AN ACT to renumber 461.02 (9) (a) to (d); to renumber and amend 461.02 (2) (f), 461.02 (9) (intro.) (except 461.02 (9) (title)) and 461.04 (4); to amend 440.08 (2) (a) (intro.), 461.01 (5), 461.02 (2) (intro.), 461.02 (4) (a), 461.02 (5) (title), 461.02 (5) (a) to (d), 461.02 (6), 461.03 (1), 461.03 (2) and 461.04 (4) (title); and to create 461.02 (2) (f) 2., 461.02 (4) (c), 461.04 (4) (a), 461.04 (4) (c) and 461.10 of the statutes; relating to: professional employer organizations.

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

SECTION 1. 440.08 (2) (a) (intro.) of the statutes 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 461.07 (3) (a) and (b) and (4), the renewal dates for credentials are as follows:

SECTION 2. 461.01 (5) of the statutes is amended to read:
461.01 (5) “Professional employer organization” means a person that is engaged in the business of entering into written contracts for the provision of the non-temporary, 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 any other name, as part of the person’s business name or to describe the person’s business. “Professional employer organization” does not mean a temporary help agency, as defined in s. 102.01 (2) (f), or a temporary help company, as defined in s. 108.02 (24m).

SECTION 3. 461.02 (2) (intro.) of the statutes, as affected by 2009 Wisconsin Act 29, is amended to read:
461.02 (2) (intro.) Except as provided in sub. (7) (b), an applicant for registration under this section shall submit to the department an application for registration on a form prescribed by the department, together with the registration fee determined by the department under s. 440.03 (9) (a), that contains and all of the following information:

SECTION 4. 461.02 (2) (f) of the statutes is renumbered 461.02 (2) (f) 1. and amended to read:
461.02 (2) (f) 1. 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 subdivision by submitting a combined or consolidated audited financial statement.
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 subdivision by submitting financial statements that have been reviewed by an independent certified public accountant.

**Section 5.** 461.02 (2) (f) 2. of the statutes is created to read:

461.02 (2) (f) 2. Subdivision 1. does not apply to a professional employer organization or professional employer group applying for registration under sub. (5).

**Section 6.** 461.02 (4) (a) of the statutes, as affected by 2009 Wisconsin Act 29, is amended to read:

461.02 (4) (a) On Renewal applications shall be submitted, together with the applicable renewal fee determined by the department under s. 440.03 (9) (a), to the department on a form provided by the department or on or before the applicable renewal date specified under s. 440.08 (2) (a), and except, Except as provided in par. (b) and (c) and sub. (7) (b), a registrant that wishes to renew its registration the renewal application shall submit to the department, on forms furnished by the department, a renewal application, together with an updated be accompanied by a financial statement described as that term is used in sub. (2) (f) and the renewal fee determined by the department under s. 440.03 (9) (a). A renewal of registration is valid for one year after the date of renewal 1, updated to reflect the current financial condition of the registrant.

**Section 7.** 461.02 (4) (c) of the statutes is created to read:

461.02 (4) (c) A professional employer organization or professional employer group applying to renew a registration issued under sub. (5) is not required to submit a financial statement under this subsection.

**Section 8.** 461.02 (5) (title) of the statutes is amended to read:

461.02 (5) (title) **LIMITED SMALL OPERATIONS REGISTRATION.**

**Section 9.** 461.02 (5) (a) to (d) of the statutes, as affected by 2009 Wisconsin Act 29, are amended to read:

461.02 (5) (a) Except as provided in sub. (7) (b), 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 small operations registration** under this section by filing with the department a **limited small operations 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 small operations registration** shall, in addition to the information provided required under sub. (2) (a) to (e), provide the department with information and documentation showing that the applicant meets the qualifications specified in this paragraph for **limited small operations registration.**

(b) Except as provided in sub. (7) (b), a professional employer organization or professional employer group seeking **limited small operations registration** that has no employees performing services for clients in this state on July 1, 2009, 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) Except as provided in sub. (7) (b), a professional employer organization or professional employer group seeking **limited small operations registration** that does not have employees performing services for clients in this state on July 1, 2009, 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) Except as provided in sub. (7) (b), a professional employer organization or professional employer group registered under this subsection that wishes to renew its **limited small operations registration** shall, in addition to complying with sub. (4), provide the department with information and documentation showing that the professional employer organization or professional employer group continues to meet the qualifications specified in par. (a) for **limited small operations registration, and the limited registration shall be valid as provided in sub. (4).**

**Section 10.** 461.02 (6) of the statutes, as affected by 2009 Wisconsin Act 29, is amended to read:

461.02 (6) **PROFESSIONAL EMPLOYER GROUP REGISTRATION.** Except as provided in sub. (7) (b), 2 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) 1, 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.

**Section 11.** 461.02 (9) (intro.) (except 461.02 (9) (title)) of the statutes is renumbered 461.02 (9) (am) and amended to read:

461.02 (9) (am) The department shall maintain and periodically update a list of all professional employer organizations and professional employer groups registered under this section. All and shall make the list avail-
able on the department’s Internet Web site. The list shall include the address of each registrant.

(bm) Except as provided in par. (am), 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:

SECTION 12. 461.02 (9) (a) to (d) of the statutes are renumbered 461.02 (9) (bm) 1. to 4.

SECTION 13. 461.03 (1) of the statutes is amended to read:

461.03 (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.

SECTION 14. 461.03 (2) of the statutes is amended to read:

461.03 (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 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.

SECTION 15. 461.04 (4) (c) of the statutes is created to read:

461.04 (4) (c) Taxes, assessments, expenditures, or benefits required by the state or a local governmental unit to be paid by an employer on a per employee basis shall be paid by, assessed against, or charged to a client if the
employee is providing services for that client or by a professional employer organization or professional employer group if the employee is providing services to the professional employer organization or professional employer group and not assigned to or providing services for a specific client. Benefits or monetary consideration provided or paid to an employee by a professional employer organization or professional employer group shall be credited against the obligations required to be paid by, assessed against, or charged to the client if the benefits or monetary consideration provided or paid to the employee satisfy the requirements imposed by the state or local governmental unit.

SECTION 19. 461.10 of the statutes is created to read: 461.10 Short title. This chapter shall be known as the “Wisconsin Professional Employer Organizations Act.”