The House Committee on Small Business Development offers the following substitute to HB 250:

A BILL TO BE ENTITLED

AN ACT

To amend Titles 33 and 34 of the Official Code of Georgia Annotated, relating to insurance and labor and industrial relations, respectively, so as to provide for the registration and regulation of professional employer organizations; to provide for certain regulatory powers, duties, and authority of the Commissioner of Insurance over professional employer organizations; to exempt such organizations from certain licensing requirements; to provide for definitions; to provide for the registration of such organizations; to provide for certain fees; to provide for the restriction of the use of certain terms; to provide for complaints; to provide for coordination with the Commissioner of Labor; to provide for a co-employment relationship; to provide for no effect on existing collective bargaining agreements or other contracts; to provide for legislative construction; to clarify rights, duties, and obligations of clients and professional employer organizations; to clarify employer and employee statuses; to clarify tax duties, obligations, and credits; to provide for disciplinary actions; to provide for the applicability of Chapter 8 of Title 34, the "Employment Security Law"; to provide for rules and regulations; to repeal obsolete provisions; to provide for the posting of a surety bond; to provide for conforming changes; to provide for a short title; to provide for related matters; to provide for an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

PART I

SECTION 1-1.

Title 33 of the Official Code of Georgia Annotated, relating to insurance, is amended in subsections (b) and (c) of Code Section 33-23-1, relating to definitions relative to agents, agencies, subagents, counselors, and adjusters, as follows:

"(b) The definitions of agent, subagent, and counselor in subsection (a) of this Code section shall not be deemed to include:

(1) An attorney at law admitted to practice in this state, when handling the collections of premiums or advising clients as to insurance as a function incidental to the practice of law or who adjusts losses which are incidental to the practice of his or her profession;

(2) Any representative of ocean marine insurers;

(3) Any representative of farmers' mutual fire insurance companies as defined in Chapter 16 of this title;

(4) A salaried employee of a credit or character reporting firm or agency not engaged in the insurance business who may, however, report to an insurer;

(5) A person acting for or as a collection agency;

(6) A person who makes the salary deductions of premiums for employees or, under a group insurance plan, a person who serves the master policyholder of group insurance in administering the details of such insurance for the employees or debtors of the master policyholder or of a firm or corporation by which the person is employed and who does not receive insurance commissions for such service; provided, further, that an administration fee not exceeding 5 percent of the premiums collected paid by the insurer to the administration office shall not be construed to be an insurance commission;

(7) Persons exempted from licensure as provided in subsection (h) of Code Section 33-23-4; ~~or~~

(8) An individual who collects claim information from, or furnishes claim information to, insureds or claimants, who conducts data entry, and who enters data into an automated claims adjudication system, provided that the individual is an employee of a licensed independent adjuster or its affiliate where no more than 25 such persons are under the supervision of one licensed independent adjustor or licensed agent; or

(9) A professional employer organization providing professional employer services to a client or covered employee pursuant to a professional employer agreement, as such terms are defined in Code Section 34-11-1, to the extent that such organization collects information from a client or covered employee; obtains, offers, or provides life, accident and sickness, disability income, and other types of insurance coverage for a client or covered employee; establishes a retirement plan for a client or covered employee; and has or obtains, offers, or provides other types of employee benefits and discusses such benefits with a client or covered employee.

(c) In addition to paragraphs (2) through ~~(8)~~ (9) of subsection (b) of this Code section, the definitions of public adjuster, independent adjuster, and adjuster in subsection (a) of this Code section shall not be deemed to include an attorney admitted to practice law in this state."

SECTION 1-2.

Said title is further amended in subsection (b) of Code Section 33-23-100, relating to definitions, exemptions, and applicability of Code Section 33-24-59.5 and 33-24-59.14, by striking "or" at the end of paragraph (12), replacing the period at the end of paragraph (13) with "; or", and adding a new paragraph to read as follows:

"(14) A professional employer organization to the extent that such organization administers insurance or certain claims pursuant to a professional employer agreement, as such terms are defined in Code Section 34-11-1."

