

Brad Moran
Spivey SENATE BILL NO. 264 *Sprague* *Cernott*
 INTRODUCED BY *Lafe Wilson* *Mckee* *Legrand*
Miller *McClay* *Dunagan* *Forness* *Harber* *ORR*

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING THE MONTANA PROFESSIONAL EMPLOYER ORGANIZATIONS LICENSING ACT; REQUIRING LICENSING OF AND STANDARDS FOR PROFESSIONAL EMPLOYER ORGANIZATIONS AND GROUPS; REQUIRING PROFESSIONAL EMPLOYER ORGANIZATIONS AND GROUPS TO PROVIDE WORKERS' COMPENSATION AND UNEMPLOYMENT INSURANCE COVERAGE; PROVIDING FOR DISCLOSURE OF INFORMATION; PROVIDING EXEMPTIONS AND PENALTIES; AND PROVIDING AN EFFECTIVE DATE."

STATEMENT OF INTENT

A statement of intent is required for this bill because [section 3] authorizes the department of labor and industry to adopt rules regarding professional employer organization and group licensing. It is intended that the department develop rules similar to those adopted by other states that regulate professional employer licensing organizations and groups and develop rules to provide for the reciprocal licensing provisions provided for in [this act].

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Short title -- purpose.** (1) [Sections 1 through 14] may be cited as the "Montana Professional Employer Organizations and Groups Licensing Act".

(2) The legislature recognizes that there is a public need for professional employer services and finds it necessary in the interest of public health, safety, and welfare to establish standards for the operation, regulation, and licensing of professional employer organizations and groups in this state.

NEW SECTION. **Section 2. Definitions.** As used in [sections 1 through 14], unless the context indicates otherwise, the following definitions apply:

(1) "Applicant" means a person that seeks to be licensed under [sections 1 through 14].

(2) "Client" means a person who obtains all or part of its workforce from another person through a professional employer arrangement.

1 (3) "Controlling person" means an individual who possesses the right to direct the management
2 or policies of a professional employer organization or group through ownership of voting securities, by
3 contract or otherwise.

4 (4) "Department" means the department of labor and industry.

5 (5) "Employee leasing arrangement" means an arrangement by contract or otherwise under which
6 a person hires its own employees and assigns the employees to work for another person to staff and
7 manage, or to assist in staffing and managing, a facility, function, project, or enterprise on an ongoing
8 basis.

9 (6) "Licensee" means a person licensed as a professional employer organization or group under
10 [sections 1 through 14].

11 (7) "Person" means an individual, association, company, firm, partnership, corporation, or limited
12 liability company.

13 (8) (a) "Professional employer arrangement" means an arrangement by contract or otherwise under
14 which:

15 (i) a professional employer organization or group assigns employees to perform services for a client;

16 (ii) the arrangement is or is intended to be ongoing rather than temporary in nature; and

17 (iii) the employer responsibilities are shared by the professional employer organization or group and
18 the client.

19 (b) The term does not include:

20 (i) services performed by a temporary service contractor;

21 (ii) arrangements under which a person shares employees with a commonly owned company within
22 the meaning of section 414(b) and (c) of the Internal Revenue Code of 1986, as amended, if:

23 (A) that person's principal business activity is not entering into professional employer
24 arrangements; and

25 (B) that person does not represent to the public that the person is a professional employer
26 organization or group; and

27 (iii) arrangements exist for employment of an independent contractor as defined in 39-71-120.

28 (9) "Professional employer group" or "group" means at least two but not more than five
29 professional employer organizations, each of which is majority-owned by the same person.

30 (10) "Professional employer organization" means:

1 (a) a person that provides services of employees pursuant to one or more professional employer
2 arrangements or to one or more employee leasing arrangements; or

3 (b) a person that represents to the public that the person provides services pursuant to a
4 professional employer arrangement.

5 (11) "Temporary service contractor" means a person conducting a business that hires its own
6 employees and assigns them to clients to fulfill a work assignment with a finite ending date to support or
7 supplement the client's workforce in situations resulting from employee absences, skill shortages, seasonal
8 workloads, and special assignments and projects.

9

10 **NEW SECTION. Section 3. License required -- exemption -- rulemaking authority.** (1) On or after
11 [the effective date of this act], a person who acts as a professional employer organization or group by
12 entering into a professional employer arrangement with a client in this state without a license or who
13 violates the provisions of [sections 1 through 14] may be subject to the penalties provided in [section 11].

14 (2) The provisions of [sections 1 through 14] do not apply to a labor organization, the state or its
15 political subdivisions, the United States, or any programs or agencies of those entities.

16 (3) A license issued under [sections 1 through 14] remains the property of the department and may
17 not be transferred.

18 (4) The department may adopt rules to implement the provisions of [sections 1 through 14].

19

20 **NEW SECTION. Section 4. Initial license application -- application fee -- standards.** (1) An
21 applicant for initial licensure as a professional employer organization or group shall file with the department
22 a completed application on a form provided by the department.

23 (2) The application must be accompanied by a nonrefundable application fee and any material or
24 information required by the department that demonstrates compliance with the requirements of [sections
25 1 through 14]. The application fee is:

26 (a) \$750 for a resident or nonresident unrestricted license; and

27 (b) \$500 for a restricted license.

28 (3) As a condition of licensure under [sections 1 through 14], an applicant who is not a resident
29 or who is domiciled outside the state must first be licensed as a professional employer organization or group
30 in the state in which the applicant is a resident or is domiciled if licensing is required by that state.

1 (4) An applicant for licensure as a professional employer organization or group shall meet the
2 following standards:

3 (a) An individual must be 18 years of age or older.

4 (b) A partnership or a limited partnership shall provide the names and home addresses of all
5 partners, indicate whether each partner is a general or a limited partner, and include a copy of the
6 partnership agreement or an affidavit signed by all partners acknowledging that no written partnership
7 agreement exists.

8 (c) A corporation shall state the names and home addresses of all officers, directors, and
9 shareholders who own a 5% or greater interest in the corporation and provide a certificate of good standing
10 from the secretary of state demonstrating that the corporation is qualified to do business in this state.

11 (d) A limited liability company shall state the names and home addresses of those individuals who
12 own a 5% or greater interest in the limited liability company and provide a certificate of good standing from
13 the secretary of state demonstrating that the company is qualified to do business in this state.

14 (e) A group:

15 (i) must be authorized to act on behalf of the group;

16 (ii) shall include for each professional employer organization within the group the information
17 required in subsection (4); and

18 (iii) shall guarantee, on a form provided by the department and executed by each professional
19 employer organization within the group, payment of all financial obligations with respect to wages,
20 payroll-related taxes, insurance premiums, and employee benefits of each other member within the group.
21 A professional employer group may satisfy the reporting and financial requirements of [section 9] on a
22 consolidated basis.

23 (5) An applicant shall also provide:

24 (a) the trade name or names under which the applicant conducts business, the business's taxpayer
25 or employer identification number, the address of the business's principal place of business in the state,
26 and the addresses of any other offices within the state through which the applicant intends to conduct
27 business as a professional employer organization or group. If the applicant's principal place of business
28 is located in another state, the address must be provided.

29 (b) a list by jurisdiction of each name under which the applicant has operated in the preceding 5
30 years, including any alternative names, names of predecessors, and names of related business entities with

1 common majority ownership, and detailed information on the background of each controlling person to the
2 extent required by the department; and

3 (c) other information requested by the department to show that the applicant and each controlling
4 person are of good moral character, have business integrity, and are financially responsible. "Good moral
5 character" means a personal history of honesty, trustworthiness, and fairness; a good reputation for fair
6 dealings; and respect for the rights of others and for the laws of this state and nation.

7 (6) Except for an applicant who is granted a restricted license under subsection (8), an applicant
8 shall maintain a tangible accounting net worth of not less than \$50,000, evidenced by providing a financial
9 statement prepared in accordance with generally accepted accounting principles and accompanied by a
10 compilation report by an independent certified public accountant. Documents submitted to establish net
11 worth must reflect net worth as of a date not more than 6 months prior to the date on which the
12 application is submitted. A financial statement submitted must be attested by the president, chief financial
13 officer, and at least one controlling person of the professional employer organization or group. In meeting
14 the specified net worth requirement, the applicant may provide to the department a surety bond, letter of
15 credit, or marketable securities acceptable to the department. A surety will not be acceptable to satisfy
16 this requirement unless the applicant submits sufficient evidence to satisfy the department that the surety
17 has adequate resources to satisfy the obligations of the surety. A surety is subject to audit or verification
18 by the department or its agent.

19 (7) The applicant shall maintain a positive working capital, as determined in accordance with
20 generally accepted accounting principles.

21 (8) The department may issue a restricted license for limited operation within this state to a
22 professional employer organization or group that is a resident of or domiciled in another state if:

23 (a) the applicant's state of residence or domicile provides for licensing of professional employer
24 organizations or groups, the applicant is licensed and in good standing in the state of residence or domicile,
25 and that state grants a similar privilege for restricted licensing to professional employer organizations or
26 groups that are residents of or domiciled in this state and that are licensed under [sections 1 through 14];

27 (b) the applicant does not maintain an office, a sales force, or a sales representative in this state
28 and does not solicit clients who are residents of or domiciled in this state; and

29 (c) the applicant does not have more than 100 leased employees working in this state.

30 (9) An applicant for a nonresident or restricted license shall file, on a form provided by the

1 department, an appointment of a recognized and approved entity as its attorney to receive service of legal
2 process issued against it in this state.

3 (10) A license issued under this section remains the property of the department and may not be
4 transferred.

5

6 **NEW SECTION. Section 5. Denial of license application or renewal -- hearing.** (1) The department
7 shall deny a license application or an application to renew a license if:

8 (a) the application is not fully completed or properly executed;

9 (b) documents required to supplement the application are not included in the application packet or
10 are inadequate;

11 (c) the nonrefundable application or license fee is not submitted or is incorrectly submitted with
12 the application packet;

13 (d) the applicant or any person named in the application misrepresents material in the application;

14 (e) the applicant is determined by the department to lack good moral character, business integrity,
15 or financial responsibility; or

16 (f) the department determines that the applicant has failed to meet or maintain any requirement of
17 [sections 1 through 14].

18 (2) Conviction of a crime within the last 7 years does not automatically bar an applicant from
19 obtaining a license or bar a licensee from renewing a license. The department shall consider the type of
20 crime committed, the crime's relevancy to the employee leasing industry, the length of time since the
21 conviction, and any other factor considered relevant by the department.

22 (3) The department or its agent shall furnish the applicant with a written statement of the reason
23 or reasons for denying the license or license renewal application.

24 (4) An applicant or licensee may request a hearing before the department within 30 days after
25 receiving the written denial statement. The hearing and appeal must follow the procedures provided in Title
26 2, chapter 4, parts 6 and 7.

27 (5) During the hearing and appeal process, a licensee may continue to operate unless the
28 circumstances warrant the ordering of immediate cessation of operations. If the renewal application is
29 rejected, the licensee shall cease operations within this state 30 days after receiving written notification.
30 A licensee who does not comply with the department's order to cease is subject to the penalties provided

1 in [section 11].

2 (6) The department may institute and maintain in the name of the state, through the attorney
3 general or the county attorney of the county in which the violation of an order to cease occurs, an action
4 for an injunction, order, or other civil remedy in district court to enforce its order.

5 (7) An applicant or licensee is ineligible to reapply for a license for 1 year following final department
6 action denying the issuance of or renewal of a license. The 1-year restriction does not apply to an
7 administrative denial or nonrenewal if the denial or nonrenewal was caused:

8 (a) by an inadvertent error or omission on the application;

9 (b) by experience that was insufficiently documented to the department at the time of the previous
10 application;

11 (c) by a failure to submit the required fees; or

12 (d) when the applicant or licensee was determined to be ineligible because an individual no longer
13 associated with the professional employer organization or group was determined to lack good moral
14 character, business integrity, or financial responsibility.

15
16 **NEW SECTION. Section 6. License renewal.** (1) Except as provided in subsection (5), a license
17 issued under [sections 1 through 14] is valid for 1 year from the date of issuance unless suspended or
18 revoked.

19 (2) At least 30 days prior to the expiration of the license, the licensee shall submit an application
20 for renewal of a license on a form prescribed by the department and accompanied by the license fee, as
21 provided in [section 7].

22 (3) A late renewal application may not be processed prior to the expiration of the licensee's current
23 license. A person engaged in an unlicensed activity is subject to the penalty established in [section 11].

24 (4) Denial of a renewal license is subject to review under the provisions of [section 5].

25 (5) If the application fee required in [section 4] is paid and accepted, then no additional license fee
26 is required for the first year.

27
28 **NEW SECTION. Section 7. Renewal fees.** (1) The fee for the renewal of a resident or nonresident
29 unrestricted license is \$750.

30 (2) The fee for the renewal of a restricted license is \$500.

1 (3) The application fee required in [section 4] does not apply to the renewal of an unrestricted
2 license.

3 (4) A restricted license may not be granted to a professional employer organization or group that
4 is a resident of or domiciled in another state if the state requires licensing but does not grant a similar
5 privilege for restricted licensing to a licensee who is a resident of or domiciled in this state.

6 (5) Fees collected must be used by the department to implement [sections 1 through 14].
7

8 **NEW SECTION. Section 8. License suspension, revocation, or nonrenewal.** (1) In addition to the
9 penalty provided in [section 11], the department may suspend for up to 1 year, may permanently revoke,
10 or may refuse to renew a license issued under [sections 1 through 14] if, after notice to the licensee of the
11 charges and after a hearing, the department finds that any of the following exists:

12 (a) a cause for which issuance of the license could have been refused had it been known to the
13 department at the time of issuance;

14 (b) a violation of an order of the department or noncompliance with any provision of [sections 1
15 through 14];

16 (c) procurement of or attempting to procure a license through misrepresentation or fraud;

17 (d) failure to provide a written response to a written inquiry from the department or its agent within
18 30 days after receiving an inquiry; or

19 (e) failure to meet or maintain any other requirement of [sections 1 through 14].

20 (2) If a license is suspended, revoked, or not renewed, the department shall:

21 (a) immediately notify by certified mail the licensee and the licensee's workers' compensation
22 carrier; and

23 (b) require the licensee to notify each client by certified mail, return receipt requested, of the
24 suspension, revocation, or nonrenewal using language furnished by the department and to provide the
25 department with evidence of client notification.

26 (3) Upon notification, the licensee may appeal the decision of the department pursuant to the
27 procedure provided in [section 5].
28

29 **NEW SECTION. Section 9. Requirements of licensee.** (1) A professional employer organization
30 or group shall, by written contract with the client, establish the responsibilities and duties of each party.

1 The contract must disclose to the client:

2 (a) the services provided, the administrative fee, and the respective rights and obligations of the
3 parties;

4 (b) a statement providing that the professional employer organization or group:

5 (i) reserves a right of direction and control over employees assigned to the client's location. The
6 client may retain sufficient direction and control over employees necessary to conduct business and without
7 which the client would be unable to conduct business, discharge fiduciary responsibilities, or comply with
8 state licensing laws.

9 (ii) assumes responsibility for the payment of wages of employees, payroll-related taxes, and
10 employee benefits from its own accounts without regard to payments by the client; and

11 (iii) retains authority to hire, terminate, discipline, and reassign employees. The client has the right
12 to accept or cancel the assignment of an employee.

13 (c) a statement that, with respect to a worker subject to a professional employer arrangement, the
14 client shares joint liability for any wages, workers' compensation premiums, payroll-related taxes, and any
15 benefits left unpaid by the professional employer organization or group; and

16 (d) a statement that the client is responsible for compliance with the Montana Safety Culture Act,
17 Title 39, chapter 71, part 15.

18 (2) The professional employer organization or group shall:

19 (a) give written notice of the general nature of the relationship between the professional employer
20 organization or group and the client to each employee assigned to perform services at the client's place of
21 work. The employer shall disclose to the client a statement providing that the professional employer
22 organization or group:

23 (i) reserves a right of direction and control over employees assigned to the client's location. The
24 client may retain sufficient direction and control over employees necessary to conduct business and without
25 which the client would be unable to conduct business, discharge fiduciary responsibilities, or comply with
26 state licensing laws.

27 (ii) retains authority to hire, terminate, discipline, and reassign employees. The client has the right
28 to accept or cancel the assignment of an employee.

29 (b) submit to the department, within 90 days of the end of each calendar quarter, information
30 certified by an independent certified public accountant demonstrating that all payroll-related taxes for the

1 quarter have been paid. Upon a showing of reasonable cause, one 30-day extension may be granted for
2 each quarter.

3 (c) maintain and make available for the department or its agent all records relating to the licensee's
4 business conduct. Records must be maintained for 5 years after terminating an employee leasing
5 arrangement or professional employer arrangement.

6 (d) notify the department in writing within 20 days of a change of business address or a change
7 in partners, directors, officers, members, or controlling persons designated in the license;

8 (e) notify the department in writing within 20 days after a client either commences or terminates
9 a professional employer arrangement or an employee leasing arrangement with that professional employer
10 organization or group; and

11 (f) post the license issued in a conspicuous place in the principal place of business and display, in
12 clear public view in each licensee's office, a notice stating that the professional employer organization or
13 group is licensed and regulated by the department.

14 (3) When a professional employer organization or group uses a professional employer arrangement
15 with the client, both the professional employer organization or group and the client are the immediate
16 employers of the workers subject to the arrangement for the purposes of the workers' compensation laws
17 of this state. When a professional employer organization or group uses an employee leasing arrangement
18 with the client, the professional employer organization or group is the immediate employer of the workers
19 subject to the arrangement for the purposes of the workers' compensation laws of this state.

20 (4) A professional employer organization or group shall:

21 (a) pay wages and collect, report, and pay payroll-related taxes from its own accounts;

22 (b) pay unemployment taxes, pursuant to 39-51-1103, and provide, maintain, and secure all
23 records and documents required of employers under the unemployment insurance laws of this state. For
24 unemployment reporting purposes, each professional employer organization or group is the employing unit
25 as defined in 39-51-201.

26 (c) provide workers' compensation coverage for all employees and provide, maintain, and secure
27 all records and documents required of employers under the workers' compensation laws of this state. A
28 license may not be issued to a professional employer organization or group until the department receives
29 proof of workers' compensation coverage for all employees assigned to any client location in this state.

30 (5) A professional employer organization or group is the employer for sponsoring and maintaining

1 employee benefit and welfare plans. The plans, if limited to employees of the professional employer
2 organization or group, are not multiple employer welfare arrangements.

3 (6) A professional employer organization or group shall disclose to the department, to each client,
4 and to its employees information on any health or life fringe benefit program provided for its employees.

