SB41
78608-4
By Senator Means
RFD: Business and Labor
First Read: 10-JAN-06
PFD: 12/08/2005
ENROLLED, An Act,

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

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:
Section 1. This act shall be known and may be cited as the "Alabama Professional Employer Organization Registration Act."

Section 2. The Legislature finds and declares the following:

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

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

(3) That any allocation of the employer duties and responsibilities pursuant to this act will preserve all rights to which covered employees would be entitled under a traditional employment relationship.
Section 3. As used in this act, the following terms shall have the following meanings:

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

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

(3) CONTROLLING PERSON. Any of the following:

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

b. An individual who possesses, directly or indirectly, the power to direct or cause the direction of the management or policies of a company operating as a professional employer organization through the ownership of
voting securities, by contract or otherwise, and who is actively involved in the day-to-day management of the company.

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

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

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

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

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

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

(7) PERSON. An individual, sole proprietorship, business, partnership, corporation, limited liability company,
association, firm, or any other form of legally recognized entity.

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

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

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

c. Temporary help services, which consist only of: (i) recruiting and hiring their own employees; (ii) finding
other organizations that need the services of those employees;
(iii) assigning those employees to perform work at or services
for the other organizations to support or supplement the other
organizations' workforces, or to provide assistance in special
work situations such as, but not limited to, employee
absences, skill shortages, seasonal workloads, or to perform
special assignments or projects, and (iv) customarily
attempting to reassign the employees to other organizations
when they finish each assignment. However, notwithstanding any
provision to the contrary, a temporary help service entity
shall annually, at no cost, certify on a form approved by the
director that the temporary help service is not providing PEO
services.

(9) PROFESSIONAL EMPLOYER ORGANIZATION ARRANGEMENTS.
An arrangement under contract where an employee of a
professional employer organization is assigned or leased, or
both, to work at a client company. The assignment of the
covered employee is intended to be of a long-term or
continuing nature, rather than temporary or seasonal in
nature. The term shall be liberally construed to include any
and all arrangements meeting the criteria set forth by this
act, by whatever term known.

(10) PROFESSIONAL EMPLOYER SERVICES. The service of
entering into relationships under this act in which all or a
majority of the employees providing services to a client or to
a division or work unit of clients are covered employees. More specifically, professional employer services may include, but are not limited to, the payment of payroll, payment of payroll taxes, payment of unemployment compensation taxes, providing for workers' compensation coverage, providing for health insurance coverage and any and all other additional services as may be contracted for under the professional employer organization agreement. Exclusively providing, selling, or administering workers' compensation and/or health insurance plans to one or more clients is not the provision of professional employer services.

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

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

Section 4. (a) Neither this act nor a professional employer agreement may affect, modify, or amend any collective bargaining agreement, or the rights or obligations of any
client, professional employer organization, or covered
employee under the Federal National Labor Relations Act, or
any other similar law.

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

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

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

(e) Unless otherwise expressly agreed to by the
client in the professional employer agreement, a client shall
have the sole right to direct and control the professional or
licensed activities of covered employees and of the business
of the client.
(f)(1) After the effective date of this act, for the purpose of qualifying for the income tax capital credit allowed under Title 40, Chapter 18, Article 7, Code of Alabama 1975, and for the purpose of determining other economic incentives based on employment as provided or administered by the State of Alabama or its political subdivisions, covered employees actually working full-time in the business operations of the client shall be deemed employees solely of the client. A client shall be entitled to the benefit of any tax credit, economic incentive, or other benefit arising as the result of the employment of covered employees of the client, subject to all other state and local laws controlling any benefit addressed in this sentence. When determining the Alabama apportionment factor, a client company shall include in the payroll factor the amount paid to the professional employer organization that is due to be paid to covered employees as wages earned.

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

(3) The tax assessed on a per capita or per employee basis shall be assessed against the client for covered employees and against the professional employer organization for its employees who are not a covered employee of a client.
(g) A bid, contract, purchase order, or agreement entered into with the state or a political subdivision of the state, a client company's status or certification as a small, minority-owned, disadvantaged, or woman-owned business enterprise or as a historically under-utilized business is not affected because the client company has entered into an agreement with a professional employer organization or uses the services of a professional employer organization.