PART II

SECTION 2-1.

This Act shall be known and may be cited as the "Better Small Business Employee Benefits Act."

SECTION 2-2.

Title 34 of the Official Code of Georgia Annotated, relating to labor and industrial relations, is amended by revising Chapter 11, which is reserved, as follows:

"CHAPTER 11

34-11-1.

As used in this chapter, the term:

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

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

(3) 'Co-employment relationship' means an arrangement wherein the rights, duties, and obligations of an employer which arise out of an employment arrangement are allocated between the parties to such arrangement.

(4) 'Commissioner' means the Commissioner of Insurance.

(5) 'Covered employee' means an individual working under a co-employment relationship between a PEO and a client pursuant to a professional employer agreement subject to this chapter.

(6) 'Department' means the Department of Insurance.

(7) 'Limited registrant' means a PEO that:

(A) Is domiciled and registered or licensed in another state;

(B) Has 50 or fewer covered employees; and

(C) Maintains no principal place of business in this state.

(8) 'PEO group' means two or more PEO entities that are majority owned or commonly controlled by the same entity or parent company.

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

(10) 'Professional employer agreement' means a written contract between a client and a PEO that provides:

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

(B) An express allocation of employer rights and obligations regarding covered employees between the client and the PEO; and

(C) That the PEO and the client assume the responsibilities required by this chapter.

(11) 'Professional employer organization' or 'PEO' means any person engaged in the business of providing professional employer services. Such term is not required to be in the title of the business. Such term shall include a staff leasing company, registered staff leasing company, employee leasing company, administrative employer, or any other similar name, provided that the person is engaged in the business of providing professional employer services. Such term shall not include:

(A) A person, whose principal business activity is not entering into professional employer agreements and which does not hold itself out as a PEO, that shares employees with a commonly controlled corporation, trade, or business within the meaning of Section 414(b) and (c) of the federal Internal Revenue Code of 1986;

(B) A person in an independent contractor arrangement by which such person assumes responsibility for the goods produced or services performed by such person or such person's agents and retains and exercises primary direction and control over the work performed by the individuals whose goods or services are supplied under such arrangement; or

(C) A temporary help contracting firm as defined in Code Section 34-8-46.

(12) 'Professional employer services' means the service of entering into co-employment relationships in which all or a majority of the employees providing services to a client are covered employees pursuant to a professional employer agreement.

(13) 'Registrant' means a PEO registered with the department pursuant to Code Section 34-11-2.

34-11-2.

(a) Beginning July 1, 2027, except as otherwise provided in this chapter, no person shall provide, advertise, or otherwise hold itself out as providing professional employer services in this state, unless such person is registered with the department in accordance with this chapter. The department shall begin accepting applications for registration no later than January 2, 2026.

(b) Each applicant for registration shall provide the department with the following:

(1) The name or names under which the PEO conducts business;

(2) The address of the principal place of business of the PEO;

(3) The address of each office, if any, it maintains in this state;

(4) The PEO's taxpayer or employer identification number;

(5) A list by jurisdiction of each name under which the PEO has operated in the preceding two years;

(6) A statement of ownership, which shall include the name and address of any person that, individually or in a business relationship with one or more other persons, owns or controls at least 25 percent of the equity interests of the PEO;

(7) A statement of management, which shall include the name of any person who serves as chief executive officer, president, or secretary or otherwise has been empowered with the authority to act as an officer of the PEO; and

(8) A financial statement, prepared in accordance with generally accepted accounting principles by an independent, certified public accountant licensed to practice in the jurisdiction in which such accountant is located. A PEO group may submit combined or consolidated financial statements to meet the requirements of this paragraph. A PEO that has not had sufficient operating history to be able to provide such records shall meet the financial requirements set forth in this Code section and present financial statements as requested by the department.