5 The information must include:

6 (a) the type of benefits;

7 (b) the identity of each insurer providing each type of coverage;

8 (c) the amount of benefits for each type of coverage and to whom or on whose behalf the benefits
9 will be paid;

10 (d) the policy limits on each insurance policy; and

11 (e) whether coverage is fully insured, partially insured, or fully self-funded.

12 (7) Disclosure required by this section may be made by any written means reasonably calculated
13 to adequately inform the employees, including a summary plan description that meets the requirements of
14 the Employee Retirement Income Security Act of 1974, as amended.

15 (8) (a) Subject to any contrary provisions of the contract between the client and the professional
16 employer organization or group, the professional employer arrangement that exists between the parties
17 must be interpreted for purposes of insurance, bonding, and employer liability pursuant to subsection (8)(b).

18 (b) The professional employer organization or group:

19 (i) is entitled, along with the client, to the exclusivity of the remedy under both the workers'
20 compensation and employers' liability provisions of a workers' compensation policy or plan of either party;
21 and

22 (ii) is not liable for the acts, errors, or omissions of a client or of an employee acting under the
23 direction and control of a client, subject to the provisions of [sections 1 through 14]. Subject to the
24 provisions of [sections 1 through 14], a client is not liable for the acts, errors, or omissions of a professional
25 employer organization or group or of any employee of a professional employer organization or group acting
26 under the direction and control of the professional employer organization or group.

27 (9) A provider of workers' compensation insurance shall base classifications and rates applicable
28 to the payroll of a worker subject to either a professional employer arrangement or an employee leasing
29 arrangement as though the worker had been a direct employee of the client. A licensee shall maintain
30 payroll records by classification for each client during the term of the arrangement. If an experience

1 modification has been established for the client, that experience modification may be applied by the insurer
2 to the premium for the client's leased workers.

3 (10) An employee assigned to a client by a professional employer organization or group is
4 considered the employee of the client for purposes of general liability insurance, motor vehicle insurance,
5 fidelity bonds, surety bonds, and employers' liability and liquor liability insurance carried by the client. An
6 employee assigned to a client by a professional employer organization or group is not an employee of the
7 professional employer organization or group for purposes of general liability insurance, motor vehicle
8 insurance, fidelity bonds, surety bonds, or employers' liability or liquor liability insurance carried by the
9 professional employer organization or group unless the employee is included by reference in an employment
10 arrangement contract, insurance contract, or bond.

11 (11) The sale of professional employer services pursuant to [sections 1 through 14] does not
12 constitute the sale of insurance under Title 33.

13 (12) (a) The existence of a professional employer arrangement does not constitute employment
14 within the meaning of 39-51-204 if the client is a sole proprietor or a working member of a partnership.

15 (b) An individual working under a professional employer arrangement may not receive
16 unemployment insurance benefits unless the individual would otherwise be entitled to benefits if the
17 professional employer arrangement did not exist.

18 (13) If the professional employer organization or group or the client complies with the provisions
19 of 39-71-401 with respect to a worker under the professional employer arrangement, the professional
20 employer organization or group and the client, with respect to those workers, are not uninsured employers,
21 as defined in 39-71-501, and are not subject to the provisions of 39-71-508 or 39-71-515.

22

23 **NEW SECTION. Section 10. Deceptive practices prohibited.** A professional employer organization
24 or group may not:

25 (1) make, issue, circulate, or cause to be made, issued, or circulated an estimate, illustration,
26 circular, statement, advertisement, sales presentation, omission, or comparison that misrepresents the
27 benefits, advantages, conditions, or terms of a professional employer arrangement or that is otherwise
28 untrue, deceptive, or misleading;

29 (2) enter into an agreement to commit or by concerted action commit an act of boycott, coercion,
30 or intimidation that results in unreasonable restraint of or monopoly in the business of professional employer

1 services;

2 (3) file with the department or other public official or make, publish, disseminate, circulate, or
3 deliver to a person a false statement of financial condition with the intent to deceive;

4 (4) knowingly:

5 (a) make a false entry of a material fact in a book, report, or statement of a person; or

6 (b) omit a material fact pertaining to the business of the person from a book, report, or statement
7 of that person;

8 (5) permit the use or filing of a name, trade name, fictitious name, or business identity that is the
9 same as or similar to or that may be confused with the name, trade name, fictitious name, or business
10 identity of an existing licensee, governmental agency, or nonprofit organization; or

11 (6) commit any other practice determined by department rule to be deceptive.

12

13 **NEW SECTION. Section 11. Disciplinary action against licensee -- penalties.** (1) The department
14 may deny a license application or may suspend, revoke, or refuse to renew an existing license for a person
15 who:

16 (a) obtains or renews a license through bribery, fraud, or willful misrepresentation;

17 (b) engages in fraud, deceit, misrepresentation, or misconduct in:

18 (i) obtaining or providing workers' compensation or health coverage;

19 (ii) the classification of employees;

20 (iii) the reporting of employee wages for purposes of unemployment insurance or workers'
21 compensation benefits; or

22 (iv) the operation of a professional employer organization or group;

23 (c) conducts business without a valid license;

24 (d) fails to maintain evidence of workers' compensation insurance coverage;

25 (e) transfers or attempts to transfer a license issued pursuant to [sections 1 through 14]; or

26 (f) violates the provisions of [sections 1 through 14] or a rule issued pursuant to [sections 1
27 through 14].

28 (2) A person who fails to comply with the provisions of [sections 1 through 14] is guilty of a
29 misdemeanor and, upon conviction, is subject to a fine of up to \$500, imprisonment for not more than 1
30 year, or both.

1 **NEW SECTION. Section 12. Investigations -- audits -- reviews.** (1) The department or its agent
2 may perform an investigation, audit, or review necessary to determine whether a person has violated any
3 provision of [sections 1 through 14] or any rule promulgated by the department to implement [sections 1
4 through 14].

5 (2) Except as provided in subsection (3), material compiled by the department or its agent in an
6 investigation, audit, or review pursuant to this section is a public record and may be disclosed.

7 (3) Financial information, client lists, and lists of workers that are assigned by a professional
8 employer organization or group and that are obtained by the department or its agent during an investigation,
9 audit, or review are confidential and are not subject to disclosure.

10

11 **NEW SECTION. Section 13. Disclosure of information.** (1) The department may not disclose to
12 any person the records, statements, or documents received from an applicant, client, or professional
13 employer organization or group, except:

14 (a) information necessary for state agency personnel to perform official duties; or

15 (b) in response to an order received by a court of competent jurisdiction upon a finding that the
16 disclosure of the record, statement, or document is necessary because the merits of disclosure clearly
17 exceed the demand for individual privacy.

18 (2) The department may publish or make available to the public reasonable statistical data or
19 reports regarding professional employer organizations or groups if the data or reports protect the identity
20 of an applicant, client, or professional employer organization or group.

21

22 **NEW SECTION. Section 14. Other law.** (1) [Sections 1 through 14] do not exempt a client of a
23 professional employer organization or group or an employee assigned to a client by a professional employer
24 organization or group from other local, state, or federal license or registration requirements.

25 (2) An employee who is licensed, registered, or certified under law and who is assigned to a client
26 location is an employee of the client for purposes of the license, registration, or certification.

27 (3) Except as provided in a professional employer arrangement, a professional employer
28 organization or group is not liable for the general debts, obligations, profit losses, business goodwill, or
29 other damages of a client with which it has entered into a professional employer arrangement.

30

1 **NEW SECTION. Section 15. Codification instruction.** [Sections 1 through 14] are intended to be
2 codified as an integral part of Title 37, and the provisions of Title 37 apply to [sections 1 through 14].

3

4 **NEW SECTION. Section 16. Severability.** If a part of [this act] is invalid, all valid parts that are
5 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its
6 applications, the part remains in effect in all valid applications that are severable from the invalid
7 applications.

8

9 **NEW SECTION. Section 17. Effective date.** [This act] is effective July 1, 1995.

10

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STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0264, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act establishing the Montana Professional Employer Organizations Act; requiring licensing of and standards for professional employer organizations and groups; requiring professional employer organizations and groups to provide workers' compensation and unemployment insurance coverage; providing for disclosure of information; providing exemptions and penalties; and providing an effective date.

ASSUMPTIONS:


Dept of Labor & Industry


1. Approximately ten corporations equivalent to the sort identified by this proposed legislation currently exist in-state, and hundreds more out of state, so the total number of program participants is uncertain. (10 corporations x \$750 application fee in FY96 and 10 corporations x \$750 renewal fees in FY97).
2. The workload associated with the functions of this legislation will be absorbed by Workers' Compensation Regulation Unit within Employment Relations Division, Department of Labor and Industry.

State Compensation Insurance Fund

3. Every employer in Montana must provide workers' compensation coverage for their employees.
4. "Professional Employer Organizations" (PEO) are employers of employees who are assigned to "client" employers to perform work on a permanent basis.
5. Both the PEO and the client are the immediate employer of the worker for workers' compensation purposes under a "professional employer arrangement" or "employee leasing arrangement".
6. Both the PEO and client are entitled to the exclusive remedy protection of the workers' compensation act under a professional employer arrangement.
7. PEOs must obtain a license to do business in Montana through the Department of Labor and Industry.
8. A workers' compensation insurer must base classifications and rates applicable to payroll as though the leased employee were a direct employee of the "client".
9. A PEO must maintain separate payroll records for each client during the term of a professional employer arrangement or employee leasing arrangement.
10. If the client has developed an experience modification factor, that experience factor may be used by an insurer in determining premium for a leased worker.
11. A sole proprietor or working member of a partnership is not engaged in "employment" under a professional employer arrangement.
12. This act does not apply to persons doing business as a "temporary service contractor".
13. The State Fund will be required to amend its contract of insurance and notify all active policyholders of the contents of this bill.
14. The State Fund will be required to issue a single master policy to a PEO or group of PEOs naming each client of each PEO or group of PEOs as an additional named insured.

(continued)

 2-3-95
DAVID LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

 2-9-95
DELWYN GAGE, PRIMARY SPONSOR DATE

Fiscal Note for SB0264, as introduced

SB 264

(continued)

15. A PEO may submit payroll related taxes, insurance premiums and employee benefit reports on a consolidated basis.
16. The State Fund will need to contract for programmer services to implement this legislation.
17. Individual client loss data may be obliterated, thereby preventing calculation of individual client experience modification factors.

FISCAL IMPACT:

Dept of Labor & Industry

Employment Relations Division (04)

	<u>FY96</u>	<u>FY97</u>
	<u>Difference</u>	<u>Difference</u>
<u>Revenues:</u>		
Fees, SSR (02)	7,500	7,500
Workers' Comp Assessment, SSR (02)	(7,500)	(7,500)
	0	0

State Compensation Insurance Fund

Expenditures:

	<u>FY96</u>	<u>FY97</u>
	<u>Difference</u>	<u>Difference</u>
Operating Expenses	47,150	0

TECHNICAL NOTES:

Department of Labor & Industry

1. While it is assumed all Professional Employer Organizations (PEOs) will pay their UI Contributions, in the event a PEO ceases operation without paying its UI contributions, the UI Division would seek to collect the contributions from the client company. In such a situation, the client company might effectively pay UI contributions twice. If the client company was unable to pay, and depending upon the amount of benefits charged against the client company, any reduction to the UI trust fund would be recovered by possible increased contribution rates to all employers.
2. The bill provides that "for unemployment reporting purposes, each professional employer organization (PEO) or group is the employing unit as defined in 39-51-201". If the PEO does not report employee wages by client company, failure of the PEO to pay unemployment insurance taxes would result in the UI Division having to determine the liability of each client company. Depending upon the size and number of clients of a PEO, identifying the employees of each client company could require considerable manhours as the UI Division would need to investigate and construct a wage report for each client company. Fiscal impact of this potential is indeterminate.
3. This bill gives authority to Department of Labor and Industry, yet codification instructions are to place it in Title 37 where the Department of Commerce has general authority.
4. The penalty is less than the cost of the license.

State Compensation Insurance Fund

5. PEOs and "clients" may not both be eligible for the exclusive remedy protections of the workers' compensation act under Art. II, Sec. 16 of the Montana Constitution.

(continued)

DEDICATION OF REVENUE:

- a) Are there persons or entities that benefit from this dedicated revenue that do not pay?
(Please explain)

Yes. The 'clients' and the 'employees' of the fee-paying PEOs benefit by having the state establishing standards for the PEOs. These standards would function to serve in the interest of public health, safety and welfare, especially of the employees and the clients.

- b) What special information or other advantages exist as a result of using a state special revenue fund that could not be obtained if the revenue were allocated to the general fund?

The funds are kept separate so that they are only used for the purpose for which they were collected.

- c) Is the source of revenue relevant to current use of the funds and adequate to fund the program/activity that is intended? Yes No (if no, explain)

- d) Does the need for this state special revenue provision still exist? Yes No (Explain)

This bill establishes this state special revenue.

- e) Does the dedicated revenue affect the legislature's ability to scrutinize budgets, control expenditures, or establish priorities for state spending? (Please explain)

The legislature's ability to scrutinize budgets, control expenditures, or establish priorities for state spending will not be affected by this dedicated revenue provision. The agency will track detail on SBAS to provide this information to the legislature on request.

- f) Does the dedicated revenue fulfill a continuing, legislatively recognized need?
(Please explain)

Yes, as provided in this bill.

- g) How does the dedicated revenue provision result in accounting/auditing efficiencies or inefficiencies in your agency? (Please explain. Also, if the program/activity were general funded, could you adequately account for the program/activity?)

The dedicated revenue provision allows for specific tracking of the fund balance. If this activity were general funded, the program could be accounted for adequately, except for accounting for the fund balance.

SENATE BILL NO. 264

INTRODUCED BY GAGE, WISEMAN, MCKEE, KEATING, MOLNAR, MILLS, SPRAGUE, ARNOTT,
KEENAN, MILLER, MCGEE, SWYSGOOD, FORRESTER, HARDING, ORR

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING THE MONTANA PROFESSIONAL EMPLOYER ORGANIZATIONS LICENSING ACT; REQUIRING LICENSING OF AND STANDARDS FOR PROFESSIONAL EMPLOYER ORGANIZATIONS AND GROUPS; REQUIRING PROFESSIONAL EMPLOYER ORGANIZATIONS AND GROUPS TO PROVIDE WORKERS' COMPENSATION AND UNEMPLOYMENT INSURANCE COVERAGE; PROVIDING FOR DISCLOSURE OF INFORMATION; PROVIDING EXEMPTIONS AND PENALTIES; AND PROVIDING AN EFFECTIVE DATE."

STATEMENT OF INTENT

A statement of intent is required for this bill because [section 3] authorizes the department of labor and industry to adopt rules regarding professional employer organization and group licensing. It is intended that the department develop rules similar to those adopted by other states that regulate professional employer licensing organizations and groups and develop rules to provide for the reciprocal licensing provisions provided for in [this act].

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Short title -- purpose. (1) [Sections 1 through 44 15] may be cited as the "Montana Professional Employer Organizations and Groups Licensing Act".

(2) The legislature recognizes that there is a public need for professional employer services and finds it necessary in the interest of public health, safety, and welfare to establish standards for the operation, regulation, and licensing of professional employer organizations and groups in this state.

NEW SECTION. Section 2. Definitions. As used in [sections 1 through 44 15], unless the context indicates otherwise, the following definitions apply:

(1) "Applicant" means a person that seeks to be licensed under [sections 1 through 44 15].

(2) "Client" means a person who obtains all or part of its workforce from another person through

1 a professional employer arrangement.

2 (3) "Controlling person" means an individual who possesses the right to direct the management
3 or policies of a professional employer organization or group through ownership of voting securities, by
4 contract or otherwise.

5 (4) "Department" means the department of labor and industry.

6 (5) "Employee leasing arrangement" means an arrangement by contract or otherwise under which
7 a ~~person~~ PROFESSIONAL EMPLOYER ORGANIZATION hires its own employees and assigns the employees
8 to work for another person to staff and manage, or to assist in staffing and managing, a facility, function,
9 project, or enterprise on an ongoing basis.

10 (6) "Licensee" means a person licensed as a professional employer organization or group under
11 [sections 1 through ~~14~~ 15].

12 (7) "Person" means an individual, association, company, firm, partnership, corporation, or limited
13 liability company.

14 (8) (a) "Professional employer arrangement" means an arrangement by contract or otherwise under
15 which:

16 (i) a professional employer organization or group assigns employees to perform services for a client;

17 (ii) the arrangement is or is intended to be ongoing rather than temporary in nature; and

18 (iii) the employer responsibilities are shared by the professional employer organization or group and
19 the client.

20 (b) The term does not include:

21 (i) services performed by a temporary service contractor;

22 (ii) arrangements under which a person shares employees with a commonly owned company within
23 the meaning of section 414(b) and (c) of the Internal Revenue Code of 1986, as amended, if:

24 (A) that person's principal business activity is not entering into professional employer
25 arrangements; and

26 (B) that person does not represent to the public that the person is a professional employer
27 organization or group; and

28 (iii) arrangements exist for employment of an independent contractor as defined in 39-71-120.

29 (9) "Professional employer group" or "group" means at least two but not more than five
30 professional employer organizations, each of which is majority-owned by the same person.

1 (10) "Professional employer organization" means:

2 (a) a person that provides services of employees pursuant to one or more professional employer
3 arrangements or to one or more employee leasing arrangements; or

4 (b) a person that represents to the public that the person provides services pursuant to a
5 professional employer arrangement.

6 (11) "Temporary service contractor" means a person conducting a business that hires its own
7 employees and assigns them to clients to fulfill a work assignment with a finite ending date to support or
8 supplement the client's workforce in situations resulting from employee absences, skill shortages, seasonal
9 workloads, and special assignments and projects.

10

11 **NEW SECTION. Section 3. License required -- exemption -- rulemaking authority.** (1) On or after
12 [the effective date of this act], a person who acts as a professional employer organization or group by
13 entering into a professional employer arrangement with a client in this state without a license or who
14 violates the provisions of [sections 1 through ~~44~~ 15] may be subject to the penalties provided in [section
15 11].

16 (2) The provisions of [sections 1 through ~~44~~ 15] do not apply to a labor organization, the state or
17 its political subdivisions, the United States, or any programs or agencies of those entities.

18 (3) A license issued under [sections 1 through ~~44~~ 15] remains the property of the department and
19 may not be transferred.

20 (4) The department may adopt rules to implement the provisions of [sections 1 through ~~44~~ 15].

21

22 **NEW SECTION. Section 4. Initial license application -- application fee -- standards.** (1) An
23 applicant for initial licensure as a professional employer organization or group shall file with the department
24 a completed application on a form provided by the department.

