

CHAPTER 202

REGULATION OF PROFESSIONAL EMPLOYER ORGANIZATIONS AND THE SOLICITATION
OF FUNDS FOR A CHARITABLE PURPOSESUBCHAPTER I
GENERAL PROVISIONS

- 202.01 Definitions.
 202.02 General duties and powers.
 202.025 Registration renewal; denial of registration or registration renewal.
 202.03 Registration denial, nonrenewal, or revocation based on delinquent taxes or unemployment insurance contributions.
 202.035 Delinquency in support payments; failure to comply with subpoena or warrant.
 202.04 Voluntary surrender of registration.
 202.05 Nondisclosure of certain personal information.
 202.055 Change of name or address.
 202.06 Disciplinary proceedings; enforcement of laws requiring registration.
 202.07 Administrative warnings.
 202.08 Fees.
 202.09 Debit or credit card payments; collection of registration for nonpayment by financial institution.
 202.095 Rules.

SUBCHAPTER II

SOLICITATION OF FUNDS FOR CHARITABLE PURPOSES

- 202.11 Definitions.
 202.12 Regulation of charitable organizations.
 202.13 Regulation of fund-raising counsel.
 202.14 Regulation of professional fund-raisers.
 202.15 Charitable sales promotions.
 202.155 Solicitation disclosure requirements.
 202.16 Prohibited acts.
 202.17 Administration and investigations.
 202.18 Penalties and enforcement.

SUBCHAPTER III

PROFESSIONAL EMPLOYER ORGANIZATIONS

- 202.21 Definitions.
 202.22 Registration requirements.
 202.23 Financial capability.
 202.24 Rights, duties, and obligations unaffected.
 202.26 Rules.
 202.29 Short title.

SUBCHAPTER I

GENERAL PROVISIONS

202.01 Definitions. In this subchapter:

- (1) “Applicant” means any of the following:
 (a) A person applying to the department for an initial registration.
 (b) A person applying to the department for renewal of a registration.
 (2) “Controlling person” has the meaning given in 202.21 (3).
 (3) “Department” means the department of financial institutions.
 (4) “Registrant” means a person who is registered under ss. 202.12 to 202.14 or 202.22.
 (5) “Registration” means a registration the department issues under ss. 202.12 to 202.14 or 202.22.

History: 2013 a. 20.

202.02 General duties and powers. (1) The department may issue subpoenas for the attendance of witnesses and the production of documents or other materials prior to the commencement of a disciplinary or other proceeding under this chapter.

(2) The department shall establish the content and form of each type of registration. Upon the request of a registrant and payment of a \$10 fee, the department may issue to a registrant a wall certificate.

(3) The department may require a registrant to do any of the following:

- (a) Display the registrant’s certificate of registration in a conspicuous place in the registrant’s office or place of business.
 (b) Post a notice in a conspicuous place in the registrant’s office or place of business describing the procedures for filing a complaint against the registrant.

(4) (a) The department shall require each applicant to provide his or her social security number with the applicant’s application for a registration or registration renewal, or, if the applicant is not an individual, the department shall require the applicant to provide its federal employer identification number.

(b) If an applicant is an individual who does not have a social security number, the applicant shall submit a statement to the department made or subscribed under oath that the applicant does not have a social security number. The department of children and families shall prescribe the form of the statement. A registration issued in reliance upon a false statement submitted under this paragraph is invalid.

(c) The department may not disclose a social security number obtained under par. (a) to any person except the department of children and families to administer s. 49.22, the department of revenue to request certifications under s. 73.0301 and administer state taxes, and the department of workforce development to request certifications under s. 108.227.

(5) The department shall cooperate with the departments of justice, health services, and children and families to develop and maintain a computer linkup to provide access to information regarding the current status of a registration, including whether the registration has been restricted in any way.

(6) (a) The department may conduct an investigation to determine whether an applicant satisfies any of the eligibility requirements specified for the registration, including whether the applicant does not have an arrest or conviction record. In conducting an investigation under this paragraph, the department may require an applicant to provide any information that is necessary for the investigation, except that, for an investigation of an arrest or conviction