

2007 DRAFTING REQUEST

Assembly Substitute Amendment (ASA-AB760)

Received: 02/28/2008

Received By: gmalaise

Wanted: Today

Identical to LRB:

For: Scott Newcomer (608) 266-3007

By/Representing: Carol Redell

This file may be shown to any legislator: NO

Drafter: gmalaise

May Contact:

Addl. Drafters:

Subject: Occupational Reg. - misc
Occupational Reg. - prof lic

Extra Copies:

Submit via email: YES

Requester's email: Rep.Newcomer@legis.wisconsin.gov

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Registration of professional employer organizations; deletion of registration fees and position authorization

Instructions:

See Attached--delete registration and service fees and position authorization (fiscal effects).

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	gmalaise 02/28/2008	kfollett 02/28/2008		_____			
/1			rschluet 02/28/2008	_____	sbasford 02/28/2008	sbasford 02/28/2008	

FE Sent For:

<END>

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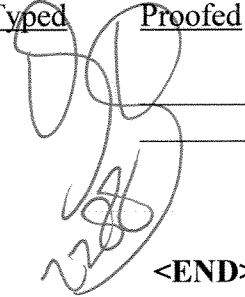
Topic:

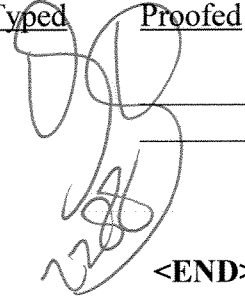
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/?	gmalaise	1/kif 2/28					

FE Sent For:  <END>

Malaise, Gordon

From: Redell, Carol
Sent: Monday, February 25, 2008 3:16 PM
To: Malaise, Gordon
Subject: Rep. Newcomer Amendment to AB 760
Attachments: Response to PEO memo to Commissioner.doc

Gordon -- Dan Schwartzer from the Nat'l Ass. of PEO's will be calling this afternoon to request changes to AB 760. He has Scott's approval to speak w/ you directly since the changes seem to be quite lengthy.

Carol Redell/Rep. Newcomer's Office



State of Wisconsin / OFFICE OF THE COMMISSIONER OF INSURANCE

Jim Doyle, Governor
Sean Dilweg, Commissioner

Wisconsin.gov

February 22, 2008

125 South Webster Street • P.O. Box 7873
Madison, Wisconsin 53707-7873
Phone: (608) 266-3585 • Fax: (608) 266-9935
E-Mail: ociinformation@wisconsin.gov
Web Address: oci.wi.gov

Date: February 22, 2008
To: Sean Dilweg, Commissioner of Insurance
From: Kim Shaul, Deputy Commissioner
Subject: AB 760 Professional employer organization ("PEO") registration; proposed revisions.

The following describes a proposed draft revision to AB 760:

Page 6, substitute for lines 6 and 7:

" (4) "Professional employer organization" means a person who engages in the business of entering into, and providing services under, contracts that represent the person will provide the non-temporary, ongoing employee workforce of a client business and who under the contract has the obligation to pay employees from its own accounts, regardless of whether the person uses the term professional employer, PEO, staff leasing company, employee leasing company or administrative employer."

Note: We want to avoid generalizing the unemployment compensation law definition of PEO elsewhere because its language assumes that the professional employer organization has an employer relationship with client employer employees. This is not Wisconsin law generally so its inclusion in this bill makes a substantial change with unintended consequences. Accordingly this proposed revision deletes the reference to s. 108.02 (21e), Stats. Also the s. 108.02 (21e), Stats., definition allows a firm to easily elect whether it is a PEO, or not, by making simple, non-substantive changes in its business processes. As one example, among several, a firm is not a PEO under s. 108.02 (21e), Stats., if the firm fails to "provide notice of the employee leasing arrangement to the employees." The proposed substitute definition, with the change below, resolves both these issues.

We accept this change.

