



**State of Wisconsin
2005 - 2006 LEGISLATURE**

LRB-4089/1

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2005 ASSEMBLY BILL 1056

February 21, 2006 – Introduced by Representative LOEFFELHOLZ. Referred to Committee on Financial Institutions.

1 **AN ACT *to renumber* 102.01 (2) (a); *to amend* 73.0301 (1) (d) 3m., 102.01 (2) (f),
2 103.005 (10), 108.02 (21e) (a), 108.02 (21e) (d), 108.02 (21e) (f) and 108.02 (21e)
3 (g); and *to create* 20.445 (1) (j), 21.72 (1) (a) 9., 49.857 (1) (d) 9., 102.01 (2) (ad),
4 102.01 (2) (an), 102.04 (2p), 102.29 (6m) and 105.117 of the statutes; **relating**
5 **to:** registration of professional employer organizations, requiring the exercise
6 of rule-making authority, making an appropriation, and providing a penalty.**

Analysis by the Legislative Reference Bureau

CURRENT LAW

PROFESSIONAL EMPLOYER ORGANIZATIONS

Under current law, for purposes of liability for unemployment insurance, a professional employer organization (PEO) is considered to be the employer of the employees whom the PEO engages to perform services for its clients. Current law defines a PEO as any person who contracts to provide the nontemporary, ongoing employee workforce of more than one client under a written leasing contract, the majority of whose clients are not under the same ownership, management, or control as the person other than through the terms of the contract, and who meets all of the following qualifications:

1. The person has the right to hire and terminate the employees who perform services for the client and to reassign the employees to other clients.

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2. The person sets the rate of pay of the employees and pays the employees from its own accounts.
3. The person has a general right of direction and control over the employees, which right may be shared with the client to the degree necessary to allow the client to conduct its business, meet any fiduciary responsibility, or comply with any applicable regulatory or statutory requirements.
4. The person assumes responsibility for the unemployment insurance coverage of the employees.
5. The person has the obligation to establish, fund, and administer employee benefit plans for the employees.
6. The person provides notice of the employee leasing arrangement to the employees.

THE BILL**REGISTRATION AND REGULATION OF PROFESSIONAL EMPLOYER ORGANIZATIONS*****Introduction***

This bill provides for the registration and regulation of PEOs. Specifically, under the bill:

1. No person may offer or provide professional employer services, advertise that the person is a professional employer organization or that the person provides professional employer services, or otherwise hold itself out as a professional employer organization, unless the person first registers with the Department of Workforce Development (DWD).
2. Subject to certain exceptions, a PEO must maintain a net worth of not less than \$100,000 or a bond or other commitment in an amount that is not less than \$100,000 to secure the payment of wages and other amounts that are payable by the PEO.
3. A professional employer agreement must allocate between the PEO and the client the rights, duties, and obligations that arise out of an employment relationship, including certain duties and obligations that are specified in the bill.
4. Certain other responsibilities of a PEO and client are specified in the bill, and the bill specifies that certain other rights, duties, and obligations under current law are unaffected by the bill.

Registration

Initial registration. The bill requires a PEO that is operating in this state on the effective date of the bill to register with DWD by no later than 180 days after that date and provides that such an initial registration is valid until 180 days after the end of the first fiscal year of the PEO that ends more than one year after that date. Similarly, the bill requires a PEO that is not engaged in the business of providing professional employer services in this state on that date to register with DWD before engaging in that business and provides that such an initial registration is valid until 180 days after the end of the first fiscal year of the PEO that ends after the date of initial registration.

The bill defines “professional employer services” as the service of entering into coemployment relationships. “Coemployment relationship,” in turn, is defined as a

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relationship between a PEO and a client of the PEO (client), a PEO and an employee of the PEO and of the client (covered employee), and a client and a covered employee under a professional employer agreement that is intended to be an ongoing relationship and not a temporary or project-specific relationship and in which the rights, duties, and obligations of an employer that arise out of an employment relationship are allocated between the PEO and the client as provided in the professional employer agreement and the bill. The bill also defines a “professional employer agreement” as a written contract between a PEO and a client under which the majority of the employees of the client or of the employees in a division or work unit of the client are covered employees, the rights, duties, and obligations of an employer that arise out of an employment relationship are allocated between the PEO and the client, and the PEO and the client assume their respective duties and obligations under the bill.

Under the bill, a person may apply for registration by paying the applicable fee as provided in the bill and filing a registration form that includes all of the following information:

1. The name or names under which the applicant conducts business.
2. The address of the principal place of business of the applicant and of each office that the applicant maintains in this state.
3. The social security number or federal employer identification number of the applicant.
4. A list by jurisdiction of each name under which the applicant has operated in the five years preceding the date of the application, including any alternate names of the applicant, the names of any predecessor business entities of the applicant, and, if known, the names of any successor business entities of the applicant.
5. A statement of ownership, which must include the name and business experience of every person who owns or controls 25 percent or more of the ownership interest of the applicant.
5. A statement of management, which must include the name and business experience of every person who serves as president or chief executive officer of the applicant or who otherwise has the authority to act as the senior executive officer of the applicant.
7. A financial statement that sets forth the financial condition of the applicant as of a date that is not more than 180 days preceding the date of the application, that is prepared in accordance with generally accepted accounting principles, and that has been audited by an independent certified public accountant.

