

2007 Assembly Bill 760

Date of enactment: **March 27, 2008**

Date of publication*: **April 10, 2008**

2007 WISCONSIN ACT 189

AN ACT *to amend* 440.08 (2) (a) (intro.); and *to create* 440.03 (13) (b) 57m., chapter 461 and 635.02 (7) (b) 3. and 4. of the statutes; **relating to:** registration of professional employer organizations, requiring the exercise of rule-making authority, and providing a penalty.

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

SECTION 1. 440.03 (13) (b) 57m. of the statutes is created to read:

440.03 (13) (b) 57m. Professional employer organization or professional employer group.

SECTION 2. 440.08 (2) (a) (intro.) of the statutes, as affected by 2007 Wisconsin Act 20, is amended to read:

440.08 (2) (a) (intro.) Except as provided in par. (b) and in ss. 440.51, 442.04, 444.03, 444.11, 448.065, 447.04 (2) (c) 2., 449.17 (1m) (d), and 449.18 (2) (d), and 461.02 (3) (a) and (b) and (4), the renewal dates for credentials are as follows:

SECTION 3. Chapter 461 of the statutes is created to read:

CHAPTER 461 PROFESSIONAL EMPLOYER ORGANIZATIONS

461.01 Definitions. In this chapter:

(1) "Applicant" means a professional employer organization or a professional employer group that applies for registration under s. 461.02.

(2) "Client" means any person that enters into a written contract with a professional employer organization or

a professional employer group for the provision of the nontemporary, ongoing workforce of the person.

(3) "Controlling person" means any of the following:

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

(b) A person who serves as president or chief executive officer of an applicant or registrant or who otherwise has the authority to act as the senior executive officer of an applicant or registrant.

(4) "Professional employer group" means 2 or more professional employer organizations that are controlled by the same person.

(5) "Professional employer organization" means a person that is engaged in the business of entering into written contracts for the provision of the nontemporary, ongoing employee workforce of a client and providing services under those contracts and that under those contracts has the obligation to pay the employees providing services for those clients from its own accounts, regardless of whether the person uses the term "professional employer organization," "PEO," "staff leasing company," "registered staff leasing company," "employee leasing company," or "administrative employer," or uses

* Section 991.11, WISCONSIN STATUTES 2005-06 : Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

any other name, as part of the person's business name or to describe the person's business.

(6) "Registrant" means a professional employer organization or a professional employer group that is registered under s. 461.02.

461.02 Registration requirements. (1) REGISTRATION REQUIRED. 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 as provided in this section. To register under this section, a person shall file the registration form under sub. (2) and pay the initial credential fee determined by the department under s. 440.03 (9) (a).

(2) **REGISTRATION FORM.** To apply for registration under this section, an applicant shall file with the department a registration form prescribed by the department that contains all of the following information:

(a) The name or names under which the applicant conducts business.

(b) The address of the principal place of business of the applicant and of each office that the applicant maintains in this state.

(c) A list by jurisdiction of each name under which the applicant has operated in the 5 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.

(d) A statement of ownership, which shall include the name and business experience of every controlling person, as defined in s. 460.01 (3) (a), of the applicant.

(e) A statement of management, which shall include the name and business experience of every controlling person, as defined in s. 460.01 (3) (b), of the applicant.

(f) A financial statement that sets forth the financial condition of the applicant as of a date that is not more than 13 months 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. The financial statement shall be without qualification as to the going concern status of the applicant. A professional employer group may meet the requirements of this paragraph by submitting a combined or consolidated audited financial statement. An applicant that does not have sufficient operating history to have an audited financial statement that is based on at least 12 months of operating history may meet the requirements of this paragraph by submitting financial statements that have been reviewed by an independent certified public accountant.

(3) **INITIAL REGISTRATION.** (a) Each professional employer organization or professional employer group that is operating in this state on the effective date of this

paragraph [revisor inserts date], shall register with the department by no later than 180 days after that date. An initial registration under this paragraph is valid until 180 days after the end of the first fiscal year of the registrant that ends more than one year after the effective date of this paragraph [revisor inserts date].

(b) Any person that is not engaged in the business of providing professional employer services in this state on the effective date of this paragraph [revisor inserts date], shall register with the department before engaging in that business in this state. An initial registration under this paragraph is valid until 180 days after the end of the first fiscal year of the registrant that ends after the date of initial registration.

(4) **RENEWAL REGISTRATION.** A registrant that wishes to renew its registration shall, by no later than 180 days after the end of the registrant's fiscal year, renew that registration by notifying the department of any changes in the information specified in sub. (2) (a) to (e), filing an updated financial statement as described in sub. (2) (f), and paying the renewal credential fee determined by the department under s. 440.03 (9) (a). A registrant may apply to the department for an extension of the time within which to renew a registration by providing with the application a letter from the certified public accountant who is auditing the registrant's financial statement stating the reasons for the delay and the anticipated completion date of the audit. A renewal registration is valid for one year after the date of renewal.