25 (2) The application must be accompanied by a nonrefundable application fee and any material or
26 information required by the department that demonstrates compliance with the requirements of [sections
27 1 through ~~44~~ 15]. The application fee is:

28 (a) \$750 for a resident or nonresident unrestricted license; and

29 (b) \$500 for a restricted license.

30 (3) As a condition of licensure under [sections 1 through ~~44~~ 15], an applicant who is not a resident

1 or who is domiciled outside the state must first be licensed as a professional employer organization or group
2 in the state in which the applicant is a resident or is domiciled if licensing is required by that state.

3 (4) An applicant for licensure as a professional employer organization or group shall meet the
4 following standards:

5 (a) An individual must be 18 years of age or older.

6 (b) A partnership or a limited partnership shall provide the names and home addresses of all
7 partners, indicate whether each partner is a general or a limited partner, and include a copy of the
8 partnership agreement or an affidavit signed by all partners acknowledging that no written partnership
9 agreement exists.

10 (c) A corporation shall state the names and home addresses of all officers, directors, and
11 shareholders who own a 5% or greater interest in the corporation and provide a certificate of good standing
12 from the secretary of state demonstrating that the corporation is qualified to do business in this state.

13 (d) A limited liability company shall state the names and home addresses of those individuals who
14 own a 5% or greater interest in the limited liability company and provide a certificate of good standing from
15 the secretary of state demonstrating that the company is qualified to do business in this state.

16 (e) A group:

17 (i) must be authorized to act on behalf of the group;

18 (ii) shall include for each professional employer organization within the group the information
19 required in subsection (4); and

20 (iii) shall guarantee, on a form provided by the department and executed by each professional
21 employer organization within the group, payment of all financial obligations with respect to wages,
22 payroll-related taxes, insurance premiums, and employee benefits of each other member within the group.
23 ~~A professional employer group may satisfy the reporting and financial requirements of [section 9] on a~~
24 ~~consolidated basis.~~

25 (5) An applicant shall also provide:

26 (a) the trade name or names under which the applicant conducts business, the business's taxpayer
27 or employer identification number, the address of the business's principal place of business in the state,
28 and the addresses of any other offices within the state through which the applicant intends to conduct
29 business as a professional employer organization or group. If the applicant's principal place of business
30 is located in another state, the address must be provided.

1 (b) a list by jurisdiction of each name under which the applicant has operated in the preceding 5
2 years, including any alternative names, names of predecessors, and names of related business entities with
3 common majority ownership, and detailed information on the background of each controlling person to the
4 extent required by the department; and

5 (c) other information requested by the department to show that the applicant and each controlling
6 person are of good moral character, have business integrity, and are financially responsible. "Good moral
7 character" means a personal history of honesty, trustworthiness, and fairness; a good reputation for fair
8 dealings; and respect for the rights of others and for the laws of this state and nation.

9 (6) Except for an applicant who is granted a restricted license under subsection (8), an applicant
10 shall maintain a tangible accounting net worth of not less than \$50,000, evidenced by providing a financial
11 statement prepared in accordance with generally accepted accounting principles and accompanied by a
12 compilation report by an independent certified public accountant. Documents submitted to establish net
13 worth must reflect net worth as of a date not more than 6 months prior to the date on which the
14 application is submitted. A financial statement submitted must be attested by the president, chief financial
15 officer, and at least one controlling person of the professional employer organization or group. In meeting
16 the specified net worth requirement, the applicant may provide to the department a surety bond, letter of
17 credit, or marketable securities acceptable to the department. A surety will not be acceptable to satisfy
18 this requirement unless the applicant submits sufficient evidence to satisfy the department that the surety
19 has adequate resources to satisfy the obligations of the surety. A surety is subject to audit or verification
20 by the department or its agent.

21 (7) The applicant shall maintain a positive working capital, as determined in accordance with
22 generally accepted accounting principles.

23 (8) The department may issue a restricted license for limited operation within this state to a
24 professional employer organization or group that is a resident of or domiciled in another state if:

25 (a) the applicant's state of residence or domicile provides for licensing of professional employer
26 organizations or groups, the applicant is licensed and in good standing in the state of residence or domicile,
27 and that state grants a similar privilege for restricted licensing to professional employer organizations or
28 groups that are residents of or domiciled in this state and that are licensed under [sections 1 through 14
29 15];

30 (b) the applicant does not maintain an office, a sales force, or a sales representative in this state

1 and does not solicit clients who are residents of or domiciled in this state; and

2 (c) the applicant does not have more than 100 leased employees working in this state.

3 (9) An applicant for a nonresident or restricted license shall file, on a form provided by the
4 department, an appointment of a recognized and approved entity as its attorney to receive service of legal
5 process issued against it in this state.

6 (10) A license issued under this section remains the property of the department and may not be
7 transferred.

8

9 **NEW SECTION. Section 5. Denial of license application or renewal -- hearing.** (1) The department
10 shall deny a license application or an application to renew a license if:

11 (a) the application is not fully completed or properly executed;

12 (b) documents required to supplement the application are not included in the application packet or
13 are inadequate;

14 (c) the nonrefundable application or license fee is not submitted or is incorrectly submitted with
15 the application packet;

16 (d) the applicant or any person named in the application misrepresents material in the application;

17 (e) the applicant is determined by the department to lack good moral character, business integrity,
18 or financial responsibility; or

19 (f) the department determines that the applicant has failed to meet or maintain any requirement of
20 [sections 1 through 44 15].

21 (2) Conviction of a crime within the last 7 years does not automatically bar an applicant from
22 obtaining a license or bar a licensee from renewing a license. The department shall consider the type of
23 crime committed, the crime's relevancy to the employee leasing industry, the length of time since the
24 conviction, and any other factor considered relevant by the department.

25 (3) The department or its agent shall furnish the applicant with a written statement of the reason
26 or reasons for denying the license or license renewal application.

27 (4) An applicant or licensee may request a hearing before the department within 30 days after
28 receiving the written denial statement. The hearing and appeal must follow the procedures provided in Title
29 2, chapter 4, parts 6 and 7.

30 (5) During the hearing and appeal process, a licensee may continue to operate unless the

1 circumstances warrant the ordering of immediate cessation of operations. If the renewal application is
2 rejected, the licensee shall cease operations within this state 30 days after receiving written notification.
3 A licensee who does not comply with the department's order to cease is subject to the penalties provided
4 in [section 11].

5 (6) The department may institute and maintain in the name of the state, through the attorney
6 general or the county attorney of the county in which the violation of an order to cease occurs, an action
7 for an injunction, order, or other civil remedy in district court to enforce its order.

8 (7) An applicant or licensee is ineligible to reapply for a license for 1 year following final department
9 action denying the issuance of or renewal of a license. The 1-year restriction does not apply to an
10 administrative denial or nonrenewal if the denial or nonrenewal was caused:

11 (a) by an inadvertent error or omission on the application;

12 (b) by experience that was insufficiently documented to the department at the time of the previous
13 application;

14 (c) by a failure to submit the required fees; or

15 (d) when the applicant or licensee was determined to be ineligible because an individual no longer
16 associated with the professional employer organization or group was determined to lack good moral
17 character, business integrity, or financial responsibility.

18
19 **NEW SECTION. Section 6. License renewal.** (1) Except as provided in subsection (5), a license
20 issued under [sections 1 through ~~44~~ 15] is valid for 1 year from the date of issuance unless suspended or
21 revoked.

22 (2) At least 30 days prior to the expiration of the license, the licensee shall submit an application
23 for renewal of a license on a form prescribed by the department and accompanied by the license fee, as
24 provided in [section 7].

25 (3) A late renewal application may not be processed prior to the expiration of the licensee's current
26 license. A person engaged in an unlicensed activity is subject to the penalty established in [section 11].

27 (4) Denial of a renewal license is subject to review under the provisions of [section 5].

28 (5) If the application fee required in [section 4] is paid and accepted, then no additional license fee
29 is required for the first year.

30

1 **NEW SECTION. Section 7. Renewal fees.** (1) The fee for the renewal of a resident or nonresident
2 unrestricted license is \$750.

3 (2) The fee for the renewal of a restricted license is \$500.

4 (3) The application fee required in [section 4] does not apply to the renewal of an unrestricted
5 license.

6 (4) A restricted license may not be granted to a professional employer organization or group that
7 is a resident of or domiciled in another state if the state requires licensing but does not grant a similar
8 privilege for restricted licensing to a licensee who is a resident of or domiciled in this state.

9 (5) Fees collected must be used by the department to implement [sections 1 through ~~44~~ 15].

10

11 **NEW SECTION. Section 8. License suspension, revocation, or nonrenewal.** (1) In addition to the
12 penalty provided in [section 11], the department may suspend for up to 1 year, may permanently revoke,
13 or may refuse to renew a license issued under [sections 1 through ~~44~~ 15] if, after notice to the licensee
14 of the charges and after a hearing, the department finds that any of the following exists:

15 (a) a cause for which issuance of the license could have been refused had it been known to the
16 department at the time of issuance;

17 (b) a violation of an order of the department or noncompliance with any provision of [sections 1
18 through ~~44~~ 15];

19 (c) procurement of or attempting to procure a license through misrepresentation or fraud;

20 (d) failure to provide a written response to a written inquiry from the department or its agent within
21 30 days after receiving an inquiry; or

22 (e) failure to meet or maintain any other requirement of [sections 1 through ~~44~~ 15].

23 (2) If a license is suspended, revoked, or not renewed, the department shall:

24 (a) immediately notify by certified mail the licensee and the licensee's workers' compensation
25 carrier; and

26 (b) require the licensee to notify each client by certified mail, return receipt requested, of the
27 suspension, revocation, or nonrenewal using language furnished by the department and to provide the
28 department with evidence of client notification.

29 (3) Upon notification, the licensee may appeal the decision of the department pursuant to the
30 procedure provided in [section 5].

1 **NEW SECTION. Section 9. Requirements of licensee.** (1) A professional employer organization
 2 or group shall, by written contract with the client, establish the responsibilities and duties of each party.
 3 The contract must disclose to the client:

4 (a) the services provided, the administrative fee, and the respective rights and obligations of the
 5 parties;

6 (b) a statement providing that the professional employer organization or group:

7 (i) reserves a right of direction and control over employees assigned to the client's location. The
 8 client may retain sufficient direction and control over employees necessary to conduct business and without
 9 which the client would be unable to conduct business, discharge fiduciary responsibilities, or comply with
 10 state licensing laws.

11 (ii) assumes responsibility for the payment of wages of employees, WORKERS' COMPENSATION
 12 PREMIUMS, payroll-related taxes, and employee benefits from its own accounts without regard to payments
 13 by the client; and

14 (iii) retains authority to hire, terminate, discipline, and reassign employees. The client has the right
 15 to accept or cancel the assignment of an employee.

16 (c) a statement that, with respect to a worker subject to a professional employer arrangement, the
 17 client shares joint liability for any wages, workers' compensation premiums, payroll-related taxes, and any
 18 benefits left unpaid by the professional employer organization or group; and

19 (d) a statement that the client is responsible for compliance with the Montana Safety Culture Act,
 20 Title 39, chapter 71, part 15.

21 (2) The professional employer organization or group shall:

22 (a) give written notice of the general nature of the relationship between the professional employer
 23 organization or group and the client to each employee assigned to perform services at the client's place of
 24 work. ~~The employer shall disclose to the client a statement providing that the professional employer~~
 25 ~~organization or group~~ THE DISCLOSURE MUST PROVIDE THAT THE PROFESSIONAL EMPLOYER
 26 ORGANIZATION:

27 (i) reserves a right of direction and control over employees assigned to the client's location. The
 28 client may retain sufficient direction and control over employees necessary to conduct business and without
 29 which the client would be unable to conduct business, discharge fiduciary responsibilities, or comply with
 30 state licensing laws.

1 (ii) retains authority to hire, terminate, discipline, and reassign employees. The client has the right
2 to accept or cancel the assignment of an employee.

3 (b) submit to the department, within 90 days of the end of each calendar quarter, information
4 certified by an independent certified public accountant demonstrating that all payroll-related taxes for the
5 quarter have been paid. Upon a showing of reasonable cause, one 30-day extension may be granted for
6 each quarter.

7 (c) maintain and make available for the department or its agent all records relating to the licensee's
8 business conduct. Records must be maintained for 5 years after terminating an employee leasing
9 arrangement or professional employer arrangement.

10 (d) notify the department in writing within 20 days of a change of business address or a change
11 in partners, directors, officers, members, or controlling persons designated in the license;

12 (e) notify the department in writing within 20 days after a client either commences or terminates
13 a professional employer arrangement or an employee leasing arrangement with that professional employer
14 organization or group; and

15 (f) post the license issued in a conspicuous place in the principal place of business and display, in
16 clear public view in each licensee's office, a notice stating that the professional employer organization or
17 group is licensed and regulated by the department.

18 (3) When a professional employer organization or group uses a professional employer arrangement
19 with the client, both the professional employer organization or group and the client are the immediate
20 employers of the workers subject to the arrangement for the purposes of the workers' compensation laws
21 of this state. When a professional employer organization or group uses an employee leasing arrangement
22 with the client, the professional employer organization or group is the immediate employer of the workers
23 subject to the arrangement for the purposes of the workers' compensation laws of this state.

24 (4) A professional employer organization or group shall:

25 (a) pay wages and collect, report, and pay payroll-related taxes from its own accounts;

26 (b) pay unemployment taxes, pursuant to 39-51-1103, and provide, maintain, and secure all
27 records and documents required of employers under the unemployment insurance laws of this state. For
28 unemployment reporting purposes, each professional employer organization ~~or group~~ is the employing unit,
29 as defined in 39-51-201, AND SHALL KEEP SEPARATE RECORDS AND SUBMIT QUARTERLY WAGE LISTS
30 FOR EACH OF ITS CLIENTS.

1 (c) provide workers' compensation coverage for all employees and provide, maintain, and secure
2 all records and documents required of employers under the workers' compensation laws of this state. A
3 license may not be issued to a professional employer organization or group until the department receives
4 proof of workers' compensation coverage for all employees assigned to any client location in this state.

5 (5) A professional employer organization or group is the employer for sponsoring and maintaining
6 employee benefit and welfare plans. The plans, if limited to employees of the professional employer
7 organization or group, are not multiple employer welfare arrangements.

8 (6) A professional employer organization or group shall disclose to the department, to each client,
9 and to its employees information on any health or life fringe benefit program provided for its employees.

10 The information must include:

11 (a) the type of benefits;

12 (b) the identity of each insurer providing each type of coverage;

13 (c) the amount of benefits for each type of coverage and to whom or on whose behalf the benefits
14 will be paid;

15 (d) the policy limits on each insurance policy; and

16 (e) whether coverage is fully insured, partially insured, or fully self-funded.

17 (7) Disclosure required by this section may be made by any written means reasonably calculated
18 to adequately inform the employees, including a summary plan description that meets the requirements of
19 the Employee Retirement Income Security Act of 1974, as amended.

20 (8) (a) Subject to any contrary provisions of the contract between the client and the professional
21 employer organization or group, the professional employer arrangement that exists between the parties
22 must be interpreted for purposes of insurance, bonding, and employer liability pursuant to subsection (8)(b).

23 (b) The professional employer organization or group:

24 (i) is entitled, along with the client, to the exclusivity of the remedy under both the workers'
25 compensation and employers' liability provisions of a workers' compensation policy or plan of either party;

26 and

27 (ii) is not liable for the acts, errors, or omissions of a client or of an employee acting under the
28 direction and control of a client, subject to the provisions of [sections 1 through ~~14~~ 15]. Subject to the
29 provisions of [sections 1 through ~~14~~ 15], a client is not liable for the acts, errors, or omissions of a
30 professional employer organization or group or of any employee of a professional employer organization or

1 group acting under the direction and control of the professional employer organization or group.

2 ~~(9) A provider of workers' compensation insurance shall base classifications and rates applicable~~
 3 ~~to the payroll of a worker subject to either a professional employer arrangement or an employee leasing~~
 4 ~~arrangement as though the worker had been a direct employee of the client. A licensee shall maintain~~
 5 ~~payroll records by classification for each client during the term of the arrangement. If an experience~~
 6 ~~modification has been established for the client, that experience modification may be applied by the insurer~~
 7 ~~to the premium for the client's leased workers.~~

8 (9) A PROFESSIONAL EMPLOYER ORGANIZATION THAT APPLIES FOR WORKERS'
 9 COMPENSATION COVERAGE SHALL ALSO MAINTAIN AND FURNISH TO THE INSURER SUFFICIENT
 10 INFORMATION TO PERMIT THE CALCULATION OF AN EXPERIENCE MODIFICATION FACTOR FOR EACH
 11 CLIENT EMPLOYER, INCLUDING BUT NOT LIMITED TO:

12 (A) THE CLIENT EMPLOYER'S CORPORATE OR BUSINESS NAME;

13 (B) THE CLIENT EMPLOYER'S TAXPAYER OR EMPLOYER IDENTIFICATION NUMBER;

14 (C) THE CLIENT EMPLOYER'S RISK IDENTIFICATION NUMBER;

15 (D) A LISTING OF ALL EMPLOYEES ASSIGNED TO EACH CLIENT EMPLOYER AND THE
 16 APPLICABLE CLASSIFICATION CODE AND PAYROLL; AND

17 (E) THE CLIENT EMPLOYER'S FIRST REPORT OF INJURY IDENTIFYING THE CLIENT EMPLOYER
 18 AND ANY OTHER INFORMATION NECESSARY TO PERMIT THE CALCULATION OF AN EXPERIENCE
 19 MODIFICATION FACTOR FOR EACH CLIENT EMPLOYER.

20 (10) An employee assigned to a client by a professional employer organization or group is
 21 considered the employee of the client for purposes of general liability insurance, motor vehicle insurance,
 22 fidelity bonds, surety bonds, ~~and employers' liability~~ and liquor liability insurance carried by the client. An
 23 employee assigned to a client by a professional employer organization or group is not an employee of the
 24 professional employer organization or group for purposes of general liability insurance, motor vehicle
 25 insurance, fidelity bonds, surety bonds, ~~or employers' liability~~ or liquor liability insurance carried by the
 26 professional employer organization or group unless the employee is included by reference in an employment
 27 arrangement contract, insurance contract, or bond.

28 (11) The sale of professional employer services pursuant to [sections 1 through ~~44~~ 15] does not
 29 constitute the sale of insurance under Title 33.

30 (12) ~~(a) The existence of a professional employer arrangement does not constitute employment~~

1 ~~within the meaning of 39-51-204 if the client is a sole proprietor or a working member of a partnership.~~

2 ~~(b) An individual~~ A SOLE PROPRIETOR OR A WORKING MEMBER OF A PARTNERSHIP working
3 under a professional employer arrangement may not receive unemployment insurance benefits unless the
4 individual would otherwise be entitled to benefits if the professional employer arrangement did not exist.