Renewal registration. Under the bill, a PEO that wishes to renew its registration must, by no later than 180 days after the end of the PEO’s fiscal year, renew that registration by notifying DWD of any changes in the information specified in the previous registration form, filing an updated financial statement, and paying the renewal fee specified in the bill. A renewal registration is valid for one year after the date of renewal.

Limited registration. The bill permits a PEO that is domiciled outside this state, that is registered or licensed as a PEO in another state that has registration or licensure requirements that are at least as strict as the registration requirements

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under the bill, that does not maintain an office in this state or directly solicit clients in this state, and that has no more than 50 covered employees employed in this state on any given day to apply for limited registration. A limited registrant is not required to comply with the financial capability requirements under the bill.

Alternative registration. In addition, the bill permits DWD to promulgate rules providing for alternative registration of a PEO on acceptance by DWD of an affidavit or certification provided by a bonded, independent, and qualified assurance organization that has been approved by DWD certifying that the PEO is qualified to engage in the business of providing professional employer services in this state. An alternative registrant also is not required to comply with the financial capability requirements under the bill.

Financial capability

The bill requires a PEO, other than a limited registrant or an alternative registrant, to maintain one of the following:

1. A net worth of not less than \$100,000.
2. A bond, certificate of deposit, escrow account, or irrevocable letter of credit in an amount that is not less than \$100,000 to secure the payment of wages, salaries, employee benefits, worker's compensation insurance premiums, payroll taxes, unemployment insurance contributions, or other amounts that are payable by the PEO to or with respect to a covered employee if the PEO does not make those payments when due.

Professional employer agreement requirements.

The bill requires a coemployment relationship to be governed by a professional employer agreement that allocates the rights, duties, and obligations of an employer that arise out of an employment relationship as follows:

1. The PEO shall be permitted to exercise and enforce only those rights, and shall be required to perform only those duties and obligations, that are specifically allocated to the PEO under the professional employer agreement or the bill.
2. The client shall be permitted to exercise and enforce all those rights, and shall be required to perform all those duties and obligations, that are specifically allocated to the client under the professional employer agreement or the bill or that are not specifically allocated under the professional employer agreement or the bill and, unless otherwise agreed to in the professional employer agreement, to retain the exclusive right to direct, supervise, and control the activities of the covered employees as necessary to conduct the client's business, to discharge the client's fiduciary duties, or to comply with any licensing requirements that are applicable to the client or a covered employee.

In addition to allocating those rights, duties, and obligations, the bill requires a professional employer agreement to specify all of the following:

1. That the PEO is responsible for paying wages or salary to a covered employee; for withholding, collecting, reporting, and remitting payroll taxes and unemployment insurance contributions on behalf of a covered employee; and, to the extent agreed to in the professional employer agreement, for making payments for employee benefits for a covered employee.

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2. Whether the professional employer organization or the client assumes liability for worker's compensation and agrees to obtain a policy of worker's compensation insurance or self-insure as permitted under the worker's compensation law.

3. That the client may hire, discipline, or discharge a covered employee, but that the PEO may also hire, discipline, or discharge a covered employee as necessary to fulfill the professional employer organization's duties and obligations under the professional employer agreement and the bill.

Other responsibilities of PEO and client

The bill also provides that all of the following apply to a coemployment relationship that is created by a professional employer agreement, unless specifically provided otherwise in the agreement:

1. The client is solely responsible for the quality, adequacy, and safety of the goods or services produced, provided, or sold in the course of the client's business.

2. The client is solely responsible for directing, supervising, and controlling the activities of the covered employees with respect to the client's business, for training the covered employees involved in that business, and for the acts, errors, or omissions of the covered employees in the performance of those activities.

3. The client is not liable for the acts, errors, or omissions of the PEO or of a covered employee when the covered employee is acting under the express direction, supervision, and control of the PEO.

4. The PEO is not liable for the acts, errors, or omissions of a client or of a covered employee when the covered employee is acting under the express direction, supervision, and control of the client.

5. For purposes of coverage under any policy of general liability insurance or employer's liability insurance, other than worker's compensation insurance, carried by the PEO or under a fidelity or surety bond posted by the PEO, a covered employee is not, solely by reason of being a covered employee, considered to be an employee of the PEO, unless the covered employee is specified as an employee of the PEO for those purposes in the professional employer agreement and in any applicable prearranged employment contract, insurance policy, or bond.

Rights, duties, and obligations unaffected

The bill provides that nothing in the bill or in a professional employer agreement may be construed to do any of the following:

1. Affect or impair any collective bargaining agreement or any right, duty, or obligation of any covered employee, representative of a covered employee, client, or PEO under any state or federal labor law.

2. Diminish, affect, or impair any rights of a covered employee as to a client or any duties or obligations of a client as to a covered employee that existed before the effective date of the professional employer agreement.

3. Affect or impair any contractual relationship or restrictive covenant between a covered employee and a client, whether existing prior to the effective date of the professional employer agreement or entered into after that date.

4. Affect or impair any federal, state, or local licensing, registration, or certification requirement that is applicable to a client or covered employee (licensing

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requirement). Under the bill: a) a covered employee who is subject to a licensing requirement is considered to be an employee solely of the client for purposes of engaging in any trade, occupation, profession, or other activity that is subject to the licensing requirement; b) a PEO is not considered to be engaging in any trade, occupation, profession, or other activity that is subject to the licensing requirement solely because the PEO has entered into and maintains a coemployment relationship with the covered employee; and c) a client has the sole right to direct, supervise, and control the activities of the covered employee, and the business of the client, that are subject to the licensing requirement.

