



2009 SENATE BILL 504

February 1, 2010 – 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* 461.02 (9) (a) to (d); *to renumber and amend* 461.02 (2)
2 (f), 461.02 (9) (intro.) (except 461.02 (9) (title)) and 461.04 (4); *to amend* 440.08
3 (2) (a) (intro.), 461.01 (5), 461.02 (2) (intro.), 461.02 (4) (a), 461.02 (5) (title),
4 461.02 (5) (a) to (d), 461.02 (6), 461.03 (1), 461.03 (2) and 461.04 (4) (title); and
5 **to create** 461.02 (2) (f) 2., 461.02 (4) (c), 461.04 (4) (a), 461.04 (4) (c) and 461.10
6 of the statutes; **relating to:** professional employer organizations.

Analysis by the Legislative Reference Bureau

Under current law, a professional employer organization (PEO) or professional employer group (PEG) must apply for and obtain registration with the Department of Regulation and Licensing (department) prior to providing professional employer services in this state. This bill makes a number of changes to the law governing PEOs and PEGs.

Change to definition of PEO

Current law defines a PEO to mean a person engaged in the business of entering into written contracts for the provision of the nontemporary, ongoing employee workforce of a client and that under the contract has the obligation to pay the employees providing services for the client. A PEG is defined to mean two or more PEOs controlled by the same person. Current law defines a temporary help agency as an employer who places its employee with or leases its employees to another

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employer who controls the employee's work activities and compensates the first employer for the employee's services, regardless of the duration of the services. Current law defines a temporary help company as an entity that contracts with a client to supply individuals to perform services for the client on a temporary basis to support or supplement the workforce of the client in situations such as personnel absences, temporary personnel shortages, and workload changes resulting from seasonal demands or special assignments or projects, and that hires and terminates the employment of, sets the rate of pay of, and pays the individuals.

This bill modifies the definition of PEO to explicitly exclude from the definition both a temporary help agency and a temporary help company.

PEO and PEG small operations registration

Currently, a PEO or PEG that has no more than 50 employees performing services for clients in Wisconsin and that is registered or licensed in another state, domiciled in another state, and does not maintain an office in Wisconsin or directly solicit clients that are located or domiciled in Wisconsin may apply for limited registration. This bill changes the name of such registration from limited to small operations.

Currently, an application for PEO or PEG registration or the renewal of registration must be accompanied by a financial statement that sets forth the financial condition of the applicant. This bill exempts a PEO or PEG seeking small operations registration or the renewal of small operations registration from the requirement to provide a financial statement to the department.

Treatment of tax credits and economic development incentives for providing employment and payment of taxes, assessments, expenditures, and benefits of employees

Current law provides that, in the event a client of a PEO or PEG is entitled to obtain tax credits or other economic development incentives from the state as a result of that client providing employment, the employees of a PEO or PEG who are providing services for that client are to be considered the employees of the client for purposes of determining the value of such tax credits or economic development incentives. This bill provides that the employees of a PEO or PEG who are providing services for the client will also be considered the employees of the client for the purposes of determining the value of any tax credits or economic development incentives that may be provided by a local governmental unit to a client who provides employment. The bill defines a local governmental unit as a political subdivision of or special purpose district in this state; an instrumentality or corporation of such a political subdivision or special purpose district; a combination or subunit of a political subdivision, special purpose district, instrumentality, or corporation; or an instrumentality of the state and any of the foregoing.

The bill also requires that any 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 is to be paid by the client of the PEO or PEG if the employee is performing services for that client, or by the PEO or PEG if the employee is not assigned to or providing services for a client. If a PEO or PEG pays any benefits or monetary consideration to its employees and the benefits or monetary consideration

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satisfy the requirements imposed by the state or local government unit, the amount of the benefits or monetary consideration are to be applied to any obligations required to be paid by, assessed against, or charged to a client.

Database of registrants

Currently, the department must maintain a list of registered PEOs and PEGs. This bill provides that the department must periodically update the list and make the list available on the department's Internet Web site, and that the list must include the address of each registrant.