Page 6, after line 12, insert:

"461.015 CONSTRUCTION. Nothing in this chapter shall be construed as establishing, or changing the law of this state with respect to establishing, an employer-employee relationship. Nothing in this chapter shall be construed as affecting chs. 600 to 646 including, but not limited to, s. 610.11. A professional employer organization may offer only health, life or disability income employee benefit plans to clients that are fully insured by an insurer licensed to do business in this state."

Note: This revision expresses the proponents' intent that the bill does not change Wisconsin employment law and does not directly or indirectly change the application of the Wisconsin insurance code to unauthorized insurance business, including to life and disability income or any other insurance product line.

The intent of the above change is fine, which is to remove the ability for PEO's to self-fund. However, we do not agree with the OCI's method of ensuring that PEO's cannot "cherry pick" by deleting our exemption to 635.02 and creating 635.06 below. Therefore, we would agree to the above change but would delete the 1st and 2nd sentence that states, "Nothing in this chapter shall

be construed as establishing, or changing the law of this state with respect to establishing, an employer-employee relationship. Nothing in this chapter shall be construed as effecting chs. 600 to 646 including, but not limited to, s.610.11."

~~Page 8, delete lines 23 and 24 and substitute:~~

"that are located or domiciled in this state, and that has clients with no more than an aggregate of 50 employees in this state on any given day may apply for limited"

Note: This revision retains the "limited registration" provision for out-of-state PEOs but eliminates legally establishing that the PEO has an employer-employee relationship with the client's employees. See the discussion above.

We do not accept this change. This is really nitpicking. Nothing in our language on lines 23 and 24 changes Wisconsin employment law. There is no reference in our language to imply we are the employer. We clearly state in our language in lines 23 and 24 "employees performing services for clients". There is no employer reference here.

~~Page 9, delete line 7 and substitute:~~

"seeking limited registration that has clients in"

Note: See above.

See our answer above

~~Page 9, delete line 12 and substitute:~~

"seeking limited registration that does not have"

Note: See above.

See our answer above

~~Page 9, delete lines 14 and 15 and substitute:~~

"shall register with the department as provided in sub. (3) (b), before contracting with a client in this state, and the initial limited"

Note: See above.

We accept this change.

~~Page 11, line 20 to page 12, line 12, delete all and substitute:~~

"registered under this section. All records, reports and other information required to be filed under this chapter are public under ch. 19 except the department may keep confidential

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personally identifiable information to the extent that it finds confidentiality is necessary to protect an individual from illegal use of such information.”

Note: This revision establishes that filings are public.

We do not accept this change. First, this provision has never been raised as an issue before by the department. More importantly, this provision and has nothing to do with the OCI or any insurance chapters in the statutes, or any insurance provisions. This provision is important to PEO's as we cannot have competitor lists exchanged and we believe to be so important that the language needs to remain in the affirmative relative to not being open to public inspection. It should be noted that our language does provide for disclosure under certain circumstances.

Page 13, delete line 3 and substitute:

“with respect to a client were”

Note: See note regarding the revision to page 8.

We do not accept this change. This is really nitpicking. Nothing in our language on lines 23 and 24 changes Wisconsin employment law. There is no reference in our language to imply we are the employer. We clearly state in our language in lines 23 and 24 “employees performing services for clients”. There is no employer reference here.

Page 13, delete line 16 and substitute:

“or with respect to a client if the professional”

Note: See above.

We do not accept this change for the same reasons above. More importantly, it inaccurately describes the nature of the relationship. They are paid with respect to employees, not clients.

Page 13, delete line 19 and substitute:

“payable to the department, for the benefit of the state and employee or client to whom or”

We do not accept this change. See above.

Page 14, delete lines 2 to 12, and substitute:

“EMPLOYER ORGANIZATION NOT SUBJECT TO THIRD PARTY ADMINISTRATOR LICENSING. A registered professional employer organization is not required to be licensed under ch. 633.”

Note: This provides an exemption for a registered PEO from licensing under ch. 633. Since a PEO may not act as an insurer there is no reason to include any other disclaimer.