In addition, the bill provides that, for purposes of taxation, tax credits, and other economic development incentives, all of the following apply:

1. A covered employee whose services are subject to sales or use taxes is considered to be an employee of the client for purposes of liability for payment of sales or use taxes on those services.

2. The liability of a PEO for any tax on professional employer services that is based on gross receipts is limited to a tax on the administrative fee charge by the professional employer organization, which does not include any amount charged to a client by a PEO for wages, salaries, employee benefits, worker's compensation coverage, payroll tax withholdings, unemployment insurance contributions, or other assessments paid to or on behalf of a covered employee by the PEO.

3. The liability of a client for any tax that is based on the payroll of an employer is limited to the amount of that tax that is based on the compensation of a covered employee and the liability of a PEO for such a tax is limited to the amount of that tax that is based on the compensation of an employee who is not a covered employee.

4. The client is entitled to the benefit of tax credits, economic development incentives provided by the state that are based on providing employment, or other benefits that arise out of the employment of a covered employee.

Finally, the bill provides that, for purposes of contracting with, or obtaining a grant or loan from, the state or a local governmental unit, a client's status or certification as a minority business, minority financial adviser, minority investment firm, women's business, small business, native American or Indian business, veteran-owned business, or disadvantaged business is not affected because the client has entered into a professional employer agreement.

For further information see the **state** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 20.445 (1) (j) of the statutes is created to read:

2 **20.445 (1) (j)** *Professional employer organizations.* All moneys received under
3 s. 105.117 (2) (h) for the administration and enforcement of s. 105.117.

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1 **SECTION 2.** 21.72 (1) (a) 9. of the statutes is created to read:

2 **21.72 (1) (a) 9.** A registration issued under s. 105.117 (2).

3 **SECTION 3.** 49.857 (1) (d) 9. of the statutes is created to read:

4 **49.857 (1) (d) 9.** A registration issued under s. 105.117 (2).

5 **SECTION 4.** 73.0301 (1) (d) 3m. of the statutes is amended to read:

6 **73.0301 (1) (d) 3m.** A license ~~or, certificate, or registration~~ issued by the
7 department of workforce development under s. 102.17 (1) (c), 103.275 (2) (b), 103.91
8 (1), 103.92 (3), 104.07 (1) or (2) ~~or 105.13 (1), 105.05, or 105.117 (2)~~.

9 **SECTION 5.** 102.01 (2) (a) of the statutes is renumbered 102.01 (2) (af).

10 **SECTION 6.** 102.01 (2) (ad) of the statutes is created to read:

11 **102.01 (2) (ad)** “Coemployer” means a professional employer organization, as
12 defined in s. 105.117 (1) (j), or a client, as defined in s. 105.117 (1) (c).

13 **SECTION 7.** 102.01 (2) (an) of the statutes is created to read:

14 **102.01 (2) (an)** “Covered employee” has the meaning given in s. 105.117 (1) (g).

15 **SECTION 8.** 102.01 (2) (f) of the statutes is amended to read:

16 **102.01 (2) (f)** “Temporary help agency” means an employer who ~~on a temporary~~
17 ~~basis~~ places its employee with or leases its employees to another employer who
18 controls the employee’s work activities and compensates the first employer for the
19 employee’s services, regardless of the duration of the services.

20 **SECTION 9.** 102.04 (2p) of the statutes is created to read:

21 **102.04 (2p)** A coemployer that assumes liability under s. 105.117 (4) (b) 2. for
22 compensation under this chapter is the employer of a covered employee for purposes
23 of this chapter. The coemployer assuming that liability is liable under s. 102.03 for
24 all compensation payable under this chapter to that covered employee, including any
25 payments required under s. 102.16 (3), 102.18 (1) (b) or (bp), 102.22 (1), 102.35 (3),

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102.57, or 102.60. Except as permitted under s. 102.29, a coemployer assuming that
liability may not seek or receive reimbursement from another coemployer for any
payments made as a result of that liability.

SECTION 10. 102.29 (6m) of the statutes is created to read:

102.29 **(6m)** No covered employee who makes a claim for compensation against
a coemployer that has assumed liability under s. 105.117 (4) (b) 2. for compensation
under this chapter may make a claim or maintain an action in tort against any other
coemployer of the covered employer.

SECTION 11. 103.005 (10) of the statutes is amended to read:

103.005 **(10)** Except as provided in ss. 103.275 (2) (bm) and (br), 103.91 (4) (b)
and (c), 103.92 (6) and (7), 104.07 (5) and (6), 105.117 (7) (b) and (c), and 105.13 (2)
and (3), orders of the department under chs. 103 to 106 shall be subject to review in
the manner provided in ch. 227.

SECTION 12. 105.117 of the statutes is created to read:

105.117 Registration of professional employer organizations. (1)

DEFINITIONS. In this section:

(a) “Administrative fee” means the fee that is charged to a client by a
professional employer organization for professional employer services, except that
“administrative fee” does not include any amount charged to a client by a
professional employer organization for wages, salaries, employee benefits, worker’s
compensation coverage, payroll tax withholdings, unemployment insurance
contributions, or other assessments paid to or on behalf of a covered employee by the
professional employer organization.

(b) “Applicant” means a professional employer organization that applies for
registration under sub. (2).

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1 (c) “Client” means any person that enters into a professional employer
2 agreement with a professional employer organization.

3 (d) “Coemployer” means a professional employer organization or a client.