5 (13) If the professional employer organization or group or the client complies with the provisions
6 of 39-71-401 with respect to a worker under the professional employer arrangement, the professional
7 employer organization or group and the client, with respect to those workers, are not uninsured employers,
8 as defined in 39-71-501, and are not subject to the provisions of 39-71-508 or 39-71-515.

9

10 NEW SECTION. Section 10. Deceptive practices prohibited. A professional employer organization
11 or group may not:

12 (1) make, issue, circulate, or cause to be made, issued, or circulated an estimate, illustration,
13 circular, statement, advertisement, sales presentation, omission, or comparison that misrepresents the
14 benefits, advantages, conditions, or terms of a professional employer arrangement or that is otherwise
15 untrue, deceptive, or misleading;

16 (2) enter into an agreement to commit or by concerted action commit an act of boycott, coercion,
17 or intimidation that results in unreasonable restraint of or monopoly in the business of professional employer
18 services;

19 (3) file with the department or other public official or make, publish, disseminate, circulate, or
20 deliver to a person a false statement of financial condition with the intent to deceive;

21 (4) knowingly:

22 (a) make a false entry of a material fact in a book, report, or statement of a person; or

23 (b) omit a material fact pertaining to the business of the person from a book, report, or statement
24 of that person;

25 (5) permit the use or filing of a name, trade name, fictitious name, or business identity that is the
26 same as or similar to or that may be confused with the name, trade name, fictitious name, or business
27 identity of an existing licensee, governmental agency, or nonprofit organization; or

28 (6) commit any other practice determined by department rule to be deceptive.

29

30 NEW SECTION. Section 11. Disciplinary action against licensee -- penalties. (1) The department

1 may deny a license application or may suspend, revoke, or refuse to renew an existing license for a person
2 who:

3 (a) obtains or renews a license through bribery, fraud, or willful misrepresentation;

4 (b) engages in fraud, deceit, misrepresentation, or misconduct in:

5 (i) obtaining or providing workers' compensation or health coverage;

6 (ii) the classification of employees;

7 (iii) the reporting of employee wages for purposes of unemployment insurance or workers'
8 compensation benefits; or

9 (iv) the operation of a professional employer organization or group;

10 (c) conducts business without a valid license;

11 (d) fails to maintain evidence of workers' compensation insurance coverage;

12 (e) transfers or attempts to transfer a license issued pursuant to [sections 1 through 44 15]; or

13 (f) violates the provisions of [sections 1 through 44 15] or a rule issued pursuant to [sections 1
14 through 44 15].

15 (2) A person who fails to comply with the provisions of [sections 1 through 44 15] is guilty of a
16 misdemeanor and, upon conviction, is subject to a fine of up to \$500, imprisonment for not more than 1
17 year, or both.

18

19 **NEW SECTION. Section 12. Investigations -- audits -- reviews.** (1) The department or its agent
20 may perform an investigation, audit, or review necessary to determine whether a person has violated any
21 provision of [sections 1 through 44 15] or any rule promulgated by the department to implement [sections
22 1 through 44 15].

23 (2) Except as provided in subsection (3), material compiled by the department or its agent in an
24 investigation, audit, or review pursuant to this section is a public record and may be disclosed.

25 (3) Financial information, client lists, and lists of workers that are assigned by a professional
26 employer organization or group and that are obtained by the department or its agent during an investigation,
27 audit, or review are confidential ~~and are not subject to disclosure~~ **AND MAY NOT BE PUBLISHED OR BE**
28 **OPEN TO PUBLIC INSPECTION, EXCEPT TO PUBLIC EMPLOYEES IN THE PERFORMANCE OF THEIR PUBLIC**
29 **DUTIES.**

30

1 **NEW SECTION. Section 13. Disclosure of information.** (1) The department may not disclose to
2 any person the records, statements, or documents received from an applicant, client, or professional
3 employer organization or group, except:

4 (a) information necessary for ~~state agency personnel to perform official duties~~ **PUBLIC EMPLOYEES**
5 **IN THE PERFORMANCE OF THEIR PUBLIC DUTIES;** or

6 (b) in response to an order received by a court of competent jurisdiction upon a finding that the
7 disclosure of the record, statement, or document is necessary because the merits of disclosure clearly
8 exceed the demand for individual privacy.

9 (2) The department may publish or make available to the public reasonable statistical data or
10 reports regarding professional employer organizations or groups if the data or reports protect the identity
11 of an applicant, client, or professional employer organization or group.

12
13 **NEW SECTION. Section 14. Other law.** (1) [Sections 1 through 44 ~~15~~] do not exempt a client
14 of a professional employer organization or group or an employee assigned to a client by a professional
15 employer organization or group from other local, state, or federal license or registration requirements.

16 (2) An employee who is licensed, registered, or certified under law and who is assigned to a client
17 location is an employee of the client for purposes of the license, registration, or certification.

18 (3) Except as provided in a professional employer arrangement, a professional employer
19 organization or group is not liable for the general debts, obligations, profit losses, business goodwill, or
20 other damages of a client with which it has entered into a professional employer arrangement.

21
22 **NEW SECTION. SECTION 15. WORKERS' COMPENSATION INSURER REQUIREMENTS.** (1) **AN**
23 **INSURER THAT PROVIDES WORKERS' COMPENSATION INSURANCE TO A CLIENT EMPLOYER OF A**
24 **PROFESSIONAL EMPLOYER ORGANIZATION SHALL BASE CLASSIFICATIONS AND RATES APPLICABLE**
25 **TO THE PAYROLL OF A WORKER WHO IS SUBJECT TO EITHER A PROFESSIONAL EMPLOYER**
26 **ARRANGEMENT OR AN EMPLOYEE LEASING ARRANGEMENT AS THOUGH THE WORKER HAS BEEN A**
27 **DIRECT EMPLOYEE OF THE CLIENT EMPLOYER. IF AN EXPERIENCE MODIFICATION HAS BEEN**
28 **ESTABLISHED FOR THE CLIENT EMPLOYER, THAT EXPERIENCE MODIFICATION MUST BE AUDITED**
29 **USING THE FACTORS IN SUBSECTION (3) AND MUST BE APPLIED BY THE INSURER TO THE PREMIUM**
30 **FOR THE CLIENT EMPLOYER'S WORKERS.**

1 (2) THE INSURER OF A PROFESSIONAL EMPLOYER ORGANIZATION SHALL REPORT TO THE
 2 WORKERS' COMPENSATION ADVISORY ORGANIZATION ALL DATA BY CLIENT, INCLUDING PAYROLL
 3 BY CLASSIFICATION AND LIABILITIES FOR EACH CLIENT DURING THE TERM OF THE POLICY.

4 (3) AN INSURER SHALL AUDIT POLICIES ISSUED TO A PROFESSIONAL EMPLOYER
 5 ORGANIZATION WITHIN 90 DAYS OF THE POLICY EFFECTIVE DATE AND MAY CONDUCT QUARTERLY
 6 AUDITS THEREAFTER. THE PURPOSE OF THE AUDIT IS TO DETERMINE WHETHER ALL
 7 CLASSIFICATIONS, EXPERIENCE MODIFICATION FACTORS, AND ESTIMATED PAYROLL USED WITH
 8 RESPECT TO THE DEVELOPMENT OF THE PREMIUM CHARGED ARE APPROPRIATE.

9 (4) ALL OPERATIONS OF A CLIENT, WHETHER OR NOT ALL OR A PORTION OF THE CLIENT'S
 10 OPERATIONS ARE SUBJECT TO A PROFESSIONAL EMPLOYER ARRANGEMENT OR EMPLOYEE LEASING
 11 ARRANGEMENT, MUST BE INSURED BY THE SAME INSURER.

12

13 NEW SECTION. Section 16. Codification instruction. [Sections 1 through 44 15] are intended to
 14 be codified as an integral part of Title ~~37~~ 39, and the provisions of Title ~~37~~ 39 apply to [sections 1 through
 15 ~~44~~ 15].

16

17 NEW SECTION. Section 17. Severability. If a part of [this act] is invalid, all valid parts that are
 18 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its
 19 applications, the part remains in effect in all valid applications that are severable from the invalid
 20 applications.

21

22 NEW SECTION. Section 18. Effective date. [This act] is effective July 1, 1995.

23

-END-

1 SENATE BILL NO. 264

2 INTRODUCED BY GAGE, WISEMAN, MCKEE, KEATING, MOLNAR, MILLS, SPRAGUE, ARNOTT,
3 KEENAN, MILLER, MCGEE, SWYSGOOD, FORRESTER, HARDING, ORR

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING THE MONTANA PROFESSIONAL EMPLOYER
6 ORGANIZATIONS LICENSING ACT; REQUIRING LICENSING OF AND STANDARDS FOR PROFESSIONAL
7 EMPLOYER ORGANIZATIONS AND GROUPS; REQUIRING PROFESSIONAL EMPLOYER ORGANIZATIONS
8 AND GROUPS TO PROVIDE WORKERS' COMPENSATION AND UNEMPLOYMENT INSURANCE COVERAGE;
9 PROVIDING FOR DISCLOSURE OF INFORMATION; PROVIDING EXEMPTIONS AND PENALTIES; AND
10 PROVIDING AN EFFECTIVE DATE."

11
12 STATEMENT OF INTENT

13 A statement of intent is required for this bill because [section 3] authorizes the department of labor
14 and industry to adopt rules regarding professional employer organization and group licensing. It is intended
15 that the department develop rules similar to those adopted by other states that regulate professional
16 employer licensing organizations and groups and develop rules to provide for the reciprocal licensing
17 provisions provided for in [this act].

18
19 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

20
21 NEW SECTION. **Section 1. Short title -- purpose.** (1) [Sections 1 through ~~44~~ 15] may be cited
22 as the "Montana Professional Employer Organizations and Groups Licensing Act".

23 (2) The legislature recognizes that there is a public need for professional employer services and
24 finds it necessary in the interest of public health, safety, and welfare to establish standards for the
25 operation, regulation, and licensing of professional employer organizations and groups in this state.

26
27 NEW SECTION. **Section 2. Definitions.** As used in [sections 1 through ~~44~~ 15], unless the context
28 indicates otherwise, the following definitions apply:

29 (1) "Applicant" means a person that seeks to be licensed under [sections 1 through ~~44~~ 15].

30 (2) "Client" means a person who obtains all or part of its workforce from another person through

1 a professional employer arrangement.

2 (3) "Controlling person" means an individual who possesses the right to direct the management
3 or policies of a professional employer organization or group through ownership of voting securities, by
4 contract or otherwise.

5 (4) "Department" means the department of labor and industry.

6 (5) "Employee leasing arrangement" means an arrangement by contract or otherwise under which
7 a ~~person~~ PROFESSIONAL EMPLOYER ORGANIZATION hires its own employees and assigns the employees
8 to work for another person to staff and manage, or to assist in staffing and managing, a facility, function,
9 project, or enterprise on an ongoing basis.

10 (6) "Licensee" means a person licensed as a professional employer organization or group under
11 [sections 1 through ~~14~~ 15].

12 (7) "Person" means an individual, association, company, firm, partnership, corporation, or limited
13 liability company.

14 (8) (a) "Professional employer arrangement" means an arrangement by contract or otherwise under
15 which:

16 (i) a professional employer organization or group assigns employees to perform services for a client;

17 (ii) the arrangement is or is intended to be ongoing rather than temporary in nature; and

18 (iii) the employer responsibilities are shared by the professional employer organization or group and
19 the client.

20 (b) The term does not include:

21 (i) services performed by a temporary service contractor;

22 (ii) arrangements under which a person shares employees with a commonly owned company within
23 the meaning of section 414(b) and (c) of the Internal Revenue Code of 1986, as amended, if:

24 (A) that person's principal business activity is not entering into professional employer
25 arrangements; and

26 (B) that person does not represent to the public that the person is a professional employer
27 organization or group; and

28 (iii) arrangements exist for employment of an independent contractor as defined in 39-71-120.

29 (9) "Professional employer group" or "group" means at least two but not more than five
30 professional employer organizations, each of which is majority-owned by the same person.

1 (10) "Professional employer organization" means:

2 (a) a person that provides services of employees pursuant to one or more professional employer
3 arrangements or to one or more employee leasing arrangements; or

4 (b) a person that represents to the public that the person provides services pursuant to a
5 professional employer arrangement.

6 (11) "Temporary service contractor" means a person conducting a business that hires its own
7 employees and assigns them to clients to fulfill a work assignment with a finite ending date to support or
8 supplement the client's workforce in situations resulting from employee absences, skill shortages, seasonal
9 workloads, and special assignments and projects.

10

11 **NEW SECTION. Section 3. License required -- exemption -- rulemaking authority.** (1) On or after
12 [the effective date of this act], a person who acts as a professional employer organization or group by
13 entering into a professional employer arrangement with a client in this state without a license or who
14 violates the provisions of [sections 1 through ~~44~~ 15] may be subject to the penalties provided in [section
15 11].

16 (2) The provisions of [sections 1 through ~~44~~ 15] do not apply to a labor organization, the state or
17 its political subdivisions, the United States, or any programs or agencies of those entities.

18 (3) A license issued under [sections 1 through ~~44~~ 15] remains the property of the department and
19 may not be transferred.

20 (4) The department may adopt rules to implement the provisions of [sections 1 through ~~44~~ 15].

21

22 **NEW SECTION. Section 4. Initial license application -- application fee -- standards.** (1) An
23 applicant for initial licensure as a professional employer organization or group shall file with the department
24 a completed application on a form provided by the department.

25 (2) The application must be accompanied by a nonrefundable application fee and any material or
26 information required by the department that demonstrates compliance with the requirements of [sections
27 1 through ~~44~~ 15]. The application fee is:

28 (a) \$750 for a resident or nonresident unrestricted license; and

29 (b) \$500 for a restricted license.

30 (3) As a condition of licensure under [sections 1 through ~~44~~ 15], an applicant who is not a resident

1 or who is domiciled outside the state must first be licensed as a professional employer organization or group
2 in the state in which the applicant is a resident or is domiciled if licensing is required by that state.

3 (4) An applicant for licensure as a professional employer organization or group shall meet the
4 following standards:

5 (a) An individual must be 18 years of age or older.

6 (b) A partnership or a limited partnership shall provide the names and home addresses of all
7 partners, indicate whether each partner is a general or a limited partner, and include a copy of the
8 partnership agreement or an affidavit signed by all partners acknowledging that no written partnership
9 agreement exists.

10 (c) A corporation shall state the names and home addresses of all officers, directors, and
11 shareholders who own a 5% or greater interest in the corporation and provide a certificate of good standing
12 from the secretary of state demonstrating that the corporation is qualified to do business in this state.

13 (d) A limited liability company shall state the names and home addresses of those individuals who
14 own a 5% or greater interest in the limited liability company and provide a certificate of good standing from
15 the secretary of state demonstrating that the company is qualified to do business in this state.

16 (e) A group:

17 (i) must be authorized to act on behalf of the group;

18 (ii) shall include for each professional employer organization within the group the information
19 required in subsection (4); and

20 (iii) shall guarantee, on a form provided by the department and executed by each professional
21 employer organization within the group, payment of all financial obligations with respect to wages,
22 payroll-related taxes, insurance premiums, and employee benefits of each other member within the group.
23 ~~A professional employer group may satisfy the reporting and financial requirements of [section 9] on a~~
24 ~~consolidated basis.~~

25 (5) An applicant shall also provide:

26 (a) the trade name or names under which the applicant conducts business, the business's taxpayer
27 or employer identification number, the address of the business's principal place of business in the state,
28 and the addresses of any other offices within the state through which the applicant intends to conduct
29 business as a professional employer organization or group. If the applicant's principal place of business
30 is located in another state, the address must be provided.

1 (b) a list by jurisdiction of each name under which the applicant has operated in the preceding 5
2 years, including any alternative names, names of predecessors, and names of related business entities with
3 common majority ownership, and detailed information on the background of each controlling person to the
4 extent required by the department; and

5 (c) other information requested by the department to show that the applicant and each controlling
6 person are of good moral character, have business integrity, and are financially responsible. "Good moral
7 character" means a personal history of honesty, trustworthiness, and fairness; a good reputation for fair
8 dealings; and respect for the rights of others and for the laws of this state and nation.

9 (6) Except for an applicant who is granted a restricted license under subsection (8), an applicant
10 shall maintain a tangible accounting net worth of not less than \$50,000, evidenced by providing a financial
11 statement prepared in accordance with generally accepted accounting principles and accompanied by a
12 compilation report by an independent certified public accountant. Documents submitted to establish net
13 worth must reflect net worth as of a date not more than 6 months prior to the date on which the
14 application is submitted. A financial statement submitted must be attested by the president, chief financial
15 officer, and at least one controlling person of the professional employer organization or group. In meeting
16 the specified net worth requirement, the applicant may provide to the department a surety bond, letter of
17 credit, or marketable securities acceptable to the department. A surety will not be acceptable to satisfy
18 this requirement unless the applicant submits sufficient evidence to satisfy the department that the surety
19 has adequate resources to satisfy the obligations of the surety. A surety is subject to audit or verification
20 by the department or its agent.

21 (7) The applicant shall maintain a positive working capital, as determined in accordance with
22 generally accepted accounting principles.

23 (8) The department may issue a restricted license for limited operation within this state to a
24 professional employer organization or group that is a resident of or domiciled in another state if:

25 (a) the applicant's state of residence or domicile provides for licensing of professional employer
26 organizations or groups, the applicant is licensed and in good standing in the state of residence or domicile,
27 and that state grants a similar privilege for restricted licensing to professional employer organizations or
28 groups that are residents of or domiciled in this state and that are licensed under [sections 1 through 14
29 15];

30 (b) the applicant does not maintain an office, a sales force, or a sales representative in this state

1 and does not solicit clients who are residents of or domiciled in this state; and

2 (c) the applicant does not have more than 100 leased employees working in this state.

3 (9) An applicant for a nonresident or restricted license shall file, on a form provided by the
4 department, an appointment of a recognized and approved entity as its attorney to receive service of legal
5 process issued against it in this state.

6 (10) A license issued under this section remains the property of the department and may not be
7 transferred.

8

9 **NEW SECTION. Section 5. Denial of license application or renewal -- hearing.** (1) The department
10 shall deny a license application or an application to renew a license if:

11 (a) the application is not fully completed or properly executed;

12 (b) documents required to supplement the application are not included in the application packet or
13 are inadequate;

14 (c) the nonrefundable application or license fee is not submitted or is incorrectly submitted with
15 the application packet;

16 (d) the applicant or any person named in the application misrepresents material in the application;

17 (e) the applicant is determined by the department to lack good moral character, business integrity,
18 or financial responsibility; or

19 (f) the department determines that the applicant has failed to meet or maintain any requirement of
20 [sections 1 through ~~4~~ 15].