(c) In the event a PEO not registered in this state becomes knowledgeable that a client has covered employees in this state:

(1) The PEO shall notify the department within 30 days of such knowledge and file a limited registrant application under subsection (f) of this Code section; or

(2) If the number of covered employees exceeds 50, the department may allow for a temporary registration while registration applications are being prepared and evaluated. In its evaluation for such temporary registration, the department may consider whether the PEO is currently registered or licensed in another state and if temporary registration is in the best interests of the covered employees in this state.

(d) A registrant shall renew its registration annually by making a filing in a form determined by the department, which shall provide for the registrants to notify the department of any material changes in the information provided in its most recent registration filing. A registrant's existing registration shall remain in effect while such renewal application is under review.

(e) A PEO group applying for renewal may satisfy the registration and financial reporting requirements of this chapter by filing combined or consolidated filings, provided that each member of the PEO group attests to being responsible for meeting the requirements set forth in this chapter.

(f) A PEO shall be eligible to be a limited registrant if such PEO submits a request for limited registration on a form provided by the department and the department finds that such PEO is domiciled outside this state and is licensed or registered as a professional employer organization in another state. A limited registrant shall not maintain an office in this state or have more than 50 covered employees employed or domiciled in this state at any time. Limited registrants shall be registered for a maximum period of one year and may be considered for renewal as a limited registrant as set forth by the department.

(g) The department shall maintain a directory of professional employer organizations registered under this chapter and shall make such directory readily available on the department's public website and by any other means deemed appropriate by the department.

(h) The department shall, to the extent practicable, accept electronic filings, including, but not limited to, applications, documents, reports, and other filings required under this chapter. The department may provide for the acceptance of electronic filings and other assurance by an independent and qualified assurance organization approved by the department that provides satisfactory assurance of compliance and security. The department may authorize a PEO to agree that such an approved assurance organization may act on the PEO's behalf in complying with the registration requirements of this chapter.

(i) All records, reports, and other information obtained from or on behalf of a PEO, except to the minimum extent necessary for the proper administration by the department or to comply with the provisions of Article 4 of Chapter 18 of Title 50, relating to open records, shall be confidential and shall not be published or open to public inspection other than to public employees in the performance of their official duties.

34-11-3.

(a) The Commissioner is authorized to assess and collect in advance, and persons so assessed shall pay in advance to the Commissioner, fees for the initial and renewal registration of a PEO, initial and renewal registration of a PEO group, and limited and temporary registration of a PEO or a PEO group.

(b) The amount of the fees provided for in subsection (a) of this Code section shall be limited as follows:

(1) The initial registration fee of a PEO shall not exceed $500.00, and the renewal registration fee of a PEO shall not exceed $250.00;

(2) The initial registration fee of a PEO group shall not exceed $500.00 per group member, and the renewal registration fee of a PEO group shall not exceed $250.00 per group member;

(3) The limited registration fee of a PEO shall not exceed $250.00, and the limited registration fee of a PEO group shall not exceed $250.00 per group member;

(4) The temporary registration fee of a PEO shall not exceed $250.00, and the temporary registration fee of a PEO group shall not exceed $250.00 per group member; and

(5) Such fees shall not exceed the amount reasonably necessary for the registration and regulation of professional employer organizations.

34-11-4.

Any applicant, either for an initial registration or a renewal, shall submit financial statements, in accordance with paragraph (8) of subsection (b) of Code Section 34-11-2, that prove that the applicant has positive working capital.

34-11-5.

(a) It shall be unlawful for any person to use the term 'PEO,' 'professional employer organization,' 'staff leasing,' 'staff leasing company,' 'registered staff leasing company,' 'employee leasing,' 'employee leasing company,' 'administrative employer,' or any other title deemed by the department to be representative of professional employer services and to provide professional employer services without being registered as a PEO with the department.

(b) It shall be unlawful for any person to knowingly provide false or otherwise fraudulent information to the department in support of any application for registration or renewal or in any report required under this chapter.