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

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

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

a. The name or names under which the PEO conducts business.
b. The address of the principal place of business of the PEO and the address of each office it maintains in this state.

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

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

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

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

g. A financial statement setting forth the financial condition of the PEO, as of a date not earlier than 180 days prior to the date submitted to the department, prepared in accordance with generally accepted accounting principles, and audited or reviewed by an independent certified public accountant licensed to practice in the jurisdiction in which
such accountant is located. The director, by rule, may allow
for a waiver of the audit or review procedures for new PEOs in
business for less than one year. In no event shall a PEO be
allowed a renewal of the waiver after its first year of
existence.

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

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

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

(b) The director shall determine, by rule, the financial requirements for a registrant or renewal of registration. The rule may require the submission of securities or guarantees securing the payment of all unemployment taxes and workers' compensation claims payments due to or with respect to covered employees and may require that the security or assets to secure such payments be maintained by a financial institution located in the State of Alabama. The director may accept net worth based upon audited
financial statements in whole or in part for the financial
requirements. The financial requirements shall not exceed one
hundred thousand dollars ($100,000).

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

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

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

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

(3) Does not have more than 50 covered employees
employed or domiciled in this state on any given day.
(4) The director shall determine, by rule, the limited registration requirements and process.

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

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

(2) The fee for any initial registration may not exceed one thousand dollars ($1,000), and the fee for a renewal registration may not exceed five hundred dollars ($500). The fee for any limited registration may not exceed five hundred dollars ($500), and the fee for a renewal of a limited registration may not exceed two hundred fifty dollars ($250). Fees for an initial or renewal registration shall be submitted at the time of registration and made payable to the Professional Employer Organization Registration Administrative Trust Fund. All registration fees shall be nonrefundable.
(g)(1) Each professional employer organization operating within this state on the effective date of this act shall complete its initial registration not later than 180 days after the effective date.

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

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

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

(5) A notice shall be maintained in the administrative office of a client employer maintained within the state and shall be made available to any covered employee or the department's representative upon request which states the name of the professional employer organization the employer is associated with, that the professional employer organization is registered and regulated by the department,
and that any questions or complaints should be directed to the director.

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

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

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

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

(1) Making, issuing, circulating, or causing to be made an estimate, illustration, circular, statement, advertisement, sales presentation, omission, or comparison
which intentionally misleads, deceives, or misrepresents the benefits, advantages, disadvantages, conditions, or terms of any professional employer organization arrangement.

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

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

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

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

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

a. A crime in any jurisdiction which relates to the operation of a professional employer organization or the ability to engage in business as a professional employer organization.
b. Fraud, deceit, or misconduct in the classification of employees and reporting of employee wages under the workers' compensation laws of this state.

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

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

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

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

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

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

(6) Failing to inform the director in writing within 30 days after being convicted, pleading guilty, or entering a
plea of nolo contendere to a felony, regardless of adjudication.

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

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

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

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

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

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

(2) The director may make, or cause to be made, investigations, audits, or reviews within or without the state as the director deems necessary to determine whether a person has violated or is in danger of violating this act, including any regulation or rule to aid in the enforcement of this act, including any regulation or rule promulgated pursuant to this act.
(3) All civil penalties collected under this act shall be deposited in the Professional Employer Organization Registration Administrative Trust Fund.

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

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

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

(e) The controlling person of a client of a professional employer organization who fraudulently or falsely
Section 9. (a) All professional employer organization arrangements shall have a written contract between the client and the professional employer organization recognizing the rights, responsibilities, and duties of each party. The contract shall disclose to the client the services to be rendered by the professional employer organization, including the total administrative fees charged for professional employer organization services, the respective rights and obligations of the parties, and shall provide the following:

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

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

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

(4) The responsibility to obtain workers'
compensation coverage for covered employees, from a carrier
licensed to do business in this state and otherwise in
compliance with all applicable requirements, shall be
specifically allocated to either the client or the
A professional employer organization in the professional employer agreement.

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

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

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

(3) Except to the extent otherwise expressly provided by the applicable professional employer agreement, a client shall be solely responsible for the quality, adequacy,
or safety of the goods or services produced or sold in a client's business.