21 (2) Conviction of a crime within the last 7 years does not automatically bar an applicant from
22 obtaining a license or bar a licensee from renewing a license. The department shall consider the type of
23 crime committed, the crime's relevancy to the employee leasing industry, the length of time since the
24 conviction, and any other factor considered relevant by the department.

25 (3) The department or its agent shall furnish the applicant with a written statement of the reason
26 or reasons for denying the license or license renewal application.

27 (4) An applicant or licensee may request a hearing before the department within 30 days after
28 receiving the written denial statement. The hearing and appeal must follow the procedures provided in Title
29 2, chapter 4, parts 6 and 7.

30 (5) During the hearing and appeal process, a licensee may continue to operate unless the

1 circumstances warrant the ordering of immediate cessation of operations. If the renewal application is
2 rejected, the licensee shall cease operations within this state 30 days after receiving written notification.
3 A licensee who does not comply with the department's order to cease is subject to the penalties provided
4 in [section 11].

5 (6) The department may institute and maintain in the name of the state, through the attorney
6 general or the county attorney of the county in which the violation of an order to cease occurs, an action
7 for an injunction, order, or other civil remedy in district court to enforce its order.

8 (7) An applicant or licensee is ineligible to reapply for a license for 1 year following final department
9 action denying the issuance of or renewal of a license. The 1-year restriction does not apply to an
10 administrative denial or nonrenewal if the denial or nonrenewal was caused:

- 11 (a) by an inadvertent error or omission on the application;
- 12 (b) by experience that was insufficiently documented to the department at the time of the previous
13 application;
- 14 (c) by a failure to submit the required fees; or
- 15 (d) when the applicant or licensee was determined to be ineligible because an individual no longer
16 associated with the professional employer organization or group was determined to lack good moral
17 character, business integrity, or financial responsibility.

18

19 **NEW SECTION. Section 6. License renewal.** (1) Except as provided in subsection (5), a license
20 issued under [sections 1 through ~~44~~ 15] is valid for 1 year from the date of issuance unless suspended or
21 revoked.

22 (2) At least 30 days prior to the expiration of the license, the licensee shall submit an application
23 for renewal of a license on a form prescribed by the department and accompanied by the license fee, as
24 provided in [section 7].

25 (3) A late renewal application may not be processed prior to the expiration of the licensee's current
26 license. A person engaged in an unlicensed activity is subject to the penalty established in [section 11].

27 (4) Denial of a renewal license is subject to review under the provisions of [section 5].

28 (5) If the application fee required in [section 4] is paid and accepted, then no additional license fee
29 is required for the first year.

30

1 **NEW SECTION. Section 7. Renewal fees.** (1) The fee for the renewal of a resident or nonresident
2 unrestricted license is \$750.

3 (2) The fee for the renewal of a restricted license is \$500.

4 (3) The application fee required in [section 4] does not apply to the renewal of an unrestricted
5 license.

6 (4) A restricted license may not be granted to a professional employer organization or group that
7 is a resident of or domiciled in another state if the state requires licensing but does not grant a similar
8 privilege for restricted licensing to a licensee who is a resident of or domiciled in this state.

9 (5) Fees collected must be used by the department to implement [sections 1 through ~~14~~ 15].

10

11 **NEW SECTION. Section 8. License suspension, revocation, or nonrenewal.** (1) In addition to the
12 penalty provided in [section 11], the department may suspend for up to 1 year, may permanently revoke,
13 or may refuse to renew a license issued under [sections 1 through ~~14~~ 15] if, after notice to the licensee
14 of the charges and after a hearing, the department finds that any of the following exists:

15 (a) a cause for which issuance of the license could have been refused had it been known to the
16 department at the time of issuance;

17 (b) a violation of an order of the department or noncompliance with any provision of [sections 1
18 through ~~14~~ 15];

19 (c) procurement of or attempting to procure a license through misrepresentation or fraud;

20 (d) failure to provide a written response to a written inquiry from the department or its agent within
21 30 days after receiving an inquiry; or

22 (e) failure to meet or maintain any other requirement of [sections 1 through ~~14~~ 15].

23 (2) If a license is suspended, revoked, or not renewed, the department shall:

24 (a) immediately notify by certified mail the licensee and the licensee's workers' compensation
25 carrier; and

26 (b) require the licensee to notify each client by certified mail, return receipt requested, of the
27 suspension, revocation, or nonrenewal using language furnished by the department and to provide the
28 department with evidence of client notification.

29 (3) Upon notification, the licensee may appeal the decision of the department pursuant to the
30 procedure provided in [section 5].

1 **NEW SECTION. Section 9. Requirements of licensee.** (1) A professional employer organization

2 or group shall, by written contract with the client, establish the responsibilities and duties of each party.

3 The contract must disclose to the client:

4 (a) the services provided, the administrative fee, and the respective rights and obligations of the
5 parties;

6 (b) a statement providing that the professional employer organization or group:

7 (i) reserves a right of direction and control over employees assigned to the client's location. The
8 client may retain sufficient direction and control over employees necessary to conduct business and without
9 which the client would be unable to conduct business, discharge fiduciary responsibilities, or comply with
10 state licensing laws.

11 (ii) assumes responsibility for the payment of wages of employees, WORKERS' COMPENSATION
12 PREMIUMS, payroll-related taxes, and employee benefits from its own accounts without regard to payments
13 by the client; and

14 (iii) retains authority to hire, terminate, discipline, and reassign employees. The client has the right
15 to accept or cancel the assignment of an employee.

16 (c) a statement that, with respect to a worker subject to a professional employer arrangement, the
17 client shares joint liability for any wages, workers' compensation premiums, payroll-related taxes, and any
18 benefits left unpaid by the professional employer organization or group; and

19 (d) a statement that the client is responsible for compliance with the Montana Safety Culture Act,
20 Title 39, chapter 71, part 15.

21 (2) The professional employer organization or group shall:

22 (a) give written notice of the general nature of the relationship between the professional employer
23 organization or group and the client to each employee assigned to perform services at the client's place of
24 work. ~~The employer shall disclose to the client a statement providing that the professional employer~~
25 ~~organization or group~~ THE DISCLOSURE MUST PROVIDE THAT THE PROFESSIONAL EMPLOYER
26 ORGANIZATION:

27 (i) reserves a right of direction and control over employees assigned to the client's location. The
28 client may retain sufficient direction and control over employees necessary to conduct business and without
29 which the client would be unable to conduct business, discharge fiduciary responsibilities, or comply with
30 state licensing laws.

1 (ii) retains authority to hire, terminate, discipline, and reassign employees. The client has the right
2 to accept or cancel the assignment of an employee.

3 (b) submit to the department, within 90 days of the end of each calendar quarter, information
4 certified by an independent certified public accountant demonstrating that all payroll-related taxes for the
5 quarter have been paid. Upon a showing of reasonable cause, one 30-day extension may be granted for
6 each quarter.

7 (c) maintain and make available for the department or its agent all records relating to the licensee's
8 business conduct. Records must be maintained for 5 years after terminating an employee leasing
9 arrangement or professional employer arrangement.

10 (d) notify the department in writing within 20 days of a change of business address or a change
11 in partners, directors, officers, members, or controlling persons designated in the license;

12 (e) notify the department in writing within 20 days after a client either commences or terminates
13 a professional employer arrangement or an employee leasing arrangement with that professional employer
14 organization or group; and

15 (f) post the license issued in a conspicuous place in the principal place of business and display, in
16 clear public view in each licensee's office, a notice stating that the professional employer organization or
17 group is licensed and regulated by the department.

18 (3) When a professional employer organization or group uses a professional employer arrangement
19 with the client, both the professional employer organization or group and the client are the immediate
20 employers of the workers subject to the arrangement for the purposes of the workers' compensation laws
21 of this state. When a professional employer organization or group uses an employee leasing arrangement
22 with the client, the professional employer organization or group is the immediate employer of the workers
23 subject to the arrangement for the purposes of the workers' compensation laws of this state.

24 (4) A professional employer organization or group shall:

25 (a) pay wages and collect, report, and pay payroll-related taxes from its own accounts;

26 (b) pay unemployment taxes, pursuant to 39-51-1103, and provide, maintain, and secure all
27 records and documents required of employers under the unemployment insurance laws of this state. For
28 unemployment reporting purposes, each professional employer organization ~~or group~~ is the employing unit,
29 as defined in 39-51-201, AND SHALL KEEP SEPARATE RECORDS AND SUBMIT QUARTERLY WAGE LISTS
30 FOR EACH OF ITS CLIENTS.

1 (c) provide workers' compensation coverage for all employees and provide, maintain, and secure
2 all records and documents required of employers under the workers' compensation laws of this state. A
3 license may not be issued to a professional employer organization or group until the department receives
4 proof of workers' compensation coverage for all employees assigned to any client location in this state.

5 (5) A professional employer organization or group is the employer for sponsoring and maintaining
6 employee benefit and welfare plans. The plans, if limited to employees of the professional employer
7 organization or group, are not multiple employer welfare arrangements.

8 (6) A professional employer organization or group shall disclose to the department, to each client,
9 and to its employees information on any health or life fringe benefit program provided for its employees.

10 The information must include:

- 11 (a) the type of benefits;
12 (b) the identity of each insurer providing each type of coverage;
13 (c) the amount of benefits for each type of coverage and to whom or on whose behalf the benefits
14 will be paid;
15 (d) the policy limits on each insurance policy; and
16 (e) whether coverage is fully insured, partially insured, or fully self-funded.

17 (7) Disclosure required by this section may be made by any written means reasonably calculated
18 to adequately inform the employees, including a summary plan description that meets the requirements of
19 the Employee Retirement Income Security Act of 1974, as amended.

20 (8) (a) Subject to any contrary provisions of the contract between the client and the professional
21 employer organization or group, the professional employer arrangement that exists between the parties
22 must be interpreted for purposes of insurance, bonding, and employer liability pursuant to subsection (8)(b).

23 (b) The professional employer organization or group:
24 (i) is entitled, along with the client, to the exclusivity of the remedy under both the workers'
25 compensation and employers' liability provisions of a workers' compensation policy or plan of either party;
26 and

27 (ii) is not liable for the acts, errors, or omissions of a client or of an employee acting under the
28 direction and control of a client, subject to the provisions of [sections 1 through ~~14~~ 15]. Subject to the
29 provisions of [sections 1 through ~~14~~ 15], a client is not liable for the acts, errors, or omissions of a
30 professional employer organization or group or of any employee of a professional employer organization or

1 group acting under the direction and control of the professional employer organization or group.

2 ~~(9) A provider of workers' compensation insurance shall base classifications and rates applicable~~
 3 ~~to the payroll of a worker subject to either a professional employer arrangement or an employee leasing~~
 4 ~~arrangement as though the worker had been a direct employee of the client. A licensee shall maintain~~
 5 ~~payroll records by classification for each client during the term of the arrangement. If an experience~~
 6 ~~modification has been established for the client, that experience modification may be applied by the insurer~~
 7 ~~to the premium for the client's leased workers.~~

8 (9) A PROFESSIONAL EMPLOYER ORGANIZATION THAT APPLIES FOR WORKERS'
 9 COMPENSATION COVERAGE SHALL ALSO MAINTAIN AND FURNISH TO THE INSURER SUFFICIENT
 10 INFORMATION TO PERMIT THE CALCULATION OF AN EXPERIENCE MODIFICATION FACTOR FOR EACH
 11 CLIENT EMPLOYER, INCLUDING BUT NOT LIMITED TO:

12 (A) THE CLIENT EMPLOYER'S CORPORATE OR BUSINESS NAME;

13 (B) THE CLIENT EMPLOYER'S TAXPAYER OR EMPLOYER IDENTIFICATION NUMBER;

14 (C) THE CLIENT EMPLOYER'S RISK IDENTIFICATION NUMBER;

15 (D) A LISTING OF ALL EMPLOYEES ASSIGNED TO EACH CLIENT EMPLOYER AND THE
 16 APPLICABLE CLASSIFICATION CODE AND PAYROLL; AND

17 (E) THE CLIENT EMPLOYER'S FIRST REPORT OF INJURY IDENTIFYING THE CLIENT EMPLOYER
 18 AND ANY OTHER INFORMATION NECESSARY TO PERMIT THE CALCULATION OF AN EXPERIENCE
 19 MODIFICATION FACTOR FOR EACH CLIENT EMPLOYER.

20 (10) An employee assigned to a client by a professional employer organization or group is
 21 considered the employee of the client for purposes of general liability insurance, motor vehicle insurance,
 22 fidelity bonds, surety bonds, ~~and employers' liability~~ and liquor liability insurance carried by the client. An
 23 employee assigned to a client by a professional employer organization or group is not an employee of the
 24 professional employer organization or group for purposes of general liability insurance, motor vehicle
 25 insurance, fidelity bonds, surety bonds, ~~or employers' liability~~ or liquor liability insurance carried by the
 26 professional employer organization or group unless the employee is included by reference in an employment
 27 arrangement contract, insurance contract, or bond.

28 (11) The sale of professional employer services pursuant to [sections 1 through ~~44~~ 15] does not
 29 constitute the sale of insurance under Title 33.

30 (12) ~~(a) The existence of a professional employer arrangement does not constitute employment~~

1 ~~within the meaning of 39-51-204 if the client is a sole proprietor or a working member of a partnership.~~

2 ~~(b) An individual~~ **A SOLE PROPRIETOR OR A WORKING MEMBER OF A PARTNERSHIP** working
3 under a professional employer arrangement may not receive unemployment insurance benefits unless the
4 individual would otherwise be entitled to benefits if the professional employer arrangement did not exist.

5 (13) If the professional employer organization or group or the client complies with the provisions
6 of 39-71-401 with respect to a worker under the professional employer arrangement, the professional
7 employer organization or group and the client, with respect to those workers, are not uninsured employers,
8 as defined in 39-71-501, and are not subject to the provisions of 39-71-508 or 39-71-515.

9
10 **NEW SECTION. Section 10. Deceptive practices prohibited.** A professional employer organization
11 or group may not:

12 (1) make, issue, circulate, or cause to be made, issued, or circulated an estimate, illustration,
13 circular, statement, advertisement, sales presentation, omission, or comparison that misrepresents the
14 benefits, advantages, conditions, or terms of a professional employer arrangement or that is otherwise
15 untrue, deceptive, or misleading;

16 (2) enter into an agreement to commit or by concerted action commit an act of boycott, coercion,
17 or intimidation that results in unreasonable restraint of or monopoly in the business of professional employer
18 services;

19 (3) file with the department or other public official or make, publish, disseminate, circulate, or
20 deliver to a person a false statement of financial condition with the intent to deceive;

21 (4) knowingly:

22 (a) make a false entry of a material fact in a book, report, or statement of a person; or

23 (b) omit a material fact pertaining to the business of the person from a book, report, or statement
24 of that person;

25 (5) permit the use or filing of a name, trade name, fictitious name, or business identity that is the
26 same as or similar to or that may be confused with the name, trade name, fictitious name, or business
27 identity of an existing licensee, governmental agency, or nonprofit organization; or

28 (6) commit any other practice determined by department rule to be deceptive.

29
30 **NEW SECTION. Section 11. Disciplinary action against licensee -- penalties.** (1) The department

1 may deny a license application or may suspend, revoke, or refuse to renew an existing license for a person
2 who:

- 3 (a) obtains or renews a license through bribery, fraud, or willful misrepresentation;
4 (b) engages in fraud, deceit, misrepresentation, or misconduct in:
5 (i) obtaining or providing workers' compensation or health coverage;
6 (ii) the classification of employees;
7 (iii) the reporting of employee wages for purposes of unemployment insurance or workers'
8 compensation benefits; or
9 (iv) the operation of a professional employer organization or group;
10 (c) conducts business without a valid license;
11 (d) fails to maintain evidence of workers' compensation insurance coverage;
12 (e) transfers or attempts to transfer a license issued pursuant to [sections 1 through 44 15]; or
13 (f) violates the provisions of [sections 1 through 44 15] or a rule issued pursuant to [sections 1
14 through 44 15].

15 (2) A person who fails to comply with the provisions of [sections 1 through 44 15] is guilty of a
16 misdemeanor and, upon conviction, is subject to a fine of up to \$500, imprisonment for not more than 1
17 year, or both.

18

19 **NEW SECTION. Section 12. Investigations -- audits -- reviews.** (1) The department or its agent
20 may perform an investigation, audit, or review necessary to determine whether a person has violated any
21 provision of [sections 1 through 44 15] or any rule promulgated by the department to implement [sections
22 1 through 44 15].

23 (2) Except as provided in subsection (3), material compiled by the department or its agent in an
24 investigation, audit, or review pursuant to this section is a public record and may be disclosed.

25 (3) Financial information, client lists, and lists of workers that are assigned by a professional
26 employer organization or group and that are obtained by the department or its agent during an investigation,
27 audit, or review are confidential ~~and are not subject to disclosure~~ **AND MAY NOT BE PUBLISHED OR BE**
28 **OPEN TO PUBLIC INSPECTION, EXCEPT TO PUBLIC EMPLOYEES IN THE PERFORMANCE OF THEIR PUBLIC**
29 **DUTIES.**

30

1 **NEW SECTION. Section 13. Disclosure of information.** (1) The department may not disclose to
 2 any person the records, statements, or documents received from an applicant, client, or professional
 3 employer organization or group, except:

4 (a) information necessary for ~~state agency personnel to perform official duties~~ **PUBLIC EMPLOYEES**
 5 **IN THE PERFORMANCE OF THEIR PUBLIC DUTIES;** or

6 (b) in response to an order received by a court of competent jurisdiction upon a finding that the
 7 disclosure of the record, statement, or document is necessary because the merits of disclosure clearly
 8 exceed the demand for individual privacy.

9 (2) The department may publish or make available to the public reasonable statistical data or
 10 reports regarding professional employer organizations or groups if the data or reports protect the identity
 11 of an applicant, client, or professional employer organization or group.

12
 13 **NEW SECTION. Section 14. Other law.** (1) [Sections 1 through ~~14~~ **15**] do not exempt a client
 14 of a professional employer organization or group or an employee assigned to a client by a professional
 15 employer organization or group from other local, state, or federal license or registration requirements.

16 (2) An employee who is licensed, registered, or certified under law and who is assigned to a client
 17 location is an employee of the client for purposes of the license, registration, or certification.

18 (3) Except as provided in a professional employer arrangement, a professional employer
 19 organization or group is not liable for the general debts, obligations, profit losses, business goodwill, or
 20 other damages of a client with which it has entered into a professional employer arrangement.