We do not accept this change. We previously agreed to take out the reference to Chapter 108, in addition to agreeing to provisions where we may have implied an employer relationship, in addition to agreeing to the inclusion of their “461.015 CONSTRUCTION provision. We believe these previously agreed changes are more than sufficient to assure we cannot self-fund. The bill,

as drafted, contains a provision that clarifies that the sale of PEO services is not the "sale of insurance." This protection is important for PEOs. When a PEO presents its potential services to a prospect, the PEO will explain all of the features of the service – including the type of benefits to be provided. The benefits explanation will include a discussion of the health, 125 plan, retirement plan and any other benefits provided. It is important that this type of presentation be protected from being interpreted as "the sale of insurance." If OCI were to take the position that the explanation of PEO services was tantamount to comparing or contrasting insurance coverage – an act that would be considered the sale of insurance – they may then take the position that the PEO was engaged in the unauthorized sale of insurance. The bill provision that clearly states that the sale of PEO services is not the sale of insurance would prevent that result.

Page 14, delete lines 13 to 17.

Note: This revision deletes exemption of an insurer offering coverage to PEO clients from the small employer health insurance law. The revision below to page 17 substitutes a provision that reflects the expressed intent of the proponents.

We do not accept this change. The OCI's major contention with our exemption to 635.02 was the possibility of a PEO "cherry picking" only health groups. We assured the OCI we do not underwrite and that we take all contracted lives without regard to their health status. Since we do not underwrite, it is impossible to cherry pick.

During our meeting, Deputy Commissioner Kim Shaul then offered language that would require a PEO to take all contracted lives. We stated we would be willing to look at that type of language. The language offered in this memo removes the exemption completely. We would be willing to add language such as Deputy Commissioner Shaul offered. Using her suggestion, that language would state, "The PEO insurer shall accept and insure all contracted lives entering the PEO, excluding any eligibility requirements imposed by the policy." This suggested language would ensure the PEO's cannot "cherry pick" only the healthy employees as they would be required to take all contracted lives entering the PEO.

Page 14, line 18 to page 15, line 15, delete all.

Note: This revision eliminates legally establishing that the PEO has an employer-employee relationship with the client's employees. See the discussion above. Since this is not Wisconsin law, the licensing and other issues referenced in these provisions do not arise. They would arise only if the bill makes the changes in employer-employee law deleted above.

We do not accept this change. Nothing in these provisions create employer status for PEO's and with the safeguards we have already agreed to, there should be no reason the department wants these provisions deleted. They are important provisions for the PEO clients (the small employer).

Page 17, delete lines 9 to 18 and substitute:

"Section 4. 635.06 of the statutes is created to read:

635.06 PROFESSIONAL EMPLOYER ORGANIZATION. (1) An insurer is not subject to s. 635.05 for any group health benefit plan coverage provided through a professional employer organization registered under ch. 461 to a client small employer of the professional employer organization if:

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- (a) The insurer establishes rates for the group health benefit plan that do not vary among participants, dependents or client small employers of the professional employer organization based on loss or claims history, health status, occupation, duration of coverage or other factors related to claims experience;
- (b) The professional employer organization does not bill for the coverage, or charge any fee, based on a factor prohibited under sub. (2); and
- (c) The insurer actively markets health benefit plan coverage generally to small employers in this state and complies with ss. 635.18 and 635.19.

(2) A professional employer organization offering an insurer's group health benefit plan coverage to its client employers may not bill or charge a fee that varies among covered participants, dependents or client employers based on health loss or claims history, health status, occupation, duration of coverage, or any other factors related to health claims experience."

We do not accept this change for all the reasons previously stated.

Malaise, Gordon

From: Redell, Carol
Sent: Thursday, February 28, 2008 12:18 PM
To: Malaise, Gordon
Subject: FW: Rep. Newcomer AB 760

Gordon -- We need to re-draft the sub to AB 760 which is on the floor today w/ the following changes:

Page 18 – Delete Lines 1 & 2.
Page 18 – Delete Lines 21-24
Page 19 – Delete Lines 1-14.