4 (e) “Coemployment relationship” means a relationship between a professional
5 employer organization and a client, a professional employer organization and a
6 covered employee, and a client and a covered employee under a professional
7 employer agreement that is intended to be an ongoing relationship and not a
8 temporary or project-specific relationship and in which the rights, duties, and
9 obligations of an employer that arise out of an employment relationship are allocated
10 between the professional employer organization and the client as provided in the
11 professional employer agreement and this section.

12 (f) “Controlling person” means any of the following:

13 1. A person who, individually or acting in concert with one or more other
14 persons, owns or controls, directly or indirectly, 25 percent or more of the ownership
15 interest of an applicant or registrant.

16 2. A person who serves as president or chief executive officer of an applicant
17 or registrant or who otherwise has the authority to act as the senior executive officer
18 of an applicant or registrant.

19 (g) “Covered employee” means an individual who has a coemployment
20 relationship with a professional employer organization and a client under a
21 professional employer agreement that complies with this section and who has
22 received written notice of that coemployment relationship under sub. (4) (c).
23 “Covered employee” includes an individual who is an officer, director, member,
24 manager, or partner of a client if the professional employer agreement provides for
25 the coemployment of the individual, the individual has received written notice of that

1 coemployment relationship under sub. (4) (c), and the individual acts as an
2 operational manager of or performs operational services for the client.

3 (h) “Professional employer group” means 2 or more professional employer
4 organizations that are controlled by the same person and that agree to guarantee
5 each other’s obligations under this section.

6 (i) “Professional employer agreement” means a written contract between a
7 professional employer organization and a client that provides for all of the following:

8 1. The majority of the employees of the client or of the employees in a division
9 or work unit of the client to be covered employees.

10 2. The allocation between the professional employer organization and the
11 client of the rights, duties, and obligations of an employer that arise out of an
12 employment relationship.

13 3. The professional employer organization and the client to assume their
14 respective duties and obligations under this section.

15 (j) “Professional employer organization” has the meaning given in s. 108.02
16 (21e), regardless of whether the person uses the term “professional employer
17 organization,” “PEO,” “staff leasing company,” “registered staff leasing company,”
18 “employee leasing company,” or “administrative employer,” or uses any other name,
19 as part of the person’s business name or to describe the person’s business.
20 “Professional employer organization” does not include any of the following:

21 1. A person that shares employees with a controlled group of corporations, as
22 defined in 26 USC 414 (b), or with other trades or businesses that are under common
23 control, as defined in 26 USC 414 (c), if the person’s principal business activity is not
24 entering into professional employer agreements and if the person does not hold itself
25 out as a professional employer organization.

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1 2. A person that performs services as an independent contractor under an
2 arrangement in which the person assumes responsibility for the satisfactory
3 completion of the work or services that the person has contracted to perform and
4 controls the means of performing that work or those services.

5 3. A temporary help company, as defined in s. 108.02 (24m).

6 (k) “Professional employer services” means the service of entering into
7 coemployment relationships.

8 (L) “Registrant” means a professional employer organization that is registered
9 under sub. (2).

10 **(2) REGISTRATION REQUIREMENTS.** (a) *Registration required.* No person may
11 offer or provide professional employer services, advertise that the person is a
12 professional employer organization or that the person provides professional
13 employer services, or otherwise hold itself out as a professional employer
14 organization unless the person first registers with the department as provided in this
15 subsection. To register under this subsection, a person shall file the registration form
16 under par. (b) and pay the applicable registration fee specified in par. (h) 1. to 5.

17 (b) *Registration form.* To apply for registration under this subsection, an
18 applicant shall file with the department a registration form prescribed by the
19 department that contains all of the following information:

- 20 1. The name or names under which the applicant conducts business.
- 21 2. The address of the principal place of business of the applicant and of each
22 office that the applicant maintains in this state.
- 23 3. The social security number or federal employer identification number of the
24 applicant as provided in sub. (7) (a).

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1 4. A list by jurisdiction of each name under which the applicant has operated
2 in the 5 years preceding the date of the application, including any alternate names
3 of the applicant, the names of any predecessor business entities of the applicant, and,
4 if known, the names of any successor business entities of the applicant.

5 5. A statement of ownership, which shall include the name and business
6 experience of every controlling person, as defined in sub. (1) (f) 1., of the applicant.

7 6. A statement of management, which shall include the name and business
8 experience of every controlling person, as defined in sub. (1) (f) 2., of the applicant.

9 7. A financial statement that sets forth the financial condition of the applicant
10 as of a date that is not more than 180 days preceding the date of the application, that
11 is prepared in accordance with generally accepted accounting principles, and that
12 has been audited by an independent certified public accountant. A professional
13 employer organization group may meet the requirements of this subdivision by
14 submitting a combined or consolidated audited financial statement. A professional
15 employer organization that does not have sufficient operating history to have an
16 audited financial statement that is based on at least 12 months of operating history
17 may meet the requirements of this subdivision by submitting pro form a financial
18 statements that have been reviewed by an independent certified public accountant.

19 (c) *Initial registration.* 1. Each professional employer organization that is
20 operating in this state on the effective date of this subdivision [revisor inserts
21 date], shall register with the department by no later than 180 days after that date.
22 An initial registration under this subdivision is valid until 180 days after the end of
23 the first fiscal year of the registrant that ends more than one year after the effective
24 date of this subdivision [revisor inserts date], unless sooner suspended, restricted,
25 or revoked under sub. (6).