21
 22 **NEW SECTION. SECTION 15. WORKERS' COMPENSATION INSURER REQUIREMENTS.** (1) **AN**
 23 **INSURER THAT PROVIDES WORKERS' COMPENSATION INSURANCE TO A CLIENT EMPLOYER OF A**
 24 **PROFESSIONAL EMPLOYER ORGANIZATION SHALL BASE CLASSIFICATIONS AND RATES APPLICABLE**
 25 **TO THE PAYROLL OF A WORKER WHO IS SUBJECT TO EITHER A PROFESSIONAL EMPLOYER**
 26 **ARRANGEMENT OR AN EMPLOYEE LEASING ARRANGEMENT AS THOUGH THE WORKER HAS BEEN A**
 27 **DIRECT EMPLOYEE OF THE CLIENT EMPLOYER. IF AN EXPERIENCE MODIFICATION HAS BEEN**
 28 **ESTABLISHED FOR THE CLIENT EMPLOYER, THAT EXPERIENCE MODIFICATION MUST BE AUDITED**
 29 **USING THE FACTORS IN SUBSECTION (3) AND MUST BE APPLIED BY THE INSURER TO THE PREMIUM**
 30 **FOR THE CLIENT EMPLOYER'S WORKERS.**



HOUSE STANDING COMMITTEE REPORT

March 15, 1995

Page 1 of 7

Mr. Speaker: We, the committee on **Business and Labor** report that **Senate Bill 264** (third reading copy -- blue) be concurred in as amended.

Signed: 
Bruce Simon, Chair

And, that such amendments read:

Carried by: Rep. Wiseman

1. Title, line 9.

Following: "PENALTIES;"

Insert: "AMENDING SECTIONS 39-71-117 AND 39-71-118, MCA;"

2. Page 1, lines 21, 27, and 29.

Page 2, line 11

Page 3, lines 14, 16, 18, 20, 27, and 30

Page 5, line 29

Page 6, line 20

Page 7, line 20

Page 8, lines 9, 13, 18, and 22

Page 11, lines 28 and 29

Page 12, line 28

Page 14, lines 12, 13, 14, 15, 21, and 22

Page 15, line 13

Page 16, lines 13 and 15

Strike: "15"

Insert: "17"

3. Page 3, line 13.

Following: "arrangement"

Insert: "or an employee leasing arrangement"

4. Page 8, line 26.

Following: "to"

SB 264

Committee Vote:
Yes 18, No 0.

HOUSE

Insert: ": (i)"

5. Page 8, line 27.

Following: "department"

Strike: "and to"

Insert: "; (ii) notify each client in writing that the client shares joint and several liability, retroactive to the date of the client's entering into a contract with the licensee, for any wages, workers' compensation premiums, payroll-related taxes, and any benefits left unpaid by the professional employer organization or group; and (iii)"

6. Page 9, line 16.

Following: "worker"

Strike: "subject to a professional employer arrangement"

Insert: "supplied to a client by a professional employer organization or group"

7. Page 9, line 17.

Following: "joint"

Insert: "and several"

8. Page 9, line 18.

Following: "group"

Strike: ";

Following: "and"

Insert: "that, in the event that the licensee's license is suspended or revoked, this liability is retroactive to the client's entering into a contract with the licensee; and"

9. Page 12, line 29.

Following: "33"

Insert: "unless the professional employer organization or group:

(a) undertakes to indemnify another or pay or provide a specified or determinable amount of benefit based on determinable contingencies unless done through a licensed insurer or an employee benefit program as defined in 29 U.S.C. 1002(1);

(b) solicits, negotiates, effects, procures, delivers, renews, continues, or binds an insurance policy unless done through a licensed insurance producer; or

(c) is exempt under 33-17-103(4)."

10. Page 14, line 16.

Strike: "\$500"

Insert: "\$1,000"

11. Page 14, line 18.

Insert: " NEW SECTION. Section 12. Practice without license -- investigation of complaint -- injunction. (1) The department shall investigate complaints concerning practice by an unlicensed person of activities for which a license is required under [sections 1 through 17].

(2) The department may file an action to enjoin a person from practicing without a license as a professional employer organization or group.

NEW SECTION. Section 13. Violation of injunction -- penalty. A person who violates an injunction issued under [section 12] shall pay a civil penalty, as determined by the court, of not more than \$5,000. Fifty percent of the penalty must be deposited in the general fund of the county in which the injunction is issued, and 50% must be deposited in the state general fund."

Renumber: subsequent sections

12. Page 16, line 2.

Following: "ADVISORY"

Insert: "or rating"

Following: "ORGANIZATION"

Insert: "of which the insurer is required to be a member under Title 33, chapter 16, part 10,"

13. Page 16, line 12.

Insert: "Section 18. Section 39-71-117, MCA, is amended to read:

"39-71-117. Employer defined. (1) "Employer" means:

(a) the state and each county, city and county, city school district, irrigation district, all other districts established by law, and all public corporations and quasi-public corporations and public agencies therein and every person, every prime contractor, and every firm, voluntary association, and private corporation, including any public service corporation and including an independent contractor who has any person in service under any appointment or contract of hire, expressed or implied, oral or written, and the legal representative of any deceased

employer or the receiver or trustee thereof;

(b) any association, corporation, or organization that seeks permission and meets the requirements set by the department by rule for a group of individual employers to operate as self-insured under plan No. 1 of this chapter; and

(c) any nonprofit association or corporation or other entity funded in whole or in part by federal, state, or local government funds that places community service participants, as defined in 39-71-118(1)(f), with nonprofit organizations or associations or federal, state, or local government entities.

(2) A temporary service contractor is the employer of a temporary worker for premium and loss experience purposes.

(3) Except as provided in [sections 1 through 17], an employer defined in subsection (1) who utilizes the services of a worker furnished by another person, association, contractor, firm, or corporation, other than a temporary service contractor, is presumed to be the employer for workers' compensation premium and loss experience purposes for work performed by the worker. The presumption may be rebutted by substantial credible evidence of the following:

(a) the person, association, contractor, firm, or corporation, other than a temporary service contractor, furnishing the services of a worker to another retains control over all aspects of the work performed by the worker, both at the inception of employment and during all phases of the work; and

(b) the person, association, contractor, firm, or corporation, other than a temporary service contractor, furnishing the services of a worker to another has obtained workers' compensation insurance for the worker in Montana both at the inception of employment and during all phases of the work performed.

(4) ~~Notwithstanding the provisions of subsection (3),~~ An interstate or intrastate common or contract motor carrier doing business in this state who utilizes drivers in this state is considered the employer, is liable for workers' compensation premiums, and is subject to loss experience rating in this state unless:

(a) the driver in this state is certified as an independent contractor as provided in 39-71-401(3); or

(b) the person, association, contractor, firm, or corporation furnishing drivers in this state to a motor carrier has obtained workers' compensation insurance on the drivers in Montana both at the inception of employment and during all phases of the work performed."

Section 19. Section 39-71-118, MCA, is amended to read:
"39-71-118. **Employee, worker, and volunteer firefighter defined.** (1) The terms "employee" or "worker" means:

(a) each person in this state, including a contractor other than an independent contractor, who is in the service of an employer, as defined by 39-71-117, under any appointment or contract of hire, expressed or implied, oral or written. The terms include aliens and minors, whether lawfully or unlawfully employed, and all of the elected and appointed paid public officers and officers and members of boards of directors of quasi-public or private corporations while rendering actual service for the corporations for pay. Casual employees as defined by 39-71-116 are included as employees if they are not otherwise covered by workers' compensation and if an employer has elected to be bound by the provisions of the compensation law for these casual employments, as provided in 39-71-401(2). Household or domestic service is excluded.

(b) any juvenile performing work under authorization of a district court judge in a delinquency prevention or rehabilitation program;

(c) a person receiving on-the-job vocational rehabilitation training or other on-the-job training under a state or federal vocational training program, whether or not under an appointment or contract of hire with an employer as defined in this chapter and whether or not receiving payment from a third party. However, this subsection does not apply to students enrolled in vocational training programs as outlined in this subsection while they are on the premises of a public school or community college.

(d) students enrolled and in attendance in programs of vocational-technical education at designated vocational-technical centers;

(e) an aircrew member or other person employed as a volunteer under 67-2-105;

(f) a person, other than a juvenile as defined in subsection (1)(b), performing community service for a nonprofit organization or association or for a federal, state, or local government entity under a court order, or an order from a hearings officer as a result of a probation or parole violation, whether or not under appointment or contract of hire with an employer as defined in this chapter and whether or not receiving payment from a third party. For a person covered by the definition in this subsection (f):

(i) compensation benefits must be limited to medical expenses pursuant to 39-71-704 and an impairment award pursuant to 39-71-703 that is based upon the minimum wage established under Title 39, chapter 3, part 4, for a full-time employee at the time of the injury; and

(ii) premiums must be paid by the employer, as defined in 39-71-117(3), and must be based upon the minimum wage established under Title 39, chapter 3, part 4, for the number of hours of community service required under the order from the court or

hearings officer.

(g) an inmate working in a federally certified prison industries program authorized under 53-1-301.

(2) The terms defined in subsection (1) do not include a person who is:

(a) participating in recreational activity and who at the time is relieved of and is not performing prescribed duties, regardless of whether the person is using, by discount or otherwise, a pass, ticket, permit, device, or other emolument of employment; or

(b) performing voluntary service at a recreational facility and who receives no compensation for those services other than meals, lodging, or the use of the recreational facilities.

(3) The term "volunteer firefighter" means a firefighter who is an enrolled and active member of a fire company organized and funded by a county, a rural fire district, or a fire service area.

(4) (a) If the employer is a partnership or sole proprietorship, the employer may elect to include as an employee within the provisions of this chapter any member of the partnership or the owner of the sole proprietorship devoting full time to the partnership or proprietorship business.

(b) In the event of an election, the employer must serve upon the employer's insurer written notice naming the partners or sole proprietor to be covered and stating the level of compensation coverage desired by electing the amount of wages to be reported, subject to the limitations in subsection (4) (d). A partner or sole proprietor is not considered an employee within this chapter until notice has been given.

(c) A change in elected wages must be in writing and is effective at the start of the next quarter following notification.

(d) All weekly compensation benefits must be based on the amount of elected wages, subject to the minimum and maximum limitations of this subsection. For premium ratemaking and for the determination of weekly wage for weekly compensation benefits, the electing employer may elect not less than \$900 a month and not more than 1 1/2 times the average weekly wage as defined in this chapter.

(5) The trustees of a rural fire district, a county governing body providing rural fire protection, or the county commissioners or trustees for a fire service area may elect to include as an employee within the provisions of this chapter any volunteer firefighter. A volunteer firefighter who receives workers' compensation coverage under this section may not receive disability benefits under Title 19, chapter 17.

(6) Except as provided in [sections 1 through 17], an employee or worker in this state whose services are furnished by

a person, association, contractor, firm, or corporation, other than a temporary service contractor, to an employer as defined in 39-71-117 is presumed to be under the control and employment of the employer. This presumption may be rebutted as provided in 39-71-117(3).

(7) For purposes of this section, an "employee or worker in this state" means:

(a) a resident of Montana who is employed by an employer and whose employment duties are primarily carried out or controlled within this state;

(b) a nonresident of Montana whose principal employment duties are conducted within this state on a regular basis for an employer;

(c) a nonresident employee of an employer from another state engaged in the construction industry, as defined in 39-71-116, within this state; or

(d) a nonresident of Montana who does not meet the requirements of subsection (7)(b) and whose employer elects coverage with an insurer that allows an election for an employer whose:

- (i) nonresident employees are hired in Montana;
- (ii) nonresident employees' wages are paid in Montana;
- (iii) nonresident employees are supervised in Montana; and
- (iv) business records are maintained in Montana.

(8) An insurer may require coverage for all nonresident employees of a Montana employer who do not meet the requirements of subsection (7)(b) or (7)(d) as a condition of approving the election under subsection (7)(d)."

Renumber: subsequent sections

-END-

1 SENATE BILL NO. 264

2 INTRODUCED BY GAGE, WISEMAN, MCKEE, KEATING, MOLNAR, MILLS, SPRAGUE, ARNOTT,
3 KEENAN, MILLER, MCGEE, SWYSGOOD, FORRESTER, HARDING, ORR

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING THE MONTANA PROFESSIONAL EMPLOYER
6 ORGANIZATIONS LICENSING ACT; REQUIRING LICENSING OF AND STANDARDS FOR PROFESSIONAL
7 EMPLOYER ORGANIZATIONS AND GROUPS; REQUIRING PROFESSIONAL EMPLOYER ORGANIZATIONS
8 AND GROUPS TO PROVIDE WORKERS' COMPENSATION AND UNEMPLOYMENT INSURANCE COVERAGE;
9 PROVIDING FOR DISCLOSURE OF INFORMATION; PROVIDING EXEMPTIONS AND PENALTIES; AMENDING
10 SECTIONS 39-71-117 AND 39-71-118, MCA; AND PROVIDING AN EFFECTIVE DATE."

11
12 STATEMENT OF INTENT

13 A statement of intent is required for this bill because [section 3] authorizes the department of labor
14 and industry to adopt rules regarding professional employer organization and group licensing. It is intended
15 that the department develop rules similar to those adopted by other states that regulate professional
16 employer licensing organizations and groups and develop rules to provide for the reciprocal licensing
17 provisions provided for in [this act].

18
19 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

20
21 NEW SECTION. Section 1. Short title -- purpose. (1) [Sections 1 through ~~14 16~~ 17] may be cited
22 as the "Montana Professional Employer Organizations and Groups Licensing Act".

23 (2) The legislature recognizes that there is a public need for professional employer services and
24 finds it necessary in the interest of public health, safety, and welfare to establish standards for the
25 operation, regulation, and licensing of professional employer organizations and groups in this state.

26
27 NEW SECTION. Section 2. Definitions. As used in [sections 1 through ~~14 16~~ 17], unless the
28 context indicates otherwise, the following definitions apply:

29 (1) "Applicant" means a person that seeks to be licensed under [sections 1 through ~~14 16~~ 17].

30 (2) "Client" means a person who obtains all or part of its workforce from another person through

1 a professional employer arrangement.

2 (3) "Controlling person" means an individual who possesses the right to direct the management
3 or policies of a professional employer organization or group through ownership of voting securities, by
4 contract or otherwise.

5 (4) "Department" means the department of labor and industry.

6 (5) "Employee leasing arrangement" means an arrangement by contract or otherwise under which
7 a ~~person~~ PROFESSIONAL EMPLOYER ORGANIZATION hires its own employees and assigns the employees
8 to work for another person to staff and manage, or to assist in staffing and managing, a facility, function,
9 project, or enterprise on an ongoing basis.

10 (6) "Licensee" means a person licensed as a professional employer organization or group under
11 [sections 1 through 44 ~~16~~ 17].

12 (7) "Person" means an individual, association, company, firm, partnership, corporation, or limited
13 liability company.

14 (8) (a) "Professional employer arrangement" means an arrangement by contract or otherwise under
15 which:

16 (i) a professional employer organization or group assigns employees to perform services for a client;

17 (ii) the arrangement is or is intended to be ongoing rather than temporary in nature; and

18 (iii) the employer responsibilities are shared by the professional employer organization or group and
19 the client.

20 (b) The term does not include:

21 (i) services performed by a temporary service contractor;

22 (ii) arrangements under which a person shares employees with a commonly owned company within
23 the meaning of section 414(b) and (c) of the Internal Revenue Code of 1986, as amended, if:

24 (A) that person's principal business activity is not entering into professional employer
25 arrangements; and

26 (B) that person does not represent to the public that the person is a professional employer
27 organization or group; and

28 (iii) arrangements exist for employment of an independent contractor as defined in 39-71-120.

29 (9) "Professional employer group" or "group" means at least two but not more than five
30 professional employer organizations, each of which is majority-owned by the same person.

1 (10) "Professional employer organization" means:

2 (a) a person that provides services of employees pursuant to one or more professional employer
3 arrangements or to one or more employee leasing arrangements; or

4 (b) a person that represents to the public that the person provides services pursuant to a
5 professional employer arrangement.

6 (11) "Temporary service contractor" means a person conducting a business that hires its own
7 employees and assigns them to clients to fulfill a work assignment with a finite ending date to support or
8 supplement the client's workforce in situations resulting from employee absences, skill shortages, seasonal
9 workloads, and special assignments and projects.

10

11 **NEW SECTION. Section 3. License required -- exemption -- rulemaking authority.** (1) On or after
12 [the effective date of this act], a person who acts as a professional employer organization or group by
13 entering into a professional employer arrangement OR AN EMPLOYEE LEASING ARRANGEMENT with a
14 client in this state without a license or who violates the provisions of [sections 1 through ~~44 16~~ 17] may
15 be subject to the penalties provided in [section 11].

16 (2) The provisions of [sections 1 through ~~44 16~~ 17] do not apply to a labor organization, the state
17 or its political subdivisions, the United States, or any programs or agencies of those entities.

18 (3) A license issued under [sections 1 through ~~44 16~~ 17] remains the property of the department
19 and may not be transferred.

20 (4) The department may adopt rules to implement the provisions of [sections 1 through ~~44 16~~ 17].

21

22 **NEW SECTION. Section 4. Initial license application -- application fee -- standards.** (1) An
23 applicant for initial licensure as a professional employer organization or group shall file with the department
24 a completed application on a form provided by the department.

25 (2) The application must be accompanied by a nonrefundable application fee and any material or
26 information required by the department that demonstrates compliance with the requirements of [sections
27 1 through ~~44 16~~ 17]. The application fee is:

28 (a) \$750 for a resident or nonresident unrestricted license; and

29 (b) \$500 for a restricted license.

30 (3) As a condition of licensure under [sections 1 through ~~44 16~~ 17], an applicant who is not a

1 resident or who is domiciled outside the state must first be licensed as a professional employer organization
2 or group in the state in which the applicant is a resident or is domiciled if licensing is required by that state.

3 (4) An applicant for licensure as a professional employer organization or group shall meet the
4 following standards:

5 (a) An individual must be 18 years of age or older.

6 (b) A partnership or a limited partnership shall provide the names and home addresses of all
7 partners, indicate whether each partner is a general or a limited partner, and include a copy of the
8 partnership agreement or an affidavit signed by all partners acknowledging that no written partnership
9 agreement exists.

10 (c) A corporation shall state the names and home addresses of all officers, directors, and
11 shareholders who own a 5% or greater interest in the corporation and provide a certificate of good standing
12 from the secretary of state demonstrating that the corporation is qualified to do business in this state.

13 (d) A limited liability company shall state the names and home addresses of those individuals who
14 own a 5% or greater interest in the limited liability company and provide a certificate of good standing from
15 the secretary of state demonstrating that the company is qualified to do business in this state.