(c) Any complaints regarding a professional employer organization shall be filed with the department, and any complaints filed with the Department of Labor shall be forwarded to the department; provided, however, that the department and the Department of Labor shall cooperate in the documentation, investigation, and resolution of any complaints received and in any disciplinary actions.

34-11-6.

(a) In a co-employment relationship:

(1) The client is entitled to enforce the rights and obligated to provide and perform the employer obligations allocated to such client by the professional employer agreement and this chapter;

(2) The client is entitled to enforce any right and obligated to perform any obligation of an employer not specifically allocated to the PEO in the professional employer agreement or this chapter;

(3) The rights, duties, and obligations of the PEO as co-employer with respect to any covered employee shall be limited to those arising pursuant to the professional employer agreement and this chapter during the term of the co-employment relationship with the PEO of such covered employee;

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

(5) For purposes of any law of this state where employer coverage and employee eligibility is determined based on the number of covered employees employed by the employer, the client as an employer shall be required to count only the covered employees of the client, and not the employees of other clients of the PEO or of the PEO itself.

(b) Except as specifically provided in this chapter, the co-employment relationship between the client and the PEO, and between each co-employer and each covered employee, shall be governed by a professional employer agreement. Each professional employer agreement shall provide for the following:

(1) The allocation of rights, duties, and obligations of each co-employer for each covered employee;

(2) The allocation of rights, duties, and obligations to the PEO regarding payment of wages. The PEO shall pay wages to covered employees; shall withhold, collect, and remit payroll and unemployment taxes; and may make payments for employee benefits. Such payment of wages shall not be interpreted as to 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, including, but not limited to, severance pay, deferred compensation, profit sharing, or vacation, sick, or other paid time off pay, unless the PEO has expressly agreed to assume liability for such payments in the professional employer agreement; and

(3) A right to hire, discipline, and terminate a covered employee shall be allocated to both the client and the PEO; provided, however, that the PEO's right shall be limited to such employment decisions as may be necessary to fulfill the PEO's responsibilities under this chapter and a valid professional employer agreement.

(c) A PEO shall provide written notice to each covered employee whose co-employment relationship is made effective by a professional employer agreement of the general nature of the co-employment relationship between and among the PEO, the client, and such covered employee.

(d) Except to the extent otherwise provided by the professional employer agreement:

(1) A client shall be solely responsible for:

(A) The quality, adequacy, or safety of the goods produced or sold or services performed in the client's business; and

(B) Directing, supervising, training, and controlling the work of covered employees with respect to the client's business activities, and the acts, errors, or omissions of such covered employees with regard to such activities;

(2) A client shall not be liable for the acts, errors, or omissions of a PEO or of a covered employee when such covered employee is acting under the express direction and control of the PEO;

(3) A PEO shall not be liable for the acts, errors, or omissions of a client or of a covered employee when such covered employee is acting under the express direction and control of the client;

(4) Nothing in this subsection shall serve to limit any contractual liability or obligation specifically provided in the professional employer agreement; and

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

(e) A PEO registered with the department and in compliance with this chapter shall not be required to obtain:

(1) A license as an agent, subagent, or counselor, provided that such PEO is not selling, soliciting, or negotiating insurance outside of a professional employer agreement as excluded in paragraph (9) of subsection (b) of Code Section 33-23-1;

(2) A license as an administrator, provided that such PEO is not administering insurance outside of a professional employer agreement as excluded in paragraph (14) of subsection (b) of Code Section 33-23-100; or

(3) A certificate of authority to transact insurance, provided that such PEO is not selling, soliciting, negotiating, administering, inducing, or effectuating insurance outside of a professional employer agreement.

(f) For purposes of any tax collected by the state or a county, municipality, or other political subdivision thereof:

(1) A covered employee whose goods or services are subject to sales tax shall be deemed the employee of a client for purposes of collecting and levying sales tax on the goods produced or services performed by the covered employee. Nothing contained in this chapter shall relieve a client of any sales tax liability with respect to its goods or services;

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

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

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

34-11-7.