Also, with these changes, Scott wants to make sure that this Bill will no longer receive a Joint Finance Referral since it is taking out the fiscal and position effects. Is that your interpretation as well?

Thanks –

Can this be done ASAP?

Thanks!!!!

Carol/Newcomer's Office

From: Redell, Carol
Sent: Wednesday, February 27, 2008 1:13 PM
To: Malaise, Gordon
Subject: RE: Rep. Newcomer AB 760

It's on its way! So sorry about the last minute request. Thank you!

From: Malaise, Gordon
Sent: Wednesday, February 27, 2008 1:10 PM
To: Redell, Carol
Subject: RE: Rep. Newcomer AB 760

Carol:

Of course. I'll do it right away. Just send s0309/1 back to the LRB so that I can do a /2.

Gordon

From: Redell, Carol
Sent: Wednesday, February 27, 2008 1:08 PM
To: Malaise, Gordon
Subject: Rep. Newcomer AB 760

Gordon – Can you make a change to the proposed Substitute Amendment to AB 760? Page 6, Line 14 – delete the word "leasing"?

Can you let me know if you'll be able to make this change prior to the bill being on the floor tomorrow?

Thank you!!

Carol Redell/Rep. Newcomer's Office

NOW

2007 - 2008 LEGISLATURE

DN OFE

50317/1

LRBs0309/2
GMM:lxx&kf:jt

stays

ASSEMBLY SUBSTITUTE AMENDMENT ,
TO 2007 ASSEMBLY BILL 760

Regen

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

REGISTRATION OF PROFESSIONAL EMPLOYER ORGANIZATIONS

Introduction

This substitute amendment provides for the registration and regulation of PEOs, which the substitute amendment defines as 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. Specifically, under the substitute amendment:

1. No person may offer or provide professional employer services, advertise that the person is a PEO or that the person provides professional employer services, or otherwise hold itself out as a PEO, unless the person first registers with the Department of Regulation and Licensing (DORL).

2. Subject to certain exceptions, a PEO must maintain working capital 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. Certain rights, duties, and obligations under current law relating to insurance, licensing, and tax credits and other economic development incentives are unaffected by the substitute amendment.

Registration

Initial registration. The substitute amendment requires a PEO that is operating in this state on the effective date of the substitute amendment to register with DORL by no later than 180 days after that date. The substitute amendment 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 the effective date of the substitute amendment. Similarly, the substitute amendment requires a PEO that is not engaged in the business of providing professional employer services in this state on that date to register with DORL before engaging in that business in this state 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.

x Under the substitute amendment, a person may apply for registration by ~~paying the initial credential fee determined by DORL 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. 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.
4. 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.
6. 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 substitute amendment specifies that the financial statement shall be without qualification as to the going concern status of the applicant.

x **Renewal registration.** Under the substitute amendment, 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 DORL of any changes in the information specified in the previous registration form, filing an updated financial statement, ~~and paying the renewal fee determined by DORL.~~ ^{and} A renewal registration is valid for one year after the date of renewal.

x **Limited registration.** The substitute amendment permits a PEO that is domiciled outside this state, that is registered or licensed as a PEO in another state, that does not maintain an office in this state or directly solicit clients in this state, and that has no more than 50 employees performing services for clients 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 substitute amendment.

Electronic or alternative registration. In addition, the substitute amendment permits DORL to promulgate rules providing for registration of a PEO on acceptance by DORL of a registration form, financial statement, or any other information or documentation required under the substitute amendment or rules promulgated by DORL in the form of an electronic record and, if a signature is required, on acceptance of an electronic signature. The substitute amendment also permits DORL to promulgate rules providing for registration of a PEO, without compliance with the registration and financial capability requirements of the substitute amendment, on acceptance of assurance provided by a bonded,

independent, and qualified assurance organization that has been approved by DORL that provides assurance satisfactory to DORL that the PEO is qualified to engage in the business of providing professional employer services in this state (alternative registrant).