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1 2. Any person that is not engaged in the business of providing professional
2 employer services in this state on the effective date of this subdivision [revisor
3 inserts date], shall register with the department before engaging in that business in
4 this state. An initial registration under this subdivision is valid until 180 days after
5 the end of the first fiscal year of the registrant that ends after the date of initial
6 registration, unless sooner suspended, restricted, or revoked under sub. (6).

7 (d) *Renewal registration.* A registrant that wishes to renew its registration
8 shall, by no later than 180 days after the end of the registrant's fiscal year, renew that
9 registration by notifying the department of any changes in the information specified
10 in par. (b) 1. to 6., filing an updated financial statement as described in par. (b) 7.,
11 and paying the renewal fee specified in par. (h) 2. A renewal registration is valid for
12 one year after the date of renewal, unless sooner suspended, restricted, or revoked
13 under sub. (6).

14 (e) *Limited registration.* 1. A professional employer organization that is
15 domiciled outside this state, that is registered or licensed as a professional employer
16 organization in another state that has registration or licensure requirements that
17 are at least as strict as the registration requirements under this subsection, that does
18 not maintain an office in this state or directly solicit clients that are located or
19 domiciled in this state, and that has no more than 50 covered employees employed
20 in this state on any given day may apply for limited registration under this
21 subsection by filing with the department a limited registration form prescribed by
22 the department and paying the limited registration fee specified in par. (h) 3. A
23 professional employer organization that is seeking limited registration shall, in
24 addition to the information provided under par. (b), provide the department with
25 information and documentation showing that the professional employer

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organization meets the qualifications specified in this subdivision for limited registration.

2. A professional employer organization seeking limited registration that has covered employees in this state on the effective date of this subdivision [revisor inserts date], shall register with the department as provided in par. (c) 1., and the initial limited registration shall be valid as provided in par. (c) 1.

3. A professional employer organization seeking limited registration that does not have covered employees in this state on the effective date of this subdivision [revisor inserts date], shall register with the department as provided in par. (c) 2. before employing any covered employees in this state, and the initial limited registration shall be valid as provided in par. (c) 2.

4. A registrant that wishes to renew its limited registration shall, in addition to complying with par. (d), provide the department with information and documentation showing that the registrant continues to meet the qualifications specified in subd. 1. for limited registration, and the limited registration shall be valid as provided in par. (d).

5. A limited registrant is not required to comply with the financial capability requirement under sub. (3).

(f) *Professional employer group registration.* A professional employer group may register under this subsection or renew a registration by providing the information required under par. (b), (d), or (e) on a combined or consolidated basis and paying the fee specified in par. (h) 4.

(g) *Alternative registration.* The department may by rule provide for registration of a professional employer organization without compliance with par. (b), (d), (e), or (f) or sub. (3) on acceptance by the department of an affidavit or

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1 certification provided by a bonded, independent, and qualified assurance
2 organization that has been approved by the department certifying that the
3 professional employer organization is qualified to engage in the business of
4 providing professional employer services in this state.

5 (h) *Fees.* 1. An applicant for initial registration under par. (c) shall pay an
6 initial registration fee of \$500.

7 2. An applicant for renewal registration under par. (d) shall pay a renewal
8 registration fee of \$250.

9 3. An applicant for limited registration or for renewal of a limited registration
10 under par. (e) shall pay a limited registration fee of \$250.

11 4. An applicant for group registration or for renewal of a group registration
12 under par. (f) shall pay a reasonable fee determined by the department by rule that
13 does not exceed an amount that is necessary to cover the cost of issuing or renewing
14 the group registration.

15 5. An applicant for alternative registration or for renewal of an alternative
16 registration under par. (g) shall pay an alternative registration fee of \$250.

17 6. The department may promulgate rules to specify a reasonable fee for any
18 other service provided under this section that does not exceed an amount that is
19 necessary to cover the cost of providing that service.

20 7. All fees collected under this paragraph shall be deposited into the general
21 fund and credited to the appropriation account under s. 20.445 (1) (j).

22 (i) *Issuance of registration.* On receipt of an application for registration or for
23 renewal of a registration under par. (c) to (g) and of the applicable registration fee
24 under par. (h) 1. to 5., the department shall investigate the applicant or registrant
25 to determine whether the applicant or registrant is qualified for registration or for

1 renewal registration. Subject to subs. (6) and (7) (b) and (c), the department shall
2 issue a registration or renewal registration if, after completing the investigation, the
3 department determines that the applicant or registrant meets the requirements
4 under this subsection and rules promulgated under sub. (8) for issuance or renewal
5 of a registration and is satisfied that the applicant or registrant will comply with this
6 section and those rules.

7 (j) *List of registrants; confidentiality.* The department shall maintain a list of
8 all professional employer organizations registered under this section. All records
9 maintained by the department that contain any information obtained from an
10 applicant or registrant are confidential and not open to public inspection or copying
11 under s. 19.35 (1) unless one of the following applies:

12 1. Disclosure of the record is necessary for the administration of this section.
13 2. A court of competent jurisdiction in this state orders the department to
14 release the record.

15 3. The requester is the subunit of the department that administers child and
16 spousal support or a county child support agency under s. 59.53 (5), the request is
17 made under s. 49.22 (2m), and the request is limited to the name, home address, and
18 business address of the applicant or controlling person who is the subject of the
19 request and any financial information about the applicant or controlling person
20 contained in the record.

21 4. The department of revenue requests the record for the purpose of locating
22 a person, or the assets of a person, who has failed to file tax returns, who has
23 underreported taxable income, or who is a delinquent taxpayer; identifying
24 fraudulent tax returns; or providing information for tax-related prosecutions.

