided by this act.

7 (c) The director is designated as trustee of the
8 fund and the State Treasurer is designated as custodian of the
9 fund, and both shall furnish bonds in amounts deemed
10 appropriate. The cost of bonds for the trustee, custodian, and
11 other employees or officials required to post bond in
12 connection with the program shall be paid out of the fund.

13 Section 11. (a) The department shall adopt rules
14 necessary for the administration of this act in compliance
15 with the Administrative Procedure Act.

16 (b) All registrants are governed and controlled by
17 this act and the rules adopted by the department.

18 (c) The director shall adopt all rules in accordance
19 with the intent and spirit of this act.

20 Section 12. Although this bill would have as its
21 purpose or effect the requirement of a new or increased
22 expenditure of local funds, the bill is excluded from further
23 requirements and application under Amendment 621 because the
24 bill defines a new crime or amends the definition of an
25 existing crime.

1 Section 13. The provisions of this act are
2 severable. If any part of this act is declared invalid or
3 unconstitutional, that declaration shall not affect the part
4 which remains.

5 Section 14. This act shall become effective on the
6 first day of the third month following its passage and
7 approval by the Governor, or its otherwise becoming law.

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President and Presiding Officer of the Senate

Speaker of the House of Representatives

SB41

Senate 19-JAN-06

I hereby certify that the within Act originated in and passed the Senate, as amended.

McDowell Lee
Secretary

House of Representatives
Amended and passed 02-MAR-06

Senate concurred in House amendment 07-MAR-06

By: Senator Means