Financial capability

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

1. Working capital of not less than \$100,000, except that DORL may issue a registration or renewal registration to a PEO that has less than \$100,000 in working capital contingent on the PEO meeting the minimum working capital requirement no later than 180 days after the issuance of the registration or renewal registration. During the period of contingent registration, the PEO must submit quarterly financial statements to DORL accompanied by an attestation that all 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 an employee of the PEO who is performing services for a client were paid when due.

2. 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 PEO's financial statement submitted to DORL 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, 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 an employee of the PEO who is performing services for a client if the PEO does not make those payments when due.

Rights, duties, and obligations unaffected

The substitute amendment provides that a PEO that offers, markets, sells, administers, or provides professional employer services that include the provision of employee benefit plans for the employees of the PEO performing services for a client is not engaged in the business or sale of insurance or in the business of an employee benefit plan administrator. The substitute amendment requires this provision to be liberally construed to permit PEO's to provide employee benefit plans without being considered to be engaged in the business or sale of insurance or in the business of an employee benefit plan administrator. Under the substitute amendment, if a PEO provides life insurance, health care, or disability income benefits for its employees performing services for a client, the PEO must 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 and the insurer, subject to any eligibility requirements imposed by the plan or policy, must accept and insure all employees of the PEO performing services for a client and all beneficiaries of those employees.

Also, for purposes of the insurance laws governing small employer health insurance, the substitute amendment provides that an insurer that contracts with a PEO that has more than 50 employees performing services for one or more clients is not a small employer insurer with respect to the contract between the insurer and

the PEO, that a PEO that provides health care benefits for more than 50 employees performing services for one or more clients is not a small employer, and that a client of such a PEO is not a small employer if the employees of the PEO performing services for the client are offered health care benefits under a health benefit plan sponsored by the PEO.

In addition, the substitute amendment provides that nothing in the substitute amendment or in a 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 of the PEO who is performing services for a client.

Finally, the substitute amendment provides that, for purposes of tax credits, economic development incentives, and other benefits that arise out of the employment of employees, the client is entitled to those credits, incentives, and other benefits that arise out of the employment of an employee of a PEO who is performing services for the client.

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

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

2 440.03 (13) (b) 57m. Professional employer organization or professional
3 employer group.

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

6 440.08 (2) (a) (intro.) Except as provided in par. (b) and in ss. 440.51, 442.04,
7 444.03, 444.11, 448.065, 447.04 (2) (c) 2., 449.17 (1m) (d), and 449.18 (2) (d), and
8 461.02 (3) (a) and (b) and (4), the renewal dates for credentials are as follows:

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

10 **CHAPTER 461**

11 **PROFESSIONAL EMPLOYER ORGANIZATIONS**

12 **461.01 Definitions.** In this chapter:

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

1 (2) “Client” means any person that enters into a written contract with a
2 professional employer organization or a professional employer group for the
3 provision of the nontemporary, ongoing workforce of the person.

4 (3) “Controlling person” means any of the following:

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

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

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

13 (5) “Professional employer organization” means a person that is engaged in the
14 business of entering into written contracts for the provision of the nontemporary,
15 ongoing employee workforce of a client and providing services under those contracts
16 and that under those contracts has the obligation to pay the employees providing
17 services for those clients from its own accounts, regardless of whether the person
18 uses the term “professional employer organization,” “PEO,” “staff leasing company,”
19 “registered staff leasing company,” “employee leasing company,” or “administrative
20 employer,” or uses any other name, as part of the person’s business name or to
21 describe the person’s business.

22 (6) “Registrant” means a professional employer organization or a professional
23 employer group that is registered under s. 461.02.