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1 **(3) FINANCIAL CAPABILITY.** Except as provided in sub. (2) (e) 5. or (g), a
2 professional employer organization shall maintain one of the following:

3 (a) A net worth of not less than \$100,000, as shown in the financial statement
4 submitted to the department under sub. (2) (b) 7., (d), or (f), except that the value of
5 any instrument specified in par. (b) may not be included in calculating the net worth
6 required under this paragraph.

7 (b) A bond, certificate of deposit, escrow account, or irrevocable letter of credit
8 in an amount that is not less than \$100,000. The commitment described in this
9 paragraph shall be in a form approved by the department, shall be held in a
10 depository designated by the department, and shall secure the payment by the
11 professional employer organization of any wages, salaries, employee benefits,
12 worker's compensation insurance premiums, payroll taxes, unemployment
13 insurance contributions, or other amounts that are payable to or with respect to a
14 covered employee if the professional employer organization does not make those
15 payments when due. The commitment shall be established in favor of or be made
16 payable to the department, for the benefit of the state and any covered employee to
17 whom or with respect to whom the professional employer organization does not make
18 a payment described in this paragraph when due. The professional employer
19 organization shall file with the department any agreement, instrument, or other
20 document that is necessary to enforce the commitment against the professional
21 employer organization or any relevant 3rd party or both.

22 **(4) PROFESSIONAL EMPLOYER AGREEMENTS; REQUIREMENTS.** (a) *Allocation of*
23 *rights, duties, and obligations.* Except as specifically provided in this section, a
24 coemployment relationship shall be governed by a professional employer agreement.

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1 A professional employer agreement shall allocate the rights, duties, and obligations
2 of an employer that arise out of an employment relationship as follows:

3 1. The professional employer organization shall be permitted to exercise and
4 enforce only those rights, and shall be required to perform only those duties and
5 obligations, that are specifically allocated to the professional employer organization
6 under the professional employer agreement or this section.

7 2. The client shall be permitted to exercise and enforce all those rights, and
8 shall be required to perform all those duties and obligations, that are specifically
9 allocated to the client under the professional employer agreement or this section or
10 that are not specifically allocated under the professional employer agreement or this
11 section and, unless otherwise agreed to in the professional employer agreement, to
12 retain the exclusive right to direct, supervise, and control the activities of the covered
13 employees as necessary to conduct the client's business, to discharge the client's
14 fiduciary duties, or to comply with any federal, state, or local licensing, registration,
15 or certification requirements that are applicable to the client or a covered employee.

16 (b) *Contents of agreement.* In addition to allocating the rights, duties, and
17 obligations specified in par. (a), a professional employer agreement shall specify all
18 of the following:

19 1. That the professional employer organization is responsible for paying wages
20 or salary to a covered employee; for withholding, collecting, reporting, and remitting
21 payroll taxes and unemployment insurance contributions on behalf of a covered
22 employee; and, to the extent agreed to in the professional employer agreement, for
23 making payments for employee benefits for a covered employee; except that the
24 professional employer organization is not responsible for the payment of any
25 remuneration payable by a client to a covered employee beyond the covered

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1 employee's regular rate of pay or overtime pay, such as bonuses, commissions, profit
2 sharing, deferred compensation, severance or dismissal pay, or sick pay, holiday pay,
3 vacation pay, or other paid time off, unless the professional employer organization
4 specifically agrees in the professional employer agreement to assume responsibility
5 for those payments.

6 2. Whether the professional employer organization or the client assumes
7 liability for worker's compensation under s. 102.03 and agrees to obtain a policy of
8 worker's compensation insurance issued by an insurer authorized to do business in
9 this state under s. 102.28 (2) (a) or self-insure in accordance with s. 102.28 (2) (b).

10 3. That the client may hire, discipline, or discharge a covered employee, but
11 that the professional employer organization may also hire, discipline, or discharge
12 a covered employee as necessary to fulfill the professional employer organization's
13 duties and obligations under the professional employer agreement and this section.

14 (c) *Notice to covered employees.* A professional employer organization that
15 enters into a professional employer agreement shall provide written notice to each
16 covered employee who is affected by the professional employer agreement
17 concerning the general nature of the coemployment relationship created by the
18 professional employer agreement.

19 (d) *Responsibilities of professional employer organization and client.* Except
20 as specifically provided in a professional employer agreement, all of the following
21 apply to a coemployment relationship that is created by the professional employer
22 agreement:

23 1. The client is solely responsible for the quality, adequacy, and safety of the
24 goods or services produced, provided, or sold in the course of the client's business.

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1 2. The client is solely responsible for directing, supervising, and controlling the
2 activities of the covered employees with respect to the client's business, for training
3 the covered employees involved in that business, and for the acts, errors, or omissions
4 of the covered employees in the performance of those activities.

5 3. The client is not liable for the acts, errors, or omissions of the professional
6 employer organization or of a covered employee when the covered employee is acting
7 under the express direction, supervision, and control of the professional employer
8 organization.

9 4. The professional employer organization is not liable for the acts, errors, or
10 omissions of a client or of a covered employee when the covered employee is acting
11 under the express direction, supervision, and control of the client.

12 5. For purposes of coverage under any policy of general liability insurance or
13 employer's liability insurance, other than worker's compensation insurance, carried
14 by the professional employer organization or under a fidelity or surety bond posted
15 by the professional employer organization, a covered employee is not, solely by
16 reason of being a covered employee, considered to be an employee of the professional
17 employer organization, unless the covered employee is specified as an employee of
18 the professional employer organization for those purposes in the professional
19 employer agreement and in any applicable prearranged employment contract,
20 insurance policy, or bond.

