



2009 SENATE BILL 216

May 22, 2009 - Introduced by Senator WIRCH, cosponsored by Representatives HILGENBERG and NEWCOMER. Referred to Committee on Small Business, Emergency Preparedness, Technical Colleges, and Consumer Protection.

1 **AN ACT** *to renumber and amend* 461.02 (1) and 461.02 (4); *to amend* 461.02
2 (1) (title), 461.02 (2) (intro.), 461.02 (3) (a), 461.02 (3) (b), 461.02 (5), 461.02 (6),
3 461.02 (7) (b), 461.02 (8) and 461.04 (1) (intro.); *to repeal and recreate* 461.02
4 (4) (title); and *to create* 440.08 (2) (a) 63p. and 461.02 (1) (b) of the statutes;
5 **relating to:** professional employer organizations and professional employer
6 groups.

Analysis by the Legislative Reference Bureau

Under current law, beginning on July 1, 2009, a person that wishes to provide or offer professional employer services in this state must register with the Department of Regulation and Licensing (DRL) as a professional employer organization (PEO) or a professional employer group (PEG). An initial registration issued by DRL is valid until 180 days after the end of the first fiscal year of the PEO or PEG that ends more than one year after July 1, 2009. A PEO or PEG that wishes to renew its registration must apply for renewal no later than 180 days after the end of the PEO's or PEG's fiscal year. The PEO or PEG must submit a copy of an updated financial statement with the application for renewal. The PEO or PEG may apply to DRL for an extension of the renewal period if the PEO or PEG submits with the application for renewal a letter from the certified public accountant that is auditing the PEO's or PEG's financial statement.

This bill provides that a PEO or PEG must annually apply to DRL for renewal of a registration by July 31 of each year, which is consistent with other credentials

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administered by DRL. The bill provides that a PEO or PEG may apply to DRL for an extension of time to submit an updated financial statement, but not for an application for renewal.

Under current law, beginning on July 1, 2009, no person may offer or provide professional employer services or advertise that the person provides professional employer services or is a professional employer organization unless the person is registered with DRL. This bill prohibits a person from operating as a professional employer organization or professional employer group or advertising that the person is a professional employer organization or professional employer group unless the person is registered with DRL.

This bill also prohibits a person from using the titles, "professional employer organization," "PEO," "professional employer group," "PEG," or similar titles unless the person is registered as a PEO or PEG by DRL.

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

1 **SECTION 1.** 440.08 (2) (a) 63p. of the statutes is created to read:

2 440.08 (2) (a) 63p. Professional employer organization or professional
3 employer group: July 31 of each year.

4 **SECTION 2.** 461.02 (1) (title) of the statutes, as created by 2007 Wisconsin Act
5 189, is amended to read:

6 461.02 (1) (title) REGISTRATION REQUIRED; USE OF TITLES.

7 **SECTION 3.** 461.02 (1) of the statutes, as created by 2007 Wisconsin Act 189, is
8 renumbered 461.02 (1) (a) and amended to read:

9 461.02 (1) (a) No person may ~~offer or provide~~ operate as a professional employer
10 services organization or professional employer group, advertise that the person is a
11 professional employer organization or ~~that the person provides professional~~
12 ~~employer services~~ professional employer group, or otherwise hold itself out as a
13 professional employer organization or professional employer group unless the
14 person first registers with the department as provided in this section. ~~To register~~

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1 under this section, a person shall file the registration form under sub. (2) and pay the
2 initial credential fee determined by the department under s. 440.03 (9) (a).

3 **SECTION 4.** 461.02 (1) (b) of the statutes, as created by 2007 Wisconsin Act 189,
4 is created to read:

5 461.02 (1) (b) No person may designate as the person's title, or append to the
6 person's name the words or letters, "professional employer organization," "P.E.O.,"
7 "professional employer group," "P.E.G.," "staff leasing company," "registered staff
8 leasing company," "employee leasing company," or "administrative employer," or
9 other similar titles or letters, or use these titles, words, or letters to describe the
10 person's business or represent that the person or the person's business is registered
11 or licensed as "professional employer organization," "P.E.O.," "professional employer
12 group," "P.E.G.," "staff leasing company," "registered staff leasing company,"
13 "employee leasing company," or "administrative employer," unless the person is
14 registered by the department under this chapter.