24 **461.02 Registration requirements. (1) REGISTRATION REQUIRED.** No person
25 may offer or provide professional employer services, advertise that the person is a

1 professional employer organization or that the person provides professional
2 employer services, or otherwise hold itself out as a professional employer
3 organization unless the person first registers with the department as provided in this
4 section. To register under this section, a person shall file the registration form under
5 sub. (2) and pay the initial credential fee determined by the department under s.

6 ~~440.03 (9) (a).~~

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

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

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

13 (c) A list by jurisdiction of each name under which the applicant has operated
14 in the 5 years preceding the date of the application, including any alternate names
15 of the applicant, the names of any predecessor business entities of the applicant, and,
16 if known, the names of any successor business entities of the applicant.

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

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

21 (f) A financial statement that sets forth the financial condition of the applicant
22 as of a date that is not more than 13 months preceding the date of the application,
23 that is prepared in accordance with generally accepted accounting principles, and
24 that has been audited by an independent certified public accountant. The financial
25 statement shall be without qualification as to the going concern status of the

1 applicant. A professional employer group may meet the requirements of this
2 paragraph by submitting a combined or consolidated audited financial statement.
3 An applicant that does not have sufficient operating history to have an audited
4 financial statement that is based on at least 12 months of operating history may meet
5 the requirements of this paragraph by submitting financial statements that have
6 been reviewed by an independent certified public accountant.

7 **(3) INITIAL REGISTRATION.** (a) Each professional employer organization or
8 professional employer group that is operating in this state on the effective date of this
9 paragraph [revisor inserts date], shall register with the department by no later
10 than 180 days after that date. An initial registration under this paragraph is valid
11 until 180 days after the end of the first fiscal year of the registrant that ends more
12 than one year after the effective date of this paragraph [revisor inserts date].

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

19 **(4) RENEWAL REGISTRATION.** A registrant that wishes to renew its registration
20 shall, by no later than 180 days after the end of the registrant's fiscal year, renew that
21 registration by notifying the department of any changes in the information specified
22 in sub. (2) (a) to (e), ^{and} filing an updated financial statement as described in sub. (2) (f),

23 ~~and paying the renewal credential fee determined by the department under s. 440.03~~

24 ~~(9) (a).~~ A registrant may apply to the department for an extension of the time within
25 which to renew a registration by providing with the application a letter from the

1 certified public accountant who is auditing the registrant's financial statement
2 stating the reasons for the delay and the anticipated completion date of the audit.
3 A renewal registration is valid for one year after the date of renewal.

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

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

21 (c) A professional employer organization or professional employer group
22 seeking limited registration that does not have employees performing services for
23 clients in this state on the effective date of this paragraph [revisor inserts date],
24 shall register with the department as provided in sub. (3) (b), before contracting with

1 a client in this state, and the initial limited registration shall be valid as provided
2 in sub. (3) (b).

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

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

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

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

1 in s. 137.11 (7) and, if a signature is required, on acceptance of an electronic
2 signature, as defined in s. 137.11 (8).

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

11 (c) This subsection does not limit the authority of the department to require a
12 professional employer organization or professional employer group to register as
13 provided in sub. (2), (4), (5), or (6), to maintain proof of financial capability as
14 required under s. 461.03, or to comply with this chapter and the rules promulgated
15 under s. 461.06; to investigate an applicant or registrant and deny registration or
16 renewal registration under sub. (8), or to investigate an applicant, registrant, or
17 controlling person and take disciplinary action under s. 461.05.

18 **(8) ISSUANCE OF REGISTRATION.** On receipt of an application for registration or
19 for renewal of a registration under subs. (3) to (7) ~~and of the initial credential fee or~~
20 ~~renewal fee determined by the department under s. 440.03 (9) (a),~~ the department
21 shall investigate the applicant or registrant to determine whether the applicant or
22 registrant is qualified for registration or for renewal registration. Except as provided
23 in s. 440.12 and 440.13, the department shall issue a registration or renewal
24 registration if, after completing the investigation, the department determines that
25 the applicant or registrant meets the requirements under this chapter and rules

1 promulgated under s. 461.06 for issuance or renewal of a registration and is satisfied
2 that the applicant or registrant will comply with this chapter and those rules.