21 (e) *Professional employer services not insurance.* A professional employer
22 organization that offers, markets, sells, administers, or provides professional
23 employer services is not engaged in the business of insurance or in the business of
24 an employee benefit plan administrator under ch. 633.

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1 **(5) RIGHTS, DUTIES, AND OBLIGATIONS UNAFFECTED.** (a) *Labor relations.* Nothing
2 in this section or in any professional employer agreement may be construed to affect
3 or impair any collective bargaining agreement or any right, duty, or obligation of any
4 covered employee, representative of a covered employee, client, or professional
5 employer organization under subch. I, III, IV, or V of ch. 111, the federal National
6 Labor Relations Act, 29 USC 151 to 169, or the federal National Railway Labor Act,
7 45 USC 151 to 180.

8 (b) *Employment arrangements.* Nothing in this section or in any professional
9 employer agreement may be construed to do any of the following:

10 1. Diminish, affect, or impair any rights of a covered employee as to a client or
11 any duties or obligations of a client as to a covered employee that existed prior to the
12 effective date of the professional employer agreement.

13 2. Affect or impair any contractual relationship or restrictive covenant between
14 a covered employee and a client, whether existing prior to the effective date of the
15 professional employer agreement or entered into after that date. A professional
16 employer organization shall have no liability or responsibility in connection with or
17 arising out of any contractual relationship or restrictive covenant between a covered
18 employee and a client unless the professional employer organization specifically
19 agrees otherwise in writing.

20 (c) *Licensing.* Nothing in this section or in a professional employer agreement
21 may be construed to affect or impair any federal, state, or local licensing,
22 registration, or certification requirement that is applicable to a client or covered
23 employee. All of the following apply to a covered employee who is required to be
24 licensed, registered, or certified under any federal, state, or local law, rule, or

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regulation and to the client and professional employer organization that are the coemployers of the covered employee:

1. The covered employee is considered to be an employee solely of the client for purposes of engaging in any trade, occupation, profession, or other activity that is subject to the licensing, registration, or certification requirement.

2. The professional employer organization is not considered to be engaging in any trade, occupation, profession, or other activity that is subject to the licensing, registration, or certification requirement solely because the professional employer organization has entered into and maintains a coemployment relationship with the covered employee.

3. The client has the sole right to direct, supervise, and control the activities of the covered employee, and the business of the client, that are subject to the licensing, registration, or certification requirement.

(d) *Taxation, tax credits, and other economic development incentives.* 1. Any covered employee whose services are taxable service under s. 77.52 or 77.53 is considered to be an employee of the client for purposes of liability for payment of sales or use taxes on those services. Nothing contained in this section shall release a client from any liability for payment of the full amount of sales or use taxes due on those services.

2. The liability of a professional employer organization for any tax on professional employer services that is based on gross receipts is limited to a tax on the administrative fee charge by the professional employer organization.

3. For purposes of any tax that is based on the payroll of an employer, a client is liable for the amount of that tax that is based on the compensation of a covered

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1 employee and a professional employer organization is liable for the amount of that
2 tax that is based on the compensation of an employee who is not a covered employee.

3 4. For purposes of determining tax credits, other economic development
4 incentives provided by the state that are based on providing employment, or any
5 other benefits that arises out of the employment of a covered employee, a covered
6 employee is considered to be an employee solely of the client, and the client is entitled
7 to the benefit of the tax credit, economic development incentive, or other benefit. If
8 the amount of a tax credit, incentive, or benefit described in this paragraph is based
9 on the number of employees employed by a client, only those covered employees who
10 are coemployed by the client and the professional employer organization shall be
11 treated as employees employed by the client, and covered employees who are
12 coemployed by the professional employer organization and another client of the
13 professional employer organization shall not be treated as employees employed by
14 the client. On request of a client that is seeking a tax credit, incentive, or other
15 benefit described in this paragraph or of an agency of this state that is responsible
16 for administering such a tax credit, incentive, or benefit, a professional employer
17 organization shall provide any employment information reasonably required by the
18 agency that is necessary to support a claim, application, or other action by the client.

19 (e) *Contracts, grants, and loans.* For purposes of contracting with, or obtaining
20 a grant or loan from, the state or a local governmental unit, a client's status or
21 certification as a minority business, minority financial adviser, minority investment
22 firm, women's business, small business, native American or Indian business,
23 veteran-owned business, or disadvantaged business is not affected because the
24 client has entered into a professional employer agreement.

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1 **(6) VIOLATIONS; PENALTIES.** (a) *Disciplinary action.* The department may deny,
2 suspend, revoke, restrict, refuse to renew, or otherwise withhold a registration;
3 impose a period of probation under specified conditions; order a registrant to cease
4 and desist from violating this section or a rule promulgated under sub. (8); or impose
5 a forfeiture of not more than \$1,000; if the department finds that an applicant,
6 registrant, or controlling person has done any of the following:

7 1. Conducted any of the activities specified in sub. (2) (a) without first
8 registering with the department as provided in sub. (2).

9 2. Knowingly made a material misrepresentation or false statement in an
10 application for registration or for renewal of a registration under sub. (2) or in a
11 report under s. 108.067.