(5) **LIMITED REGISTRATION.** (a) A professional employer organization or professional employer group that is domiciled outside this state, that is registered or licensed as a professional employer organization or professional employer group in another state, that does not maintain an office in this state or directly solicit clients that are located or domiciled in this state, and that has no more than 50 employees performing services for clients in this state on any given day may apply for limited registration under this section by filing with the department a limited registration form prescribed by the department and paying the initial credential fee determined by the department under s. 440.03 (9) (a). An applicant that is seeking limited registration shall, in addition to the information provided under sub. (2), provide the department with information and documentation showing that the applicant meets the qualifications specified in this paragraph for limited registration.

(b) A professional employer organization or professional employer group seeking limited registration that has employees performing services for clients in this state on the effective date of this paragraph [revisor inserts date], shall register with the department as provided in sub. (3) (a), and the initial limited registration shall be valid as provided in sub. (3) (a).

(c) A professional employer organization or professional employer group seeking limited registration that

does not have employees performing services for clients in this state on the effective date of this paragraph ... [revisor inserts date], shall register with the department as provided in sub. (3) (b), before contracting with a client in this state, and the initial limited registration shall be valid as provided in sub. (3) (b).

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

(e) A limited registrant is not required to comply with the financial capability requirement under s. 461.03.

(6) PROFESSIONAL EMPLOYER GROUP REGISTRATION. Two or more professional employer organizations that are part of a professional employer group may register under this section or renew a registration by providing the information required under sub. (2), (4), or (5) on a combined or consolidated basis, paying the initial credential or renewal fee determined by the department under s. 440.03 (9) (a), and guaranteeing each other's obligations. If a professional employer group provides a combined or consolidated financial statement under sub. (2) (f) that includes the financial condition of entities that are not part of the professional employer group, the person controlling the professional employer group shall guarantee the obligations of the professional employer organizations in the professional employer group.

(7) ALTERNATIVE REGISTRATION. (a) The department shall by rule provide for registration of a professional employer organization or professional employer group on acceptance by the department of a registration form, financial statement, or any other information or documentation required under sub. (2), (4), (5), or (6), s. 461.03, or rules promulgated under s. 461.06 in the form of an electronic record, as defined in s. 137.11 (7) and, if a signature is required, on acceptance of an electronic signature, as defined in s. 137.11 (8).

(b) The department may by rule provide for registration of a professional employer organization or professional employer group without compliance with sub. (2), (4), (5), or (6), s. 461.03, or rules promulgated under s. 461.06 on acceptance by the department of assurance provided by a bonded, independent, and qualified assurance organization that has been approved by the department that provides assurance satisfactory to the department that the professional employer organization or professional employer group is qualified to engage in the business of providing professional employer services in this state.

(c) This subsection does not limit the authority of the department to require a professional employer organization or professional employer group to register as provided in sub. (2), (4), (5), or (6), to maintain proof of

financial capability as required under s. 461.03, or to comply with this chapter and the rules promulgated under s. 461.06; to investigate an applicant or registrant and deny registration or renewal registration under sub. (8), or to investigate an applicant, registrant, or controlling person and take disciplinary action under s. 461.05.

(8) ISSUANCE OF REGISTRATION. On receipt of an application for registration or for renewal of a registration under subs. (3) to (7) and of the initial credential fee or renewal fee determined by the department under s. 440.03 (9) (a), the department shall investigate the applicant or registrant to determine whether the applicant or registrant is qualified for registration or for renewal registration. Except as provided in s. 440.12 and 440.13, the department shall issue a registration or renewal registration if, after completing the investigation, the department determines that the applicant or registrant meets the requirements under this chapter and rules promulgated under s. 461.06 for issuance or renewal of a registration and is satisfied that the applicant or registrant will comply with this chapter and those rules.

(9) LIST OF REGISTRANTS; CONFIDENTIALITY. The department shall maintain a list of all professional employer organizations and professional employer groups registered under this section. All records maintained by the department that contain any information obtained from an applicant or registrant are confidential and not open to public inspection or copying under s. 19.35 (1) unless one of the following applies:

(a) Disclosure of the record is necessary for the administration of this section.

(b) A court of competent jurisdiction in this state orders the department to release the record.

(c) The requester is the department of children and families or a county child support agency under s. 59.53 (5), the request is made under s. 49.22 (2m), and the request is limited to the name, home address, and business address of the applicant, registrant, or controlling person who is the subject of the request and any financial information about the applicant, registrant, or controlling person contained in the record.