16 (e) A group:

17 (i) must be authorized to act on behalf of the group;

18 (ii) shall include for each professional employer organization within the group the information
19 required in subsection (4); and

20 (iii) shall guarantee, on a form provided by the department and executed by each professional
21 employer organization within the group, payment of all financial obligations with respect to wages,
22 payroll-related taxes, insurance premiums, and employee benefits of each other member within the group.
23 ~~A professional employer group may satisfy the reporting and financial requirements of [section 9] on a~~
24 ~~consolidated basis.~~

25 (5) An applicant shall also provide:

26 (a) the trade name or names under which the applicant conducts business, the business's taxpayer
27 or employer identification number, the address of the business's principal place of business in the state,
28 and the addresses of any other offices within the state through which the applicant intends to conduct
29 business as a professional employer organization or group. If the applicant's principal place of business
30 is located in another state, the address must be provided.

1 (b) a list by jurisdiction of each name under which the applicant has operated in the preceding 5
2 years, including any alternative names, names of predecessors, and names of related business entities with
3 common majority ownership, and detailed information on the background of each controlling person to the
4 extent required by the department; and

5 (c) other information requested by the department to show that the applicant and each controlling
6 person are of good moral character, have business integrity, and are financially responsible. "Good moral
7 character" means a personal history of honesty, trustworthiness, and fairness; a good reputation for fair
8 dealings; and respect for the rights of others and for the laws of this state and nation.

9 (6) Except for an applicant who is granted a restricted license under subsection (8), an applicant
10 shall maintain a tangible accounting net worth of not less than \$50,000, evidenced by providing a financial
11 statement prepared in accordance with generally accepted accounting principles and accompanied by a
12 compilation report by an independent certified public accountant. Documents submitted to establish net
13 worth must reflect net worth as of a date not more than 6 months prior to the date on which the
14 application is submitted. A financial statement submitted must be attested by the president, chief financial
15 officer, and at least one controlling person of the professional employer organization or group. In meeting
16 the specified net worth requirement, the applicant may provide to the department a surety bond, letter of
17 credit, or marketable securities acceptable to the department. A surety will not be acceptable to satisfy
18 this requirement unless the applicant submits sufficient evidence to satisfy the department that the surety
19 has adequate resources to satisfy the obligations of the surety. A surety is subject to audit or verification
20 by the department or its agent.

21 (7) The applicant shall maintain a positive working capital, as determined in accordance with
22 generally accepted accounting principles.

23 (8) The department may issue a restricted license for limited operation within this state to a
24 professional employer organization or group that is a resident of or domiciled in another state if:

25 (a) the applicant's state of residence or domicile provides for licensing of professional employer
26 organizations or groups, the applicant is licensed and in good standing in the state of residence or domicile,
27 and that state grants a similar privilege for restricted licensing to professional employer organizations or
28 groups that are residents of or domiciled in this state and that are licensed under [sections 1 through 14
29 ~~15~~ 17];

30 (b) the applicant does not maintain an office, a sales force, or a sales representative in this state

1 and does not solicit clients who are residents of or domiciled in this state; and

2 (c) the applicant does not have more than 100 leased employees working in this state.

3 (9) An applicant for a nonresident or restricted license shall file, on a form provided by the
4 department, an appointment of a recognized and approved entity as its attorney to receive service of legal
5 process issued against it in this state.

6 (10) A license issued under this section remains the property of the department and may not be
7 transferred.

8

9 **NEW SECTION. Section 5. Denial of license application or renewal -- hearing.** (1) The department
10 shall deny a license application or an application to renew a license if:

11 (a) the application is not fully completed or properly executed;

12 (b) documents required to supplement the application are not included in the application packet or
13 are inadequate;

14 (c) the nonrefundable application or license fee is not submitted or is incorrectly submitted with
15 the application packet;

16 (d) the applicant or any person named in the application misrepresents material in the application;

17 (e) the applicant is determined by the department to lack good moral character, business integrity,
18 or financial responsibility; or

19 (f) the department determines that the applicant has failed to meet or maintain any requirement of
20 [sections 1 through ~~14~~ 15 17].

21 (2) Conviction of a crime within the last 7 years does not automatically bar an applicant from
22 obtaining a license or bar a licensee from renewing a license. The department shall consider the type of
23 crime committed, the crime's relevancy to the employee leasing industry, the length of time since the
24 conviction, and any other factor considered relevant by the department.

25 (3) The department or its agent shall furnish the applicant with a written statement of the reason
26 or reasons for denying the license or license renewal application.

27 (4) An applicant or licensee may request a hearing before the department within 30 days after
28 receiving the written denial statement. The hearing and appeal must follow the procedures provided in Title
29 2, chapter 4, parts 6 and 7.

30 (5) During the hearing and appeal process, a licensee may continue to operate unless the

1 circumstances warrant the ordering of immediate cessation of operations. If the renewal application is
2 rejected, the licensee shall cease operations within this state 30 days after receiving written notification.
3 A licensee who does not comply with the department's order to cease is subject to the penalties provided
4 in [section 11].

5 (6) The department may institute and maintain in the name of the state, through the attorney
6 general or the county attorney of the county in which the violation of an order to cease occurs, an action
7 for an injunction, order, or other civil remedy in district court to enforce its order.

8 (7) An applicant or licensee is ineligible to reapply for a license for 1 year following final department
9 action denying the issuance of or renewal of a license. The 1-year restriction does not apply to an
10 administrative denial or nonrenewal if the denial or nonrenewal was caused:

11 (a) by an inadvertent error or omission on the application;

12 (b) by experience that was insufficiently documented to the department at the time of the previous
13 application;

14 (c) by a failure to submit the required fees; or

15 (d) when the applicant or licensee was determined to be ineligible because an individual no longer
16 associated with the professional employer organization or group was determined to lack good moral
17 character, business integrity, or financial responsibility.

18

19 **NEW SECTION. Section 6. License renewal.** (1) Except as provided in subsection (5), a license
20 issued under [sections 1 through ~~14 15~~ 17] is valid for 1 year from the date of issuance unless suspended
21 or revoked.

22 (2) At least 30 days prior to the expiration of the license, the licensee shall submit an application
23 for renewal of a license on a form prescribed by the department and accompanied by the license fee, as
24 provided in [section 7].

25 (3) A late renewal application may not be processed prior to the expiration of the licensee's current
26 license. A person engaged in an unlicensed activity is subject to the penalty established in [section 11].

27 (4) Denial of a renewal license is subject to review under the provisions of [section 5].

28 (5) If the application fee required in [section 4] is paid and accepted, then no additional license fee
29 is required for the first year.

30

1 **NEW SECTION. Section 7. Renewal fees.** (1) The fee for the renewal of a resident or nonresident
2 unrestricted license is \$750.

3 (2) The fee for the renewal of a restricted license is \$500.

4 (3) The application fee required in [section 4] does not apply to the renewal of an unrestricted
5 license.

6 (4) A restricted license may not be granted to a professional employer organization or group that
7 is a resident of or domiciled in another state if the state requires licensing but does not grant a similar
8 privilege for restricted licensing to a licensee who is a resident of or domiciled in this state.

9 (5) Fees collected must be used by the department to implement [sections 1 through ~~4 15~~ 17].

10

11 **NEW SECTION. Section 8. License suspension, revocation, or nonrenewal.** (1) In addition to the
12 penalty provided in [section 11], the department may suspend for up to 1 year, may permanently revoke,
13 or may refuse to renew a license issued under [sections 1 through ~~4 15~~ 17] if, after notice to the licensee
14 of the charges and after a hearing, the department finds that any of the following exists:

15 (a) a cause for which issuance of the license could have been refused had it been known to the
16 department at the time of issuance;

17 (b) a violation of an order of the department or noncompliance with any provision of [sections 1
18 through ~~4 15~~ 17];

19 (c) procurement of or attempting to procure a license through misrepresentation or fraud;

20 (d) failure to provide a written response to a written inquiry from the department or its agent within
21 30 days after receiving an inquiry; or

22 (e) failure to meet or maintain any other requirement of [sections 1 through ~~4 15~~ 17].

23 (2) If a license is suspended, revoked, or not renewed, the department shall:

24 (a) immediately notify by certified mail the licensee and the licensee's workers' compensation
25 carrier; and

26 (b) require the licensee to:

27 (i) notify each client by certified mail, return receipt requested, of the suspension, revocation, or
28 nonrenewal using language furnished by the department and to;

29 (ii) NOTIFY EACH CLIENT IN WRITING THAT THE CLIENT SHARES JOINT AND SEVERAL
30 LIABILITY, RETROACTIVE TO THE DATE OF THE CLIENT'S ENTERING INTO A CONTRACT WITH THE

1 LICENSEE, FOR ANY WAGES, WORKERS' COMPENSATION PREMIUMS, PAYROLL-RELATED TAXES, AND
 2 ANY BENEFITS LEFT UNPAID BY THE PROFESSIONAL EMPLOYER ORGANIZATION OR GROUP; AND

3 (III) provide the department with evidence of client notification.

4 (3) Upon notification, the licensee may appeal the decision of the department pursuant to the
 5 procedure provided in [section 5].

6
 7 NEW SECTION. Section 9. Requirements of licensee. (1) A professional employer organization
 8 or group shall, by written contract with the client, establish the responsibilities and duties of each party.
 9 The contract must disclose to the client:

10 (a) the services provided, the administrative fee, and the respective rights and obligations of the
 11 parties;

12 (b) a statement providing that the professional employer organization or group:

13 (i) reserves a right of direction and control over employees assigned to the client's location. The
 14 client may retain sufficient direction and control over employees necessary to conduct business and without
 15 which the client would be unable to conduct business, discharge fiduciary responsibilities, or comply with
 16 state licensing laws.

17 (ii) assumes responsibility for the payment of wages of employees, WORKERS' COMPENSATION
 18 PREMIUMS, payroll-related taxes, and employee benefits from its own accounts without regard to payments
 19 by the client; and

20 (iii) retains authority to hire, terminate, discipline, and reassign employees. The client has the right
 21 to accept or cancel the assignment of an employee.

22 (c) a statement that, with respect to a worker ~~subject to a professional employer arrangement~~
 23 SUPPLIED TO A CLIENT BY A PROFESSIONAL EMPLOYER ORGANIZATION OR GROUP, the client shares
 24 joint AND SEVERAL liability for any wages, workers' compensation premiums, payroll-related taxes, and
 25 any benefits left unpaid by the professional employer organization or group; and THAT, IN THE EVENT
 26 THAT THE LICENSEE'S LICENSE IS SUSPENDED OR REVOKED, THIS LIABILITY IS RETROACTIVE TO THE
 27 CLIENT'S ENTERING INTO A CONTRACT WITH THE LICENSEE; AND

28 (d) a statement that the client is responsible for compliance with the Montana Safety Culture Act,
 29 Title 39, chapter 71, part 15.

30 (2) The professional employer organization or group shall:

1 (a) give written notice of the general nature of the relationship between the professional employer
2 organization or group and the client to each employee assigned to perform services at the client's place of
3 work. ~~The employer shall disclose to the client a statement providing that the professional employer~~
4 ~~organization or group~~ THE DISCLOSURE MUST PROVIDE THAT THE PROFESSIONAL EMPLOYER
5 ORGANIZATION:

6 (i) reserves a right of direction and control over employees assigned to the client's location. The
7 client may retain sufficient direction and control over employees necessary to conduct business and without
8 which the client would be unable to conduct business, discharge fiduciary responsibilities, or comply with
9 state licensing laws.

10 (ii) retains authority to hire, terminate, discipline, and reassign employees. The client has the right
11 to accept or cancel the assignment of an employee.

12 (b) submit to the department, within 90 days of the end of each calendar quarter, information
13 certified by an independent certified public accountant demonstrating that all payroll-related taxes for the
14 quarter have been paid. Upon a showing of reasonable cause, one 30-day extension may be granted for
15 each quarter.

16 (c) maintain and make available for the department or its agent all records relating to the licensee's
17 business conduct. Records must be maintained for 5 years after terminating an employee leasing
18 arrangement or professional employer arrangement.

19 (d) notify the department in writing within 20 days of a change of business address or a change
20 in partners, directors, officers, members, or controlling persons designated in the license;

21 (e) notify the department in writing within 20 days after a client either commences or terminates
22 a professional employer arrangement or an employee leasing arrangement with that professional employer
23 organization or group; and

24 (f) post the license issued in a conspicuous place in the principal place of business and display, in
25 clear public view in each licensee's office, a notice stating that the professional employer organization or
26 group is licensed and regulated by the department.

27 (3) When a professional employer organization or group uses a professional employer arrangement
28 with the client, both the professional employer organization or group and the client are the immediate
29 employers of the workers subject to the arrangement for the purposes of the workers' compensation laws
30 of this state. When a professional employer organization or group uses an employee leasing arrangement

1 with the client, the professional employer organization or group is the immediate employer of the workers
2 subject to the arrangement for the purposes of the workers' compensation laws of this state.

3 (4) A professional employer organization or group shall:

4 (a) pay wages and collect, report, and pay payroll-related taxes from its own accounts;

5 (b) pay unemployment taxes, pursuant to 39-51-1103, and provide, maintain, and secure all
6 records and documents required of employers under the unemployment insurance laws of this state. For
7 unemployment reporting purposes, each professional employer organization ~~or group~~ is the employing unit,
8 as defined in 39-51-201, AND SHALL KEEP SEPARATE RECORDS AND SUBMIT QUARTERLY WAGE LISTS
9 FOR EACH OF ITS CLIENTS.

10 (c) provide workers' compensation coverage for all employees and provide, maintain, and secure
11 all records and documents required of employers under the workers' compensation laws of this state. A
12 license may not be issued to a professional employer organization or group until the department receives
13 proof of workers' compensation coverage for all employees assigned to any client location in this state.

14 (5) A professional employer organization or group is the employer for sponsoring and maintaining
15 employee benefit and welfare plans. The plans, if limited to employees of the professional employer
16 organization or group, are not multiple employer welfare arrangements.

17 (6) A professional employer organization or group shall disclose to the department, to each client,
18 and to its employees information on any health or life fringe benefit program provided for its employees.
19 The information must include:

20 (a) the type of benefits;

21 (b) the identity of each insurer providing each type of coverage;

22 (c) the amount of benefits for each type of coverage and to whom or on whose behalf the benefits
23 will be paid;

24 (d) the policy limits on each insurance policy; and

25 (e) whether coverage is fully insured, partially insured, or fully self-funded.

26 (7) Disclosure required by this section may be made by any written means reasonably calculated
27 to adequately inform the employees, including a summary plan description that meets the requirements of
28 the Employee Retirement Income Security Act of 1974, as amended.

29 (8) (a) Subject to any contrary provisions of the contract between the client and the professional
30 employer organization or group, the professional employer arrangement that exists between the parties

1 must be interpreted for purposes of insurance, bonding, and employer liability pursuant to subsection (8)(b).

2 (b) The professional employer organization or group:

3 (i) is entitled, along with the client, to the exclusivity of the remedy under both the workers'
4 compensation and employers' liability provisions of a workers' compensation policy or plan of either party;
5 and

6 (ii) is not liable for the acts, errors, or omissions of a client or of an employee acting under the
7 direction and control of a client, subject to the provisions of [sections 1 through ~~14~~ 15 17]. Subject to the
8 provisions of [sections 1 through ~~14~~ 15 17], a client is not liable for the acts, errors, or omissions of a
9 professional employer organization or group or of any employee of a professional employer organization or
10 group acting under the direction and control of the professional employer organization or group.

11 ~~(9) A provider of workers' compensation insurance shall base classifications and rates applicable~~
12 ~~to the payroll of a worker subject to either a professional employer arrangement or an employee leasing~~
13 ~~arrangement as though the worker had been a direct employee of the client. A licensee shall maintain~~
14 ~~payroll records by classification for each client during the term of the arrangement. If an experience~~
15 ~~modification has been established for the client, that experience modification may be applied by the insurer~~
16 ~~to the premium for the client's leased workers.~~

17 (9) A PROFESSIONAL EMPLOYER ORGANIZATION THAT APPLIES FOR WORKERS'
18 COMPENSATION COVERAGE SHALL ALSO MAINTAIN AND FURNISH TO THE INSURER SUFFICIENT
19 INFORMATION TO PERMIT THE CALCULATION OF AN EXPERIENCE MODIFICATION FACTOR FOR EACH
20 CLIENT EMPLOYER, INCLUDING BUT NOT LIMITED TO:

21 (A) THE CLIENT EMPLOYER'S CORPORATE OR BUSINESS NAME;

22 (B) THE CLIENT EMPLOYER'S TAXPAYER OR EMPLOYER IDENTIFICATION NUMBER;

23 (C) THE CLIENT EMPLOYER'S RISK IDENTIFICATION NUMBER;

24 (D) A LISTING OF ALL EMPLOYEES ASSIGNED TO EACH CLIENT EMPLOYER AND THE
25 APPLICABLE CLASSIFICATION CODE AND PAYROLL; AND

26 (E) THE CLIENT EMPLOYER'S FIRST REPORT OF INJURY IDENTIFYING THE CLIENT EMPLOYER
27 AND ANY OTHER INFORMATION NECESSARY TO PERMIT THE CALCULATION OF AN EXPERIENCE
28 MODIFICATION FACTOR FOR EACH CLIENT EMPLOYER.

29 (10) An employee assigned to a client by a professional employer organization or group is
30 considered the employee of the client for purposes of general liability insurance, motor vehicle insurance,

1 fidelity bonds, surety bonds, ~~and employers' liability~~ and liquor liability insurance carried by the client. An
 2 employee assigned to a client by a professional employer organization or group is not an employee of the
 3 professional employer organization or group for purposes of general liability insurance, motor vehicle
 4 insurance, fidelity bonds, surety bonds, ~~or employers' liability~~ or liquor liability insurance carried by the
 5 professional employer organization or group unless the employee is included by reference in an employment
 6 arrangement contract, insurance contract, or bond.

7 (11) The sale of professional employer services pursuant to [sections 1 through ~~44 46 17~~] does not
 8 constitute the sale of insurance under Title 33 UNLESS THE PROFESSIONAL EMPLOYER ORGANIZATION
 9 OR GROUP:

10 (A) UNDERTAKES TO INDEMNIFY ANOTHER OR PAY OR PROVIDE A SPECIFIED OR
 11 DETERMINABLE AMOUNT OF BENEFIT BASED ON DETERMINABLE CONTINGENCIES UNLESS DONE
 12 THROUGH A LICENSED INSURER OR AN EMPLOYEE BENEFIT PROGRAM AS DEFINED IN 29 U.S.C.
 13 1002(1);

14 (B) SOLICITS, NEGOTIATES, EFFECTS, PROCURES, DELIVERS, RENEWS, CONTINUES, OR BINDS
 15 AN INSURANCE POLICY UNLESS DONE THROUGH A LICENSED INSURANCE PRODUCER; OR

16 (C) IS EXEMPT UNDER 33-17-103(4).