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

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

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

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

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

22 **461.03 Financial capability.** Except as provided in s. 461.02 (5) (e) or (7) (b),
23 a professional employer organization or professional employer group shall maintain
24 one of the following:

1 **(1) WORKING CAPITAL REQUIREMENT.** Working capital, as defined by generally
2 accepted accounting principals, of not less than \$100,000, as shown in the financial
3 statement submitted to the department under s. 461.02 (2) (f), (4), or (6). If a
4 professional employer organization or professional employer group has less than
5 \$100,000 in working capital, the department may issue a registration or renewal
6 registration contingent on the registrant meeting the working capital requirement
7 of this subsection no later than 180 days after the issuance of the registration or
8 renewal registration. During the period of contingent registration, the registrant
9 shall submit quarterly financial statements to the department accompanied by an
10 attestation by the chief executive officer of the registrant that all wages, salaries,
11 employee benefits, worker's compensation insurance premiums, payroll taxes,
12 unemployment insurance contributions, and other amounts that are payable to or
13 with respect to an employee of the registrant performing services for a client were
14 paid by the registrant when due.

15 **(2) ALTERNATIVE COMMITMENT.** A bond, certificate of deposit, escrow account, or
16 irrevocable letter of credit in an amount that is not less than \$100,000 or, if the
17 financial statement submitted to the department under s. 461.02 (2) (f), (4), or (6)
18 indicates a deficit in working capital, a bond, certificate of deposit, escrow account,
19 or irrevocable letter of credit in an amount that is not less than \$100,000 plus an
20 amount that is sufficient to cover that deficit. The commitment described in this
21 subsection shall be in a form approved by the department, shall be held in a
22 depository designated by the department, and shall secure the payment by the
23 professional employer organization or professional employer group of any wages,
24 salaries, employee benefits, worker's compensation insurance premiums, payroll
25 taxes, unemployment insurance contributions, or other amounts that are payable to

1 or with respect to an employee performing services for a client if the professional
2 employer organization or professional employer group does not make those
3 payments when due. The commitment shall be established in favor of or be made
4 payable to the department, for the benefit of the state and any employee to whom or
5 with respect to whom the professional employer organization or professional
6 employer group does not make a payment described in this subsection when due. The
7 professional employer organization or professional employer group shall file with the
8 department any agreement, instrument, or other document that is necessary to
9 enforce the commitment against the professional employer organization or
10 professional employer group, or against any relevant 3rd party, or both.

11 **461.04 Rights, duties, and obligations unaffected. (1)** PROFESSIONAL
12 EMPLOYER SERVICES NOT INSURANCE. A professional employer organization or
13 professional employer group that offers, markets, sells, administers, or provides
14 professional employer services that include the provision of employee benefit plans
15 for the employees of the professional employer organization or professional employer
16 group performing services for a client is not engaged in the business or sale of
17 insurance or in the business of an employee benefit plan administrator under ch. 633.
18 This subsection shall be liberally construed to permit professional employer
19 organizations and professional employer groups to provide employee benefit plans
20 as provided in this subsection without being considered to be engaged in the business
21 or sale of insurance or in the business of an employee benefit plan administrator
22 under ch. 633. If a professional employer organization or professional employer
23 group provides life insurance, health care, or disability income benefits for its
24 employees performing services for a client, all of the following apply:

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

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

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

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

17 **(4) TAX CREDITS AND OTHER ECONOMIC DEVELOPMENT INCENTIVES.** For purposes of
18 determining tax credits, other economic development incentives provided by the
19 state that are based on providing employment, or any other benefits that arises out
20 of the employment of an employee of a professional employer organization or
21 professional employer group who is performing services for a client, such an
22 employee is considered to be an employee solely of the client, and the client is entitled
23 to the benefit of the tax credit, economic development incentive, or other benefit. If
24 the amount of a tax credit, incentive, or benefit described in this subsection is based
25 on the number of employees employed by a client, only those employees of a