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

1 **SECTION 1.** 440.08 (2) (a) (intro.) of the statutes is amended to read:
2 440.08 **(2)** (a) (intro.) Except as provided in par. (b) and in ss. 440.51, 442.04,
3 444.03, 444.11, 448.065, 447.04 (2) (c) 2., 449.17 (1m) (d), and 449.18 (2) (d), ~~and~~
4 461.02 (3) (a) and (b) and (4), the renewal dates for credentials are as follows:
5 **SECTION 2.** 461.01 (5) of the statutes is amended to read:
6 461.01 **(5)** "Professional employer organization" means a person that is
7 engaged in the business of entering into written contracts for the provision of the
8 nontemporary, ongoing employee workforce of a client and providing services under
9 those contracts and that under those contracts has the obligation to pay the
10 employees providing services for those clients from its own accounts, regardless of
11 whether the person uses the term "professional employer organization," "PEO,"
12 "staff leasing company," "registered staff leasing company," "employee leasing
13 company," or "administrative employer," or uses any other name, as part of the
14 person's business name or to describe the person's business. "Professional employer
15 organization" does not mean a temporary help agency, as defined in s. 102.01 (2) (f),
16 or a temporary help company, as defined in s. 108.02 (24m).

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1 **SECTION 3.** 461.02 (2) (intro.) of the statutes, as affected by 2009 Wisconsin Act
2 29, is amended to read:

3 461.02 **(2)** (intro.) Except as provided in sub. (7) (b), an applicant for
4 registration under this section shall submit to the department an application for
5 registration on a form prescribed by the department, together with the registration
6 fee determined by the department under s. 440.03 (9) (a), ~~that contains~~ and all of the
7 following information:

8 **SECTION 4.** 461.02 (2) (f) of the statutes is renumbered 461.02 (2) (f) 1. and
9 amended to read:

10 461.02 **(2)** (f) 1. ~~A~~ Except as provided under subd. 2., a financial statement that
11 sets forth the financial condition of the applicant as of a date that is not more than
12 13 months preceding the date of the application, that is prepared in accordance with
13 generally accepted accounting principles, and that has been audited by an
14 independent certified public accountant. The financial statement shall be without
15 qualification as to the going concern status of the applicant. A professional employer
16 group may meet the requirements of this ~~paragraph~~ subdivision by submitting a
17 combined or consolidated audited financial statement. An applicant that does not
18 have sufficient operating history to have an audited financial statement that is based
19 on at least 12 months of operating history may meet the requirements of this
20 ~~paragraph~~ subdivision by submitting financial statements that have been reviewed
21 by an independent certified public accountant.

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

23 461.02 **(2)** (f) 2. Subdivision 1. does not apply to a professional employer
24 organization or professional employer group applying for registration under sub. (5).

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

3 461.02 (4) (a) ~~On Renewal applications shall be submitted, together with the~~
4 ~~applicable renewal fee determined by the department under s. 440.03 (9) (a), to the~~
5 ~~department on a form provided by the department on or before the applicable~~
6 ~~renewal date specified under s. 440.08 (2) (a), and except. Except as provided in par.~~
7 ~~pars. (b) and (c) and sub. (7) (b), a registrant that wishes to renew its registration~~
8 ~~the renewal application shall submit to the department, on forms furnished by the~~
9 ~~department, a renewal application, together with an updated be accompanied by a~~
10 ~~financial statement described, as that term is used in sub. (2) (f) and the renewal fee~~
11 ~~determined by the department under s. 440.03 (9) (a). A renewal of registration is~~
12 ~~valid for one year after the date of renewal 1., updated to reflect the current financial~~
13 ~~condition of the registrant.~~

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

15 461.02 (4) (c) A professional employer organization or professional employer
16 group applying to renew a registration issued under sub. (5) is not required to submit
17 a financial statement under this subsection.

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

19 461.02 (5) (title) ~~LIMITED~~ SMALL OPERATIONS REGISTRATION.