(a) A professional employer agreement shall have no effect on existing collective bargaining agreements. Nothing in this chapter shall alter the rights or obligations of any client, professional employer organization, or worksite employee under the federal National Labor Relations Act or any state law.

(b) Nothing in this chapter or in any professional employer agreement shall:

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

(2) Affect, modify, or amend any contractual relationship or restrictive covenant between a covered employee and any client in effect at the time a professional employer agreement becomes effective;

(3) Prohibit or amend any contractual relationship or restrictive covenant that is entered into subsequently between a client and a covered employee, provided that a PEO shall bear no liability arising from any such contractual relationship or restrictive covenant unless the PEO and the client have each expressly agreed to such an exception, which shall become an addendum to the professional employment agreement; or

(4) Create any new or additional enforceable right of a covered employee against a PEO that is not expressly provided by the professional employer agreement or this chapter.

(c) Nothing contained in this chapter or any professional employer agreement shall affect, modify, or amend any state, local, or federal licensing, registration, or certification requirement applicable to any client or covered employee or affect, modify, or amend a client's or covered employee's duties and obligations with respect to workplace safety.

(d) A covered employee of a client who is required by law or rule or regulation promulgated thereunder to be licensed, registered, or certified shall be deemed to be solely an employee of the client for purposes of such license, registration, or certification requirement.

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

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

(g) For purposes of determination of tax credits and other economic incentives provided by the state or any other governmental entity and based on employment, covered employees 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 such client. Notwithstanding that the PEO shall be the W-2 reporting employer, the client shall continue to qualify for any such benefit, incentive, or credit. If the grant or amount of any such incentive is based on number of employees, then each client shall be treated as employing only those covered employees. Covered employees working for other clients of the PEO shall not be counted. Each PEO shall provide, upon request by a client or state agency, employment information reasonably required by the state agency responsible for the administration of any such tax credit or economic incentive and necessary to support any request, claim, application, or other action by a client seeking any such tax credit or economic incentive.

(h) With respect to a bid, contract, purchase order, or agreement entered into with the state or a political subdivision of the state, a client's status as a small business certified as a minority business enterprise, women owned business, or veteran owned business or as a historically underutilized business shall not be affected because such client has a professional employment agreement with a PEO or otherwise transacts business with a PEO.

34-11-8.

(a) A client and a PEO operating under a professional employer agreement shall each be deemed an employer for the purposes of sponsoring retirement and welfare benefit plans for its covered employees.

(b) A fully insured welfare benefit plan offered to the covered employees of a PEO shall be treated as a single employer welfare benefit plan. A plan shall be considered fully insured only if all benefits payable are guaranteed under a contract or policy of insurance issued by an insurer licensed or otherwise authorized to transact the business of insurance in this state pursuant to Title 33.

(c) For purposes of Chapter 60 of Title 33, the 'Small Business Employee Choice of Benefits Health Insurance Plan Act,' a PEO shall be considered the employer of all of its covered employees, and all covered employees of one or more clients who are participating in any health benefit plan sponsored by such PEO shall be considered employees of that PEO.

34-11-9.

(a) Upon finding that a PEO, an owner or manager of a PEO, or a person offering professional employer services has committed a violation of a provision of Title 33; Code

Section 34-11-2, 34-11-3, 34-11-4, or 34-11-5; or the rules and regulations or an order of the Commissioner, in addition to all other penalties provided for under Title 33, the Commissioner shall have the authority to:

(1) Deny an application for registration or refuse to renew a registration;

(2) Place any registration on probation for any time period and subject to conditions;

(3) Suspend, revoke, or restrict a registration;

(4) Impose an administrative penalty in an amount not to exceed $2,000.00 for each and every violation; and

(5) Issue an order to cease and desist as provided for in Code Section 33-2-24.