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

461.03 Financial capability. Except as provided in s. 461.02 (5) (e) or (7) (b), a professional employer organization or professional employer group shall maintain one of the following:

(1) WORKING CAPITAL REQUIREMENT. Working capital, as defined by generally accepted accounting principals, of not less than \$100,000, as shown in the financial statement submitted to the department under s. 461.02 (2) (f), (4), or (6). If a professional employer organization or

professional employer group has less than \$100,000 in working capital, the department may issue a registration or renewal registration contingent on the registrant meeting the working capital requirement of this subsection no later than 180 days after the issuance of the registration or renewal registration. During the period of contingent registration, the registrant shall submit quarterly financial statements to the department accompanied by an attestation by the chief executive officer of the registrant that all wages, salaries, employee benefits, worker's compensation insurance premiums, payroll taxes, unemployment insurance contributions, and other amounts that are payable to or with respect to an employee of the registrant performing services for a client were paid by the registrant when due.

(2) **ALTERNATIVE COMMITMENT.** A bond, certificate of deposit, escrow account, or irrevocable letter of credit in an amount that is not less than \$100,000 or, if the financial statement submitted to the department under s. 461.02 (2) (f), (4), or (6) indicates a deficit in working capital, a bond, certificate of deposit, escrow account, or irrevocable letter of credit in an amount that is not less than \$100,000 plus an amount that is sufficient to cover that deficit. The commitment described in this subsection shall be in a form approved by the department, shall be held in a depository designated by the department, and shall secure the payment by the professional employer organization or professional employer group of any wages, salaries, employee benefits, worker's compensation insurance premiums, payroll taxes, unemployment insurance contributions, or other amounts that are payable to or with respect to an employee performing services for a client if the professional employer organization or professional employer group does not make those payments when due. The commitment shall be established in favor of or be made payable to the department, for the benefit of the state and any employee to whom or with respect to whom the professional employer organization or professional employer group does not make a payment described in this subsection when due. The professional employer organization or professional employer group shall file with the department any agreement, instrument, or other document that is necessary to enforce the commitment against the professional employer organization or professional employer group, or against any relevant 3rd party, or both.

461.04 Rights, duties, and obligations unaffected.

(1) **PROFESSIONAL EMPLOYER SERVICES NOT INSURANCE.** A professional employer organization or professional employer group that offers, markets, sells, administers, or provides professional employer services that include the provision of employee benefit plans for the employees of the professional employer organization or professional employer group performing services for a client is not engaged in the business or sale of insurance or in the business of an employee benefit plan administra-

tor under ch. 633. This subsection shall be liberally construed to permit professional employer organizations and professional employer groups to provide employee benefit plans as provided in this subsection without being considered to be engaged in the business or sale of insurance or in the business of an employee benefit plan administrator under ch. 633. If a professional employer organization or professional employer group provides life insurance, health care, or disability income benefits for its employees performing services for a client, all of the following apply:

(a) The professional employer organization or professional employer group shall fully insure payment of those benefits by having in force a plan or policy of insurance issued by an insurer authorized to do business in this state.

(b) Subject to any eligibility requirements imposed by the plan or policy under par. (a), the insurer under par. (a) shall accept and insure all employees of the professional employer organization or professional employer group performing services for a client and all beneficiaries of those employees.

(2) **INSURER NOT SMALL EMPLOYER INSURER.** An insurer that contracts with a professional employer organization or professional employer group that has more than 50 employees performing services for one or more clients is not a small employer insurer, as defined in s. 635.02 (8), with respect to the contract between the insurer and the professional employer organization or professional employer group.

(3) **LICENSING.** Nothing in this chapter or in any contract for the provision of the nontemporary, ongoing workforce of a client may be construed to affect or impair any federal, state, or local licensing, registration, or certification requirement that is applicable to a client or to an employee performing services for a client.

(4) **TAX CREDITS AND OTHER ECONOMIC DEVELOPMENT INCENTIVES.** For purposes of determining tax credits, other economic development incentives provided by the state that are based on providing employment, or any other benefits that arises out of the employment of an employee of a professional employer organization or professional employer group who is performing services for a client, such an employee is considered to be an employee solely of the client, and the client is entitled to the benefit of the tax credit, economic development incentive, or other benefit. If the amount of a tax credit, incentive, or benefit described in this subsection is based on the number of employees employed by a client, only those employees of a professional employer organization or professional employer group who are performing services for the client shall be treated as employees employed by the client, and employees of the professional employer organization or professional employer group who are performing services for another client shall not be treated as employees employed by the client.