17 (12) ~~(a) The existence of a professional employer arrangement does not constitute employment~~
 18 ~~within the meaning of 39-51-204 if the client is a sole proprietor or a working member of a partnership.~~

19 ~~(b) An individual~~ A SOLE PROPRIETOR OR A WORKING MEMBER OF A PARTNERSHIP working
 20 under a professional employer arrangement may not receive unemployment insurance benefits unless the
 21 individual would otherwise be entitled to benefits if the professional employer arrangement did not exist.

22 (13) If the professional employer organization or group or the client complies with the provisions
 23 of 39-71-401 with respect to a worker under the professional employer arrangement, the professional
 24 employer organization or group and the client, with respect to those workers, are not uninsured employers,
 25 as defined in 39-71-501, and are not subject to the provisions of 39-71-508 or 39-71-515.

26
 27 NEW SECTION. Section 10. Deceptive practices prohibited. A professional employer organization
 28 or group may not:

29 (1) make, issue, circulate, or cause to be made, issued, or circulated an estimate, illustration,
 30 circular, statement, advertisement, sales presentation, omission, or comparison that misrepresents the

1 benefits, advantages, conditions, or terms of a professional employer arrangement or that is otherwise
 2 untrue, deceptive, or misleading;

3 (2) enter into an agreement to commit or by concerted action commit an act of boycott, coercion,
 4 or intimidation that results in unreasonable restraint of or monopoly in the business of professional employer
 5 services;

6 (3) file with the department or other public official or make, publish, disseminate, circulate, or
 7 deliver to a person a false statement of financial condition with the intent to deceive;

8 (4) knowingly:

9 (a) make a false entry of a material fact in a book, report, or statement of a person; or

10 (b) omit a material fact pertaining to the business of the person from a book, report, or statement
 11 of that person;

12 (5) permit the use or filing of a name, trade name, fictitious name, or business identity that is the
 13 same as or similar to or that may be confused with the name, trade name, fictitious name, or business
 14 identity of an existing licensee, governmental agency, or nonprofit organization; or

15 (6) commit any other practice determined by department rule to be deceptive.

16

17 **NEW SECTION. Section 11. Disciplinary action against licensee -- penalties.** (1) The department
 18 may deny a license application or may suspend, revoke, or refuse to renew an existing license for a person
 19 who:

20 (a) obtains or renews a license through bribery, fraud, or willful misrepresentation;

21 (b) engages in fraud, deceit, misrepresentation, or misconduct in:

22 (i) obtaining or providing workers' compensation or health coverage;

23 (ii) the classification of employees;

24 (iii) the reporting of employee wages for purposes of unemployment insurance or workers'
 25 compensation benefits; or

26 (iv) the operation of a professional employer organization or group;

27 (c) conducts business without a valid license;

28 (d) fails to maintain evidence of workers' compensation insurance coverage;

29 (e) transfers or attempts to transfer a license issued pursuant to [sections 1 through ~~14~~ 16 17];

30 or

1 (f) violates the provisions of [sections 1 through ~~14 15~~ 17] or a rule issued pursuant to [sections
2 1 through ~~14 15~~ 17].

3 (2) A person who fails to comply with the provisions of [sections 1 through ~~14 15~~ 17] is guilty of
4 a misdemeanor and, upon conviction, is subject to a fine of up to ~~\$500~~ \$1,000, imprisonment for not more
5 than 1 year, or both.

6

7 **NEW SECTION. SECTION 12. PRACTICE WITHOUT LICENSE -- INVESTIGATION OF COMPLAINT**
8 **-- INJUNCTION. (1) THE DEPARTMENT SHALL INVESTIGATE COMPLAINTS CONCERNING PRACTICE BY**
9 **AN UNLICENSED PERSON OF ACTIVITIES FOR WHICH A LICENSE IS REQUIRED UNDER [SECTIONS 1**
10 **THROUGH 17].**

11 **(2) THE DEPARTMENT MAY FILE AN ACTION TO ENJOIN A PERSON FROM PRACTICING**
12 **WITHOUT A LICENSE AS A PROFESSIONAL EMPLOYER ORGANIZATION OR GROUP.**

13

14 **NEW SECTION. SECTION 13. VIOLATION OF INJUNCTION -- PENALTY. A PERSON WHO**
15 **VIOLATES AN INJUNCTION ISSUED UNDER [SECTION 12] SHALL PAY A CIVIL PENALTY, AS**
16 **DETERMINED BY THE COURT, OF NOT MORE THAN \$5,000. FIFTY PERCENT OF THE PENALTY MUST**
17 **BE DEPOSITED IN THE GENERAL FUND OF THE COUNTY IN WHICH THE INJUNCTION IS ISSUED, AND**
18 **50% MUST BE DEPOSITED IN THE STATE GENERAL FUND.**

19

20 **NEW SECTION. Section 14. Investigations -- audits -- reviews.** (1) The department or its agent
21 may perform an investigation, audit, or review necessary to determine whether a person has violated any
22 provision of [sections 1 through ~~14 15~~ 17] or any rule promulgated by the department to implement
23 [sections 1 through ~~14 15~~ 17].

24 (2) Except as provided in subsection (3), material compiled by the department or its agent in an
25 investigation, audit, or review pursuant to this section is a public record and may be disclosed.

26 (3) Financial information, client lists, and lists of workers that are assigned by a professional
27 employer organization or group and that are obtained by the department or its agent during an investigation,
28 audit, or review are confidential ~~and are not subject to disclosure~~ **AND MAY NOT BE PUBLISHED OR BE**
29 **OPEN TO PUBLIC INSPECTION, EXCEPT TO PUBLIC EMPLOYEES IN THE PERFORMANCE OF THEIR PUBLIC**
30 **DUTIES.**

1 **NEW SECTION. Section 15. Disclosure of information.** (1) The department may not disclose to
 2 any person the records, statements, or documents received from an applicant, client, or professional
 3 employer organization or group, except:

4 (a) information necessary for ~~state agency personnel to perform official duties~~ **PUBLIC EMPLOYEES**
 5 **IN THE PERFORMANCE OF THEIR PUBLIC DUTIES;** or

6 (b) in response to an order received by a court of competent jurisdiction upon a finding that the
 7 disclosure of the record, statement, or document is necessary because the merits of disclosure clearly
 8 exceed the demand for individual privacy.

9 (2) The department may publish or make available to the public reasonable statistical data or
 10 reports regarding professional employer organizations or groups if the data or reports protect the identity
 11 of an applicant, client, or professional employer organization or group.

12

13 **NEW SECTION. Section 16. Other law.** (1) [Sections 1 through 44 ~~16~~ 17] do not exempt a client
 14 of a professional employer organization or group or an employee assigned to a client by a professional
 15 employer organization or group from other local, state, or federal license or registration requirements.

16 (2) An employee who is licensed, registered, or certified under law and who is assigned to a client
 17 location is an employee of the client for purposes of the license, registration, or certification.

18 (3) Except as provided in a professional employer arrangement, a professional employer
 19 organization or group is not liable for the general debts, obligations, profit losses, business goodwill, or
 20 other damages of a client with which it has entered into a professional employer arrangement.

21

22 **NEW SECTION. SECTION 17. WORKERS' COMPENSATION INSURER REQUIREMENTS.** (1) **AN**
 23 **INSURER THAT PROVIDES WORKERS' COMPENSATION INSURANCE TO A CLIENT EMPLOYER OF A**
 24 **PROFESSIONAL EMPLOYER ORGANIZATION SHALL BASE CLASSIFICATIONS AND RATES APPLICABLE**
 25 **TO THE PAYROLL OF A WORKER WHO IS SUBJECT TO EITHER A PROFESSIONAL EMPLOYER**
 26 **ARRANGEMENT OR AN EMPLOYEE LEASING ARRANGEMENT AS THOUGH THE WORKER HAS BEEN A**
 27 **DIRECT EMPLOYEE OF THE CLIENT EMPLOYER. IF AN EXPERIENCE MODIFICATION HAS BEEN**
 28 **ESTABLISHED FOR THE CLIENT EMPLOYER, THAT EXPERIENCE MODIFICATION MUST BE AUDITED**
 29 **USING THE FACTORS IN SUBSECTION (3) AND MUST BE APPLIED BY THE INSURER TO THE PREMIUM**
 30 **FOR THE CLIENT EMPLOYER'S WORKERS.**

1 (2) THE INSURER OF A PROFESSIONAL EMPLOYER ORGANIZATION SHALL REPORT TO THE
2 WORKERS' COMPENSATION ADVISORY OR RATING ORGANIZATION OF WHICH THE INSURER IS
3 REQUIRED TO BE A MEMBER UNDER TITLE 33, CHAPTER 16, PART 10, ALL DATA BY CLIENT,
4 INCLUDING PAYROLL BY CLASSIFICATION AND LIABILITIES FOR EACH CLIENT DURING THE TERM OF
5 THE POLICY.

6 (3) AN INSURER SHALL AUDIT POLICIES ISSUED TO A PROFESSIONAL EMPLOYER
7 ORGANIZATION WITHIN 90 DAYS OF THE POLICY EFFECTIVE DATE AND MAY CONDUCT QUARTERLY
8 AUDITS THEREAFTER. THE PURPOSE OF THE AUDIT IS TO DETERMINE WHETHER ALL
9 CLASSIFICATIONS, EXPERIENCE MODIFICATION FACTORS, AND ESTIMATED PAYROLL USED WITH
10 RESPECT TO THE DEVELOPMENT OF THE PREMIUM CHARGED ARE APPROPRIATE.

11 (4) ALL OPERATIONS OF A CLIENT, WHETHER OR NOT ALL OR A PORTION OF THE CLIENT'S
12 OPERATIONS ARE SUBJECT TO A PROFESSIONAL EMPLOYER ARRANGEMENT OR EMPLOYEE LEASING
13 ARRANGEMENT, MUST BE INSURED BY THE SAME INSURER.

14
15 **SECTION 18. SECTION 39-71-117, MCA, IS AMENDED TO READ:**

16 **"39-71-117. Employer defined.** (1) "Employer" means:

17 (a) the state and each county, city and county, city school district, irrigation district, all other
18 districts established by law, and all public corporations and quasi-public corporations and public agencies
19 therein and every person, every prime contractor, and every firm, voluntary association, and private
20 corporation, including any public service corporation and including an independent contractor who has any
21 person in service under any appointment or contract of hire, expressed or implied, oral or written, and the
22 legal representative of any deceased employer or the receiver or trustee thereof;

23 (b) any association, corporation, or organization that seeks permission and meets the requirements
24 set by the department by rule for a group of individual employers to operate as self-insured under plan No.
25 1 of this chapter; and

26 (c) any nonprofit association or corporation or other entity funded in whole or in part by federal,
27 state, or local government funds that places community service participants, as defined in 39-71-118(1)(f),
28 with nonprofit organizations or associations or federal, state, or local government entities.

29 (2) A temporary service contractor is the employer of a temporary worker for premium and loss
30 experience purposes.

1 (3) ~~An~~ Except as provided in [sections 1 through 17], an employer defined in subsection (1) who
 2 utilizes the services of a worker furnished by another person, association, contractor, firm, or corporation,
 3 other than a temporary service contractor, is presumed to be the employer for workers' compensation
 4 premium and loss experience purposes for work performed by the worker. The presumption may be
 5 rebutted by substantial credible evidence of the following:

6 (a) the person, association, contractor, firm, or corporation, other than a temporary service
 7 contractor, furnishing the services of a worker to another retains control over all aspects of the work
 8 performed by the worker, both at the inception of employment and during all phases of the work; and

9 (b) the person, association, contractor, firm, or corporation, other than a temporary service
 10 contractor, furnishing the services of a worker to another has obtained workers' compensation insurance
 11 for the worker in Montana both at the inception of employment and during all phases of the work
 12 performed.

13 (4) ~~Notwithstanding the provisions of subsection (3),~~ an An interstate or intrastate common or
 14 contract motor carrier doing business in this state who utilizes drivers in this state is considered the
 15 employer, is liable for workers' compensation premiums, and is subject to loss experience rating in this
 16 state unless:

17 (a) the driver in this state is certified as an independent contractor as provided in 39-71-401(3);
 18 or

19 (b) the person, association, contractor, firm, or corporation furnishing drivers in this state to a
 20 motor carrier has obtained workers' compensation insurance on the drivers in Montana both at the inception
 21 of employment and during all phases of the work performed."
 22

23 **SECTION 19. SECTION 39-71-118, MCA, IS AMENDED TO READ:**

24 "**39-71-118. Employee, worker, and volunteer firefighter defined.** (1) The terms "employee" or
 25 "worker" means:

26 (a) each person in this state, including a contractor other than an independent contractor, who is
 27 in the service of an employer, as defined by 39-71-117, under any appointment or contract of hire,
 28 expressed or implied, oral or written. The terms include aliens and minors, whether lawfully or unlawfully
 29 employed, and all of the elected and appointed paid public officers and officers and members of boards of
 30 directors of quasi-public or private corporations while rendering actual service for the corporations for pay.

1 Casual employees as defined by 39-71-116 are included as employees if they are not otherwise covered
2 by workers' compensation and if an employer has elected to be bound by the provisions of the
3 compensation law for these casual employments, as provided in 39-71-401(2). Household or domestic
4 service is excluded.

5 (b) any juvenile performing work under authorization of a district court judge in a delinquency
6 prevention or rehabilitation program;

7 (c) a person receiving on-the-job vocational rehabilitation training or other on-the-job training under
8 a state or federal vocational training program, whether or not under an appointment or contract of hire with
9 an employer as defined in this chapter and whether or not receiving payment from a third party. However,
10 this subsection does not apply to students enrolled in vocational training programs as outlined in this
11 subsection while they are on the premises of a public school or community college.

12 (d) students enrolled and in attendance in programs of vocational-technical education at designated
13 vocational-technical centers;

14 (e) an aircrew member or other person employed as a volunteer under 67-2-105;

15 (f) a person, other than a juvenile as defined in subsection (1)(b), performing community service
16 for a nonprofit organization or association or for a federal, state, or local government entity under a court
17 order, or an order from a hearings officer as a result of a probation or parole violation, whether or not under
18 appointment or contract of hire with an employer as defined in this chapter and whether or not receiving
19 payment from a third party. For a person covered by the definition in this subsection (f):

20 (i) compensation benefits must be limited to medical expenses pursuant to 39-71-704 and an
21 impairment award pursuant to 39-71-703 that is based upon the minimum wage established under Title 39,
22 chapter 3, part 4, for a full-time employee at the time of the injury; and

23 (ii) premiums must be paid by the employer, as defined in 39-71-117(3), and must be based upon
24 the minimum wage established under Title 39, chapter 3, part 4, for the number of hours of community
25 service required under the order from the court or hearings officer.

26 (g) an inmate working in a federally certified prison industries program authorized under 53-1-301.

27 (2) The terms defined in subsection (1) do not include a person who is:

28 (a) participating in recreational activity and who at the time is relieved of and is not performing
29 prescribed duties, regardless of whether the person is using, by discount or otherwise, a pass, ticket,
30 permit, device, or other emolument of employment; or

1 (b) performing voluntary service at a recreational facility and who receives no compensation for
2 those services other than meals, lodging, or the use of the recreational facilities.

3 (3) The term "volunteer firefighter" means a firefighter who is an enrolled and active member of
4 a fire company organized and funded by a county, a rural fire district, or a fire service area.

5 (4) (a) If the employer is a partnership or sole proprietorship, the employer may elect to include as
6 an employee within the provisions of this chapter any member of the partnership or the owner of the sole
7 proprietorship devoting full time to the partnership or proprietorship business.

8 (b) In the event of an election, the employer must serve upon the employer's insurer written notice
9 naming the partners or sole proprietor to be covered and stating the level of compensation coverage desired
10 by electing the amount of wages to be reported, subject to the limitations in subsection (4)(d). A partner
11 or sole proprietor is not considered an employee within this chapter until notice has been given.

12 (c) A change in elected wages must be in writing and is effective at the start of the next quarter
13 following notification.

14 (d) All weekly compensation benefits must be based on the amount of elected wages, subject to
15 the minimum and maximum limitations of this subsection. For premium ratemaking and for the
16 determination of weekly wage for weekly compensation benefits, the electing employer may elect not less
17 than \$900 a month and not more than 1 1/2 times the average weekly wage as defined in this chapter.

18 (5) The trustees of a rural fire district, a county governing body providing rural fire protection, or
19 the county commissioners or trustees for a fire service area may elect to include as an employee within the
20 provisions of this chapter any volunteer firefighter. A volunteer firefighter who receives workers'
21 compensation coverage under this section may not receive disability benefits under Title 19, chapter 17.

22 (6) ~~An~~ Except as provided in [sections 1 through 17], an employee or worker in this state whose
23 services are furnished by a person, association, contractor, firm, or corporation, other than a temporary
24 service contractor, to an employer as defined in 39-71-117 is presumed to be under the control and
25 employment of the employer. This presumption may be rebutted as provided in 39-71-117(3).

26 (7) For purposes of this section, an "employee or worker in this state" means:

27 (a) a resident of Montana who is employed by an employer and whose employment duties are
28 primarily carried out or controlled within this state;

29 (b) a nonresident of Montana whose principal employment duties are conducted within this state
30 on a regular basis for an employer;

1 (c) a nonresident employee of an employer from another state engaged in the construction industry,
2 as defined in 39-71-116, within this state; or

3 (d) a nonresident of Montana who does not meet the requirements of subsection (7)(b) and whose
4 employer elects coverage with an insurer that allows an election for an employer whose:

- 5 (i) nonresident employees are hired in Montana;
6 (ii) nonresident employees' wages are paid in Montana;
7 (iii) nonresident employees are supervised in Montana; and
8 (iv) business records are maintained in Montana.

9 (8) An insurer may require coverage for all nonresident employees of a Montana employer who do
10 not meet the requirements of subsection (7)(b) or (7)(d) as a condition of approving the election under
11 subsection (7)(d)."

12

13 **NEW SECTION. Section 20. Codification instruction.** [Sections 1 through 44 ~~45~~ 17] are intended
14 to be codified as an integral part of Title ~~37~~ 39, and the provisions of Title ~~37~~ 39 apply to [sections 1
15 through 44 ~~45~~ 17].

16

17 **NEW SECTION. Section 21. Severability.** If a part of [this act] is invalid, all valid parts that are
18 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its
19 applications, the part remains in effect in all valid applications that are severable from the invalid
20 applications.

21

22 **NEW SECTION. Section 22. Effective date.** [This act] is effective July 1, 1995.

23

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