(b) Except as provided for in subsection (a) of this Code section, the Commissioner of Labor is authorized to take action against any person in violation of this title or any rule or regulation promulgated under this title.

(c) The hearing and any administrative review thereof regarding an action taken pursuant to this Code section shall be conducted in accordance with Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act.'

34-11-10.

Nothing contained in this chapter shall affect the rights and obligations established under Chapter 8 of Title 34, the 'Employment Security Law,' or any rules or regulations promulgated pursuant to such chapter.

34-11-11.

This chapter shall not be applicable to:

(1) Arrangements wherein a person, whose principal business activity is not entering into professional employer agreements and which does not hold itself out as a PEO, shares employees with a commonly owned corporation, trade, or business within the meaning of Section 414(b) and (c) of the federal Internal Revenue Code of 1986; or

(2) Temporary help contracting firms as defined in Code Section 34-8-46.

34-11-12.

The Commissioner and the Commissioner of Labor shall adopt such rules and regulations as are reasonable and necessary to effectuate the provisions of this chapter. ~~Reserved.~~"

PART III

SECTION 3-1.

Said title is further amended by revising Code Section 34-7-6, relating to professional employer organizations and rights, powers, and responsibility, as follows:

"34-7-6.

~~(a) As used in this Code section, the term 'professional employer organization' means an employee leasing company as defined in Code Section 34-8-32 that has established a coemployment relationship with another employer, pays the wages of the employees of the coemployer, reserves a right of direction and control over the employees of the coemployer, and assumes responsibility for the withholding and payment of payroll taxes of the coemployer.~~

~~(b) A professional employer organization may collect information to evaluate costs; may obtain life, accident and sickness, disability income, workers' compensation, and other types of insurance coverage; may establish retirement plans; may have other types of employee benefits; and may discuss such benefits with prospective coemployers and their employees.~~

~~(c) A coemployer of a professional employer organization shall retain sufficient direction and control over the employees involved in a coemployment relationship as is necessary to conduct its business operations and fulfill its obligations to such employees. Unless otherwise agreed in writing, such coemployer shall be considered to be the sole employer~~

~~of such employees for licensing purposes, provided that nothing contained in this Code section shall be deemed to prohibit a professional employer organization and its coemployer from agreeing that the professional employer organization shall be considered to be an employer for licensing purposes. The professional employer organization shall give written notice of such an agreement to the appropriate licensing agency and to the employees involved.~~

~~(d) It is the intent of this Code section that professional employer organizations shall be considered to be employers under this title and are required to comply with the provisions of Code Sections 34-8-32, 34-8-34, and 34-8-172. Professional employer organizations and their coemployer clients are entitled to exclusive remedy under Code Section 34-9-11.~~ <u>Reserved.</u>"

SECTION 3-2.

Said title is further amended by revising Code Section 34-8-32, relating to employee leasing company, as follows:

"34-8-32.

~~(a) As used in this chapter, the term 'employee leasing company' means an independently established business entity which engages in the business of providing leased employees to any other employing unit under the following conditions:~~

~~(1) Negotiates with clients or customers for such matters as time, place, type of work, working conditions, quality, and price of service;~~

~~(2) Determines assignments of individuals to its clients or customers, even if the individuals retain the right to refuse specific assignments;~~

~~(3) Sets the rate of pay of the individuals, whether or not through negotiation;~~

~~(4) Pays the individuals from its accounts; and~~

~~(5) Hires and terminates individuals who perform services for the clients or customers.~~

~~(b) Individuals performing services for an employee leasing company shall be considered employees of the employee leasing company. The employee leasing company shall file required reports in accordance with regulations prescribed by the Commissioner and pay contributions on wages paid to such employees.~~

~~(c) Individuals who perform services for temporary help contracting firms as that term is defined in Code Section 34-8-46 shall not be considered employees of an employee leasing company.~~ Reserved."