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

22 461.02 (5) (a) Except as provided in sub. (7) (b), a professional employer
23 organization or professional employer group that is domiciled outside this state, that
24 is registered or licensed as a professional employer organization or professional
25 employer group in another state, that does not maintain an office in this state or

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1 directly solicit clients that are located or domiciled in this state, and that has no more
2 than 50 employees performing services for clients in this state on any given day may
3 apply for limited small operations registration under this section by filing with the
4 department a limited small operations registration form prescribed by the
5 department and paying the initial credential fee determined by the department
6 under s. 440.03 (9) (a). An applicant that is seeking limited small operations
7 registration shall, in addition to the information ~~provided~~ required under sub. (2) (a)
8 to (e), provide the department with information and documentation showing that the
9 applicant meets the qualifications specified in this paragraph for limited small
10 operations registration.

11 (b) Except as provided in sub. (7) (b), a professional employer organization or
12 professional employer group seeking limited small operations registration that has
13 employees performing services for clients in this state on July 1, 2009, shall register
14 with the department as provided in sub. (3) (a), ~~and the initial limited registration~~
15 ~~shall be valid as provided in sub. (3) (a).~~

16 (c) Except as provided in sub. (7) (b), a professional employer organization or
17 professional employer group seeking limited small operations registration that does
18 not have employees performing services for clients in this state on July 1, 2009, shall
19 register with the department as provided in sub. (3) (b), before contracting with a
20 client in this state, ~~and the initial limited registration shall be valid as provided in~~
21 ~~sub. (3) (b).~~

22 (d) Except as provided in sub. (7) (b), a professional employer organization or
23 professional employer group registered under this subsection that wishes to renew
24 its limited small operations registration shall, in addition to complying with sub. (4),
25 provide the department with information and documentation showing that the

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1 professional employer organization or professional employer group continues to
2 meet the qualifications specified in par. (a) for limited small operations registration,
3 ~~and the limited registration shall be valid as provided in sub. (4).~~

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

6 461.02 (6) PROFESSIONAL EMPLOYER GROUP REGISTRATION. Except as provided in
7 sub. (7) (b), 2 or more professional employer organizations that are part of a
8 professional employer group may register under this section or renew a registration
9 by providing the information required under sub. (2), (4), or (5) on a combined or
10 consolidated basis, paying the initial credential or renewal fee determined by the
11 department under s. 440.03 (9) (a), and guaranteeing each other's obligations. If a
12 professional employer group provides a combined or consolidated financial
13 statement under sub. (2) (f) 1. that includes the financial condition of entities that
14 are not part of the professional employer group, the person controlling the
15 professional employer group shall guarantee the obligations of the professional
16 employer organizations in the professional employer group.

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

19 461.02 (9) (am) The department shall maintain and periodically update a list
20 of all professional employer organizations and professional employer groups
21 registered under this section.—All, and shall make the list available on the
22 department's Internet Web site. The list shall include the address of each registrant.

23 (bm) Except as provided in par. (am), all records maintained by the department
24 that contain any information obtained from an applicant or registrant are

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1 confidential and not open to public inspection or copying under s. 19.35 (1) unless one
2 of the following applies:

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

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

6 461.03 (1) WORKING CAPITAL REQUIREMENT. Working capital, as defined by
7 generally accepted accounting principals, of not less than \$100,000, as shown in the
8 financial statement submitted to the department under s. 461.02 (2) (f) 1, (4), or (6).
9 If a professional employer organization or professional employer group has less than
10 \$100,000 in working capital, the department may issue a registration or renewal
11 registration contingent on the registrant meeting the working capital requirement
12 of this subsection no later than 180 days after the issuance of the registration or
13 renewal registration. During the period of contingent registration, the registrant
14 shall submit quarterly financial statements to the department accompanied by an
15 attestation by the chief executive officer of the registrant that all wages, salaries,
16 employee benefits, worker's compensation insurance premiums, payroll taxes,
17 unemployment insurance contributions, and other amounts that are payable to or
18 with respect to an employee of the registrant performing services for a client were
19 paid by the registrant when due.