15 **SECTION 5.** 461.02 (2) (intro.) of the statutes, as created by 2007 Wisconsin Act
16 189, is amended to read:

17 461.02 (2) REGISTRATION APPLICATION FORM. (intro.) ~~To apply~~ Except as provided
18 in sub. (7) (b), an applicant for registration under this section, ~~an applicant shall file~~
19 ~~with~~ submit to the department a an application for registration on a form prescribed
20 by the department, together with the registration fee determined by the department
21 under s. 440.03 (9) (a), that contains all of the following information:

22 **SECTION 6.** 461.02 (3) (a) of the statutes, as created by 2007 Wisconsin Act 189,
23 is amended to read:

24 461.02 (3) (a) Each professional employer organization or professional
25 employer group that is operating in this state on July 1, 2009, shall register with the

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1 department by no later than 180 days after that date. ~~An initial registration under~~
2 ~~this paragraph is valid until 180 days after the end of the first fiscal year of the~~
3 ~~registrant that ends more than one year after July 1, 2009.~~

4 **SECTION 7.** 461.02 (3) (b) of the statutes, as created by 2007 Wisconsin Act 189,
5 is amended to read:

6 461.02 (3) (b) Any person that is not engaged in the business of providing
7 operating as a professional employer services organization or a professional
8 employer group in this state on July 1, 2009, shall register with the department
9 before engaging in that business operating as a professional employer organization
10 or professional employer group in this state. ~~An initial registration under this~~
11 ~~paragraph is valid until 180 days after the end of the first fiscal year of the registrant~~
12 ~~that ends after the date of initial registration.~~

13 **SECTION 8.** 461.02 (4) (title) of the statutes, as created by 2007 Wisconsin Act
14 189, is repealed and recreated to read:

15 461.02 (4) (title) REGISTRATION RENEWAL; EXTENSION FOR FILING UPDATED
16 FINANCIAL STATEMENT.

17 **SECTION 9.** 461.02 (4) of the statutes, as created by 2007 Wisconsin Act 189, is
18 renumbered 461.02 (4) (a) and amended to read:

19 461.02 (4) (a) ~~A~~ On or before the applicable renewal date specified under s.
20 440.08 (2) (a), and except as provided in par. (b) and sub. (7) (b), a registrant that
21 wishes to renew its registration shall, by no later than 180 days after the end of the
22 registrant's fiscal year, renew that registration by notifying submit to the
23 department of any changes in the information specified in sub. (2) (a) to (e), filing,
24 on forms furnished by the department, a renewal application, together with an
25 updated financial statement as described in sub. (2) (f), and paying the renewal

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1 credential fee determined by the department under s. 440.03 (9) (a). A renewal of
2 registration is valid for one year after the date of renewal.

3 (b) A registrant may apply to the department for an extension of the time within
4 which to ~~renew a registration~~ submit the updated financial statement required
5 under par. (a) by providing with the renewal application a letter from the certified
6 public accountant who is auditing the registrant's financial statement stating the
7 reasons for the delay and the anticipated completion date of the audit. ~~A renewal~~
8 ~~registration is valid for one year after the date of renewal.~~

9 **SECTION 10.** 461.02 (5) of the statutes, as created by 2007 Wisconsin Act 189,
10 is amended to read:

11 461.02 (5) LIMITED REGISTRATION. (a) ~~A~~ Except as provided in sub. (7) (b), a
12 professional employer organization or professional employer group that is domiciled
13 outside this state, that is registered or licensed as a professional employer
14 organization or professional employer group in another state, that does not maintain
15 an office in this state or directly solicit clients that are located or domiciled in this
16 state, and that has no more than 50 employees performing services for clients in this
17 state on any given day may apply for limited registration under this section by filing
18 with the department a limited registration form prescribed by the department and
19 paying the initial credential fee determined by the department under s. 440.03 (9)
20 (a). An applicant that is seeking limited registration shall, in addition to the
21 information provided under sub. (2), provide the department with information and
22 documentation showing that the applicant meets the qualifications specified in this
23 paragraph for limited registration.

24 (b) ~~A~~ Except as provided in sub. (7) (b), a professional employer organization
25 or professional employer group seeking limited registration that has employees

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1 performing services for clients in this state on July 1, 2009, shall register with the
2 department as provided in sub. (3) (a), and the initial limited registration shall be
3 valid as provided in sub. (3) (a).

4 (c) ~~A~~ Except as provided in sub. (7) (b), a professional employer organization
5 or professional employer group seeking limited registration that does not have
6 employees performing services for clients in this state on July 1, 2009, shall register
7 with the department as provided in sub. (3) (b), before contracting with a client in this
8 state, and the initial limited registration shall be valid as provided in sub. (3) (b).

9 (d) ~~A registrant~~ Except as provided in sub. (7) (b), a professional employer
10 organization or professional employer group registered under this subsection that
11 wishes to renew its limited registration shall, in addition to complying with sub. (4),
12 provide the department with information and documentation showing that the
13 ~~registrant~~ professional employer organization or professional employer group
14 continues to meet the qualifications specified in par. (a) for limited registration, and
15 the limited registration shall be valid as provided in sub. (4).

16 (e) ~~A limited registrant~~ professional employer organization or professional
17 employer group registered under this subsection is not required to comply with the
18 financial capability requirement under s. 461.03.

19 **SECTION 11.** 461.02 (6) of the statutes, as created by 2007 Wisconsin Act 189,
20 is amended to read:

21 461.02 (6) PROFESSIONAL EMPLOYER GROUP REGISTRATION. ~~Two~~ Except as
22 provided in sub. (7) (b), 2 or more professional employer organizations that are part
23 of a professional employer group may register under this section or renew a
24 registration by providing the information required under sub. (2), (4), or (5) on a
25 combined or consolidated basis, paying the initial credential or renewal fee

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1 determined by the department under s. 440.03 (9) (a), and guaranteeing each other's
2 obligations. If a professional employer group provides a combined or consolidated
3 financial statement under sub. (2) (f) that includes the financial condition of entities
4 that are not part of the professional employer group, the person controlling the
5 professional employer group shall guarantee the obligations of the professional
6 employer organizations in the professional employer group.

7 **SECTION 12.** 461.02 (7) (b) of the statutes, as created by 2007 Wisconsin Act 189,
8 is amended to read:

9 461.02 (7) (b) The department may by rule provide for registration of a
10 professional employer organization or professional employer group without
11 compliance with sub. (2), (4), (5), or (6), s. 461.03, or rules promulgated under s.
12 461.06 on acceptance by the department of assurance provided by a bonded,
13 independent, and qualified assurance organization that has been approved by the
14 department that provides assurance satisfactory to the department that the
15 professional employer organization or professional employer group is qualified to
16 ~~engage in the business of providing~~ operate as a professional employer services
17 organization or a professional employer group in this state.

18 **SECTION 13.** 461.02 (8) of the statutes, as created by 2007 Wisconsin Act 189,
19 is amended to read:

20 461.02 (8) ISSUANCE OF REGISTRATION. ~~On receipt of an application for~~
21 ~~registration or for renewal of a registration under subs. (3) to (7) and of the initial~~
22 ~~credential fee or renewal fee determined by the department under s. 440.03 (9) (a),~~
23 ~~the~~ The department shall investigate the applicant or registrant each applicant or
24 registrant who submits to the department an application for registration or
25 registration renewal under this section, together with the applicable registration or

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1 registration renewal fee, to determine whether the applicant or registrant is
2 qualified for registration or for renewal registration. Except as provided in s. 440.12
3 and 440.13, the department shall issue a registration or renewal registration if, after
4 completing the investigation, the department determines that the applicant or
5 registrant meets the requirements under this chapter and rules promulgated under
6 s. 461.06 for issuance or renewal of a registration and is satisfied that the applicant
7 or registrant will comply with this chapter and those rules.

8 **SECTION 14.** 461.04 (1) (intro.) of the statutes, as created by 2007 Wisconsin Act
9 189, is amended to read:

10 461.04 (1) PROFESSIONAL EMPLOYER SERVICES ORGANIZATION AND PROFESSIONAL
11 EMPLOYER GROUP NOT INSURANCE. (intro.) A professional employer organization or
12 professional employer group that offers, markets, sells, administers, or provides
13 ~~professional employer~~ services that include the provision of employee benefit plans
14 for the employees of the professional employer organization or professional employer
15 group performing services for a client is not engaged in the business or sale of
16 insurance or in the business of an employee benefit plan administrator under ch. 633.
17 This subsection shall be liberally construed to permit professional employer
18 organizations and professional employer groups to provide employee benefit plans
19 as provided in this subsection without being considered to be engaged in the business
20 or sale of insurance or in the business of an employee benefit plan administrator
21 under ch. 633. If a professional employer organization or professional employer
22 group provides life insurance, health care, or disability income benefits for its
23 employees performing services for a client, all of the following apply:

24 **SECTION 15. Effective date.**