1 professional employer organization or professional employer group who are
2 performing services for the client shall be treated as employees employed by the
3 client, and employees of the professional employer organization or professional
4 employer group who are performing services for another client shall not be treated
5 as employees employed by the client. On request of a client that is seeking a tax
6 credit, incentive, or other benefit described in this subsection or of an agency of this
7 state that is responsible for administering such a tax credit, incentive, or benefit, a
8 professional employer organization or professional employer group shall provide any
9 employment information reasonably required by the agency that is necessary to
10 support a claim, application, or other action by the client.

11 **461.05 Disciplinary proceedings. (1) INVESTIGATIONS.** Subject to the rules
12 promulgated under s. 440.03 (1), the department may conduct investigations and
13 hearings to determine whether a violation of this chapter or any rule promulgated
14 under s. 461.06 has occurred.

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

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

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

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

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

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

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

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

21 **461.06 Rules.** The department shall promulgate rules to implement this
22 chapter. Those rules shall include rules providing for all of the following:

23 **(1)** Alternative registration of professional employer organizations under s.
24 461.02 (7) (a) and (b).

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

3 (3) Minimum requirements for issuance or renewal of a registration under s.
4 461.02 (8).

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

6 635.02 (7) (b) 3. A professional employer organization, as defined in s. 461.01
7 (5), or a professional employer group, as defined in s. 461.01 (4), that provides health
8 care benefits to more than 50 employees performing services for a client, as defined
9 in s. 461.01 (2).

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

15 SECTION 5. **Nonstatutory provisions.**

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

21 ~~(2) POSITION AUTHORIZATION. The authorized FTE positions for the department~~
22 ~~of regulation and licensing are increased by 0.5 PR position on July 1, 2009, to be~~
23 ~~funded from the appropriation under section 20.165 (1) (g) of the statutes, for the~~
24 ~~purpose of administering the registration of professional employer organizations~~

1 and professional employer groups under chapter 461 of the statutes, as created by
2 this act.

3 (3) INITIAL FEE DETERMINATION. The department of regulation and licensing
4 shall determine the initial fees for registration or for renewal registration under
5 section 461.02 (3) to (7) of the statutes, as created by this act, as provided in section
6 440.03 (9) of the statutes. Not later than 14 days after determining those fees, the
7 department shall send a report detailing those proposed fees to the cochairpersons
8 of the joint committee on finance. If, within 14 days after the date on which the
9 department submits the report, the cochairpersons of the committee notify the
10 secretary of regulation and licensing that the committee has scheduled a meeting for
11 the purpose of reviewing the proposed fees, the department may not impose the fees
12 until the committee approves the report. If the cochairpersons of the committee do
13 not notify the secretary, the department shall post the fees on the department's
14 Internet site.

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

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

19 (END)

D. Note

Date

*LRB 030317/ldn
GMM: kjf*

Representative Newcomer:

*There are references throughout the bill to paying the initial or
renewal credential fee under s. 440.03 (9)(a). Because those references
could be construed as affecting state revenues, this substitute amendment
deletes those references. As such, there is no authority in the
substitute amendment for DORL to charge registration fees unless DORL
provides itself that authority by rule.*

GMM

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBs0317/1dn
GMM:kjf:rs

February 28, 2008

Representative Newcomer:

There are references throughout the bill to paying the initial or renewal credential fee under s. 440.03 (9) (a). Because those references could be construed as affecting state revenues, this substitute amendment deletes those references. As such, there is no authority in the substitute amendment for DORL to change registration fees unless DORL provides itself that authority by rule.

Gordon M. Malaise
Senior Legislative Attorney
Phone: (608) 266-9738
E-mail: gordon.malaise@legis.wisconsin.gov