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

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

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

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

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

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

(3) A client and a professional employer organization shall each be deemed an employer for purposes of sponsoring retirement and welfare benefit plans for their covered employees, however, in no case shall a health care benefit plan be deemed to be jointly sponsored by both the client and the professional employer organization. The
professional employer agreement shall identify whether the 
client or the professional employer organization is the 
sponsor of any given health care benefit plan.

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

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

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

(5)a. For purposes of unemployment compensation, 
covered employees of a professional employer organization are 
considered the employees of the professional employer 
organization, which shall be responsible for the payment of 
contributions, penalties, and interest on wages paid by the 
professional employer organization to its covered employees
during the term of the applicable professional employer
agreement.

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

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

(6)a. A professional employer organization shall
assure to the satisfaction of the director that workers'
compensation coverage is provided for all covered employees
employed in this state pursuant to the laws of this state.
Failure to provide the director with proof of workers'
compensation coverage shall subject the professional employer
organization to a civil penalty of one thousand dollars
($1,000). In the event individual coverage is obtained for
each client employer, failure to provide proof of coverage for
each client employer shall constitute a separate finable
offense.
b. If the responsibility to obtain workers' compensation coverage for covered employees is allocated in the professional employer agreement to the professional employer organization, the agreement shall require that the professional employer organization maintain and provide to each client, at the termination of the agreement if requested by the client, records regarding the loss experience related to workers' compensation insurance provided to covered employees pursuant to the agreement.

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

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

e. Both client and the professional employer organization shall be considered the employer for the purpose of workers' compensation coverage, and shall each be entitled
to protection of the exclusive remedy provision of the
workers' compensation laws of this state.

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

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

Section 10. (a) There is established in the State
Treasury a fund entitled the Professional Employer
Organization Registration Administrative Trust Fund. Fees and
assessments provided by this act collected by the Department
of Industrial Relations shall be deposited in the fund. The
fund shall constitute a separate fund to be disbursed by the
state Comptroller on order of the director. All expenses
incurred by the department under this act, including the
salaries of all employees, travel costs, and any other cost of
administration and enforcement as may become necessary, either
within or without the state, shall be paid from the separate
fund in the State Treasury upon warrants of the state
Comptroller drawn upon the State Treasury from time to time
when vouchers therefore are approved by the director. The
State Treasurer shall pay monies from the separate fund upon
the order of the director. The total expense for every purpose
incurred may not exceed the total fees and assessments
collected and paid into the fund. All monies remaining
unexpended in the separate fund at the end of the fiscal year
shall remain in the State Treasury to be expended as provided
by this act.

No monies shall be withdrawn or expended from the
fund for any purpose unless the monies have been appropriated
by the Legislature and allocated pursuant to this chapter. Any
monies appropriated shall be budgeted and allotted pursuant to
the Budget Management Act in accordance with Article 4
(commencing with Section 41-4-80) of Chapter 4 of Title 41,
and only in the amounts provided by the Legislature in the
general appropriations act or other appropriations act.
(b) The State Treasurer shall determine if the money in the trust fund shall be kept in cash or invested. The moneys in the fund may be invested by the State Treasurer and all moneys and interest remaining unexpended in the separate fund provided at the end of the fiscal year shall remain in the State Treasury to be expended as provided by this act.

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

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

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

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

Section 12. Although this bill would have as its purpose or effect the requirement of a new or increased expenditure of local funds, the bill is excluded from further requirements and application under Amendment 621 because the bill defines a new crime or amends the definition of an existing crime.
Section 13. The provisions of this act are severable. If any part of this act is declared invalid or unconstitutional, that declaration shall not affect the part which remains.

Section 14. This act shall become effective on the first day of the third month following its passage and approval by the Governor, or its otherwise becoming law.
President and Presiding Officer of the Senate

Speaker of the House of Representatives

SB41
Senate 19-JAN-06
I hereby certify that the within Act originated in and passed
the Senate, as amended.

McDowell Lee
Secretary

House of Representatives
Amended and passed 02-MAR-06

Senate concurred in House amendment 07-MAR-06

By: Senator Means