On request of a client that is seeking a tax credit, incentive, or other benefit described in this subsection or of an agency of this state that is responsible for administering such a tax credit, incentive, or benefit, a professional employer organization or professional employer group shall provide any employment information reasonably required by the agency that is necessary to support a claim, application, or other action by the client.

461.05 Disciplinary proceedings. (1) INVESTIGATIONS. Subject to the rules promulgated under s. 440.03 (1), the department may conduct investigations and hearings to determine whether a violation of this chapter or any rule promulgated under s. 461.06 has occurred.

(2) DISCIPLINARY ACTION. Subject to the rules promulgated under s. 440.03 (1), the department may reprimand a professional employer organization or professional employer group or deny, limit, suspend, revoke, restrict, refuse to renew, or otherwise withhold a registration if the department finds that an applicant, registrant, or controlling person has done any of the following:

(a) Conducted any of the activities specified in s. 461.02 (1) without first registering with the department as provided in s. 461.02.

(b) Knowingly made a material misrepresentation or false statement in an application for registration or for renewal of a registration under s. 461.02 or in a report under s. 108.067.

(c) Been convicted of any crime in connection with the operation of a professional employer organization or professional employer group, any crime that involves fraud or deceit, or any crime that otherwise affects the ability of the applicant, registrant, or controlling person to operate a professional employer organization or professional employer group.

(d) Willfully committed a violation of this chapter or of a rule promulgated under s. 461.06.

(3) FORFEITURE. In addition to or in lieu of a reprimand or a denial, limitation, suspension, revocation, restriction, nonrenewal, or other withholding of a registration under sub. (2), the department may assess against an applicant, registrant, or controlling person a forfeiture of not more than \$1,000 for each violation.

(4) INJUNCTION. If it appears upon complaint to the department by any person or it is known to the department that any person is violating this chapter, the department or the district attorney of the proper county may investigate and may, in addition to any other remedies, bring action in the name of and on behalf of the state against any such person to enjoin such person from such violations.

(5) JUDICIAL REVIEW. Any person who is aggrieved by any action taken under this chapter by the department, its officers, or agents may apply for judicial review as provided in ch. 227.

461.06 Rules. The department shall promulgate rules to implement this chapter. Those rules shall include rules providing for all of the following:

(1) Alternative registration of professional employer organizations under s. 461.02 (7) (a) and (b).

(2) Reasonable fees for any service provided under this chapter that do not exceed an amount that is necessary to cover the cost of providing that service.

(3) Minimum requirements for issuance or renewal of a registration under s. 461.02 (8).

SECTION 4. 635.02 (7) (b) 3. and 4. of the statutes are created to read:

635.02 (7) (b) 3. A professional employer organization, as defined in s. 461.01 (5), or a professional employer group, as defined in s. 461.01 (4), that provides health care benefits to more than 50 employees performing services for a client, as defined in s. 461.01 (2).

4. A client of a professional employer organization or professional employer group specified in subd. 3., if the employees of the professional employer organization or professional employer group performing services for the client are offered health care benefits under a health benefit plan sponsored by the professional employer organization or professional employer group.

SECTION 5. Nonstatutory provisions.

(1) RULE MAKING. The department of regulation and licensing shall submit in proposed form the rules required under section 461.06 of the statutes, as created by this act, to the legislative council staff under section 227.15 (1) of the statutes no later than the first day of the 6th month beginning after the effective date of this subsection.

(2) POSITION AUTHORIZATION. The authorized FTE positions for the department of regulation and licensing are increased by 0.5 PR position on July 1, 2009, to be funded from the appropriation under section 20.165 (1) (g) of the statutes, for the purpose of administering the registration of professional employer organizations and professional employer groups under chapter 461 of the statutes, as created by this act.

(3) INITIAL FEE DETERMINATION. The department of regulation and licensing shall determine the initial fees for registration or for renewal registration under section 461.02 (3) to (7) of the statutes, as created by this act, as provided in section 440.03 (9) of the statutes. Not later than 14 days after determining those fees, the department shall send a report detailing those proposed fees to the cochairpersons of the joint committee on finance. If, within 14 days after the date on which the department submits the report, the cochairpersons of the committee notify the secretary of regulation and licensing that the committee has scheduled a meeting for the purpose of reviewing the proposed fees, the department may not impose the fees until the committee approves the report. If the cochairpersons of the committee do not notify the

secretary, the department shall post the fees on the department's Internet site.

SECTION 6. Effective dates. This act takes effect on July 1, 2009, except as follows:

(1) **RULE MAKING; INITIAL FEE DETERMINATION.** The treatment of SECTION 5 (1) and (3) of this act takes effect on the day after publication.