SECTION 3-3.

Said title is further amended by revising Code Section 34-8-34, relating to employing unit, as follows:

"34-8-34.

As used in this chapter, the term 'employing unit' means any individual, the legal representative of a deceased individual, or any type of organization, including any partnership, association, trust, estate, joint-stock company, insurance company, or corporation, whether domestic or foreign, ~~employee leasing company~~ professional employer organization as defined in Code Section 34-11-1, common paymaster, or the receiver, trustee in bankruptcy, trustee, or successor thereof which has or had in its employ one or more individuals performing services for it within this state. Each individual performing services within this state for any employing unit which maintains two or more separate establishments within this state shall be deemed to be employed by a single employing unit for all the purposes of this chapter. Each individual employed to perform or to assist in performing the work of any agent or employee of an employing unit shall be deemed to be employed by such employing unit for all the purposes of this chapter, whether such individual was hired or paid directly by such employing unit or by such agent or employee, provided the employing unit had actual or constructive knowledge of such work."

SECTION 3-4.

Said title is further amended by revising Code Section 34-8-172, relating to surety bond required of employee leasing company, as follows:

"34-8-172.

The Commissioner shall require any ~~employee leasing company, as defined in Code Section 34-8-32,~~ professional employer organization or PEO group, as such terms are defined in Code Section 34-11-1, to post a surety bond or such equivalent financial securities as approved by the Commissioner in such an amount as needed to cover the total of any potential tax liability which may reasonably be expected to be incurred by such employer. In the event ~~an employee leasing company~~ a professional employer organization or PEO group is unable to procure such bond or security, ~~the employee leasing company~~ the professional employer organization or PEO group may report such employees as being in the employment of its client employers~~, notwithstanding any provision of Code Section 34-8-32 to the contrary~~."

SECTION 3-5.

Said title is further amended by revising subsection (c) of Code Section 34-8-195, relating to determination of eligibility for unemployment benefits generally, eligibility while in training, and deductions and withholdings from compensation, as follows:

"(c) An individual shall not be deemed to be unemployed in any week such individual refuses an intermittent or temporary assignment without good cause when the assignment offered is comparable to previous work or assignments performed by the individual or meets the conditions of employment previously agreed to between the individual and the employer. Such individual may be considered unemployed with respect to any week an assignment or work is not offered by the employer; provided, however, that an employee of a temporary help contracting firm~~, an employee leasing company,~~ or a professional employer organization as defined in Code Section ~~34-7-6~~ 34-11-1 will be presumed to have voluntarily left employment without good cause if the employee does not contact the temporary help contracting firm~~, employee leasing company,~~ or professional employer organization for reassignment upon completion of an assignment; provided, further, that such failure to contact the temporary help contracting firm~~, employee leasing company,~~ or professional employer organization will not be considered a voluntary departure from employment unless the employee has been advised in writing of the obligation to contact such employer upon completion of assignments and has been advised in writing that unemployment benefits may be denied for failure to do so.″

SECTION 3-6.

Said title is further amended by revising subsection (c) of Code Section 34-9-11, relating to exclusivity of rights and remedies granted to employee under chapter and immunity granted to construction design professionals, as follows:

″(c) The immunity provided by this subsection shall apply and extend to the businesses using the services of a temporary help contracting firm, as such term is defined in Code Section 34-8-46, or ~~an employee leasing company~~ a professional employer organization, as such term is defined in Code Section ~~34-8-32~~ 34-11-1, when the benefits required by this chapter are provided by either the temporary help contracting firm or the ~~employee leasing company~~ professional employer organization or the business using the services of either such firm or ~~company~~ organization. A temporary help contracting firm or ~~an employee leasing company~~ a professional employer organization shall be deemed to be a statutory employer for the purposes of this chapter.″

PART IV

SECTION 4-1.

This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval.

SECTION 4-2.

All laws and parts of laws in conflict with this Act are repealed.