12 3. Been convicted of any crime in connection with the operation of a professional
13 employer organization, any crime that involves fraud or deceit, or any crime that
14 otherwise affects the ability of the applicant, registrant, or controlling person to
15 operate a professional employer organization.

16 4. Willfully committed a violation of this section or of a rule promulgated under
17 sub. (8).

18 (b) *Investigations; orders.* The department may investigate violations specified
19 in par. (a) and issue orders to enforce this section. The investigations and orders shall
20 be made as provided in s. 103.005. Orders issued under this section are subject to
21 review as provided in ch. 227.

22 **(7) CHILD SUPPORT; DELINQUENT TAXES.** (a) *Social security number or federal*
23 *identification number required.* 1. Except as provided in subd. 3., the department
24 shall require each applicant for registration who is an individual to provide the
25 department with the applicant's social security number, and shall require each

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1 applicant for registration who is not an individual to provide the department with
2 the applicant's federal employer identification number, when applying for initial or
3 renewal registration.

4 2. If an applicant who is an individual fails to provide the applicant's social
5 security number to the department or if an applicant who is not an individual fails
6 to provide the applicant's federal employer identification number to the department,
7 the department may not issue or renew a registration to or for the applicant unless
8 the applicant is an individual who does not have a social security number and the
9 applicant submits a statement made or subscribed under oath or affirmation as
10 required under subd. 3.

11 3. If an applicant who is an individual does not have a social security number,
12 the applicant shall submit a statement made or subscribed under oath or affirmation
13 to the department that the applicant does not have a social security number. The
14 form of the statement shall be prescribed by the department. A registration issued
15 in reliance upon a false statement submitted under this subdivision is invalid.

16 4. The subunit of the department that obtains a social security number or a
17 federal employer identification number under subd. 1. may not disclose the social
18 security number or the federal employer identification number to any person except
19 to the department of revenue for the sole purpose of requesting certifications under
20 s. 73.0301 or on the request of the subunit of the department that administers the
21 child and spousal support program under s. 49.22 (2m).

22 (b) *Child support payments.* The department shall deny, suspend, restrict,
23 refuse to renew, or otherwise withhold a registration for failure of the applicant or
24 registrant to pay court-ordered payments of child or family support, maintenance,
25 birth expenses, medical expenses, or other expenses related to the support of a child

1 or former spouse or for failure of the applicant or registrant to comply, after
2 appropriate notice, with a subpoena or warrant issued by the department or a county
3 child support agency under s. 59.53 (5) and related to paternity or child support
4 proceedings, as provided in a memorandum of understanding entered into under s.
5 49.857. Notwithstanding s. 103.005 (10), an action taken under this paragraph is
6 subject to review only as provided in the memorandum of understanding entered into
7 under s. 49.857 and not as provided in ch. 227.

8 (c) *Delinquent taxes.* The department shall deny an application for the issuance
9 or renewal of a registration, or revoke a registration already issued, if the
10 department of revenue certifies under s. 73.0301 that the applicant or registrant is
11 liable for delinquent taxes. Notwithstanding s. 103.005 (10), an action taken under
12 this paragraph is subject to review only as provided under s. 73.0301 (5) and not as
13 provided in ch. 227.

14 **(8) RULES.** The department shall promulgate rules to implement this section.
15 Those rules shall include rules providing for all of the following:

16 (a) Alternative registration of professional employer organizations under sub.
17 (2) (g).

18 (b) Fees under sub. (2) (h) 4. and 6. for registration of professional employer
19 groups and for other services provided under this section.

20 (c) Minimum requirements for issuance or renewal of a registration under sub.
21 (2) (i).

22 **SECTION 13.** 108.02 (21e) (a) of the statutes is amended to read:

23 108.02 (21e) (a) Has the right to hire and terminate the employees who perform
24 services for the client and to reassign the employees to other clients as provided in
25 s. 105.117 (4) (b) 3.;

1 **SECTION 14.** 108.02 (21e) (d) of the statutes is amended to read:

2 108.02 (21e) (d) Has a general right of direction and control over the employees,
3 including corporate officers, ~~which right may be shared with the client to the degree~~
4 ~~necessary to allow the client to conduct its business, meet any fiduciary~~
5 ~~responsibility, or comply with any applicable regulatory or statutory requirements~~
6 ~~as provided in a professional employer agreement under s. 105.117 (4);~~

7 **SECTION 15.** 108.02 (21e) (f) of the statutes is amended to read:

8 108.02 (21e) (f) Has the obligation to establish, fund, and administer employee
9 benefit plans for the employees, ~~if so agreed to in a professional employer agreement~~
10 under s. 105.117 (4) (b) 1.; and

11 **SECTION 16.** 108.02 (21e) (g) of the statutes is amended to read:

12 108.02 (21e) (g) Provides notice of the employee leasing arrangement to the
13 employees under s. 105.117 (4) (c).

14 **SECTION 17. Nonstatutory provisions.**

15 (1) RULE MAKING. The department of workforce development shall submit in
16 proposed form the rules required under section 105.117 (8) of the statutes, as created
17 by this act, to the legislative council staff under section 227.15 (1) of the statutes no
18 later than the first day of the 6th month beginning after the effective date of this
19 subsection, unless the secretary of administration requires the department to
20 prepare an economic impact report under section 227.137 of the statutes for the
21 proposed rules.

22 **SECTION 18. Effective dates.** This act takes effect on the first day of the 12th
23 month beginning after publication, except as follows:

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(1) RULE MAKING. The treatment of SECTION 17 (1) of this act takes effect on the day after publication.

(END)