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

21 461.03 (2) ALTERNATIVE COMMITMENT. A bond, certificate of deposit, escrow
22 account, or irrevocable letter of credit in an amount that is not less than \$100,000
23 or, if the financial statement submitted to the department under s. 461.02 (2) (f) 1,
24 (4), or (6) indicates a deficit in working capital, a bond, certificate of deposit, escrow
25 account, or irrevocable letter of credit in an amount that is not less than \$100,000

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1 plus an amount that is sufficient to cover that deficit. The commitment described in
2 this subsection shall be in a form approved by the department, shall be held in a
3 depository designated by the department, and shall secure the payment by the
4 professional employer organization or professional employer group of any wages,
5 salaries, employee benefits, worker's compensation insurance premiums, payroll
6 taxes, unemployment insurance contributions, or other amounts that are payable to
7 or with respect to an employee performing services for a client if the professional
8 employer organization or professional employer group does not make those
9 payments when due. The commitment shall be established in favor of or be made
10 payable to the department, for the benefit of the state and any employee to whom or
11 with respect to whom the professional employer organization or professional
12 employer group does not make a payment described in this subsection when due. The
13 professional employer organization or professional employer group shall file with the
14 department any agreement, instrument, or other document that is necessary to
15 enforce the commitment against the professional employer organization or
16 professional employer group, or against any relevant 3rd party, or both.

17 **SECTION 15.** 461.04 (4) (title) of the statutes is amended to read:

18 461.04 (4) (title) TAX CREDITS AND OTHER ECONOMIC DEVELOPMENT INCENTIVES;
19 TAXES, ASSESSMENTS, EXPENDITURES, AND BENEFITS.

20 **SECTION 16.** 461.04 (4) of the statutes is renumbered 461.04 (4) (b) and
21 amended to read:

22 461.04 (4) (b) For purposes of determining tax credits, other economic
23 development incentives provided by the state or a local governmental unit that are
24 based on providing employment, or any other benefits that arises arise out of the
25 employment of an employee of a professional employer organization or professional

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1 employer group who is performing services for a client, such an employee is
2 considered to be an employee solely of the client, and the client is entitled to the
3 benefit of the tax credit, economic development incentive, or other benefit. If the
4 amount of a tax credit, incentive, or benefit described in this subsection paragraph
5 is based on the number of employees employed by a client, only those employees of
6 a professional employer organization or professional employer group who are
7 performing services for the client shall be treated as employees employed by the
8 client, and employees of the professional employer organization or professional
9 employer group who are performing services for the professional employer
10 organization or professional employer group or for another client shall not be treated
11 as employees employed by the client. On request of a client that is seeking a tax
12 credit, incentive, or other benefit described in this subsection paragraph or on
13 request of an agency of this state or local governmental unit that is responsible for
14 administering such a tax credit, incentive, or benefit, a professional employer
15 organization or professional employer group shall provide any employment
16 information requested and reasonably required by the agency or local governmental
17 unit that is necessary to support a claim, application, or other action by the client.

18 **SECTION 17.** 461.04 (4) (a) of the statutes is created to read:

19 461.04 (4) (a) In this subsection, “local governmental unit” has the meaning
20 given in s. 19.42 (7u).

21 **SECTION 18.** 461.04 (4) (c) of the statutes is created to read:

22 461.04 (4) (c) Taxes, assessments, expenditures, or benefits required by the
23 state or a local governmental unit to be paid by an employer on a per employee basis
24 shall be paid by, assessed against, or charged to a client if the employee is providing
25 services for that client or by a professional employer organization or professional

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1 employer group if the employee is providing services to the professional employer
2 organization or professional employer group and not assigned to or providing
3 services for a specific client. Benefits or monetary consideration provided or paid to
4 an employee by a professional employer organization or professional employer group
5 shall be credited against the obligations required to be paid by, assessed against, or
6 charged to the client if the benefits or monetary consideration provided or paid to the
7 employee satisfy the requirements imposed by the state or local governmental unit.

8 **SECTION 19.** 461.10 of the statutes is created to read:

9 **461.10 Short title.** This chapter shall be known as the “Wisconsin
10 Professional Employer Organizations Act.”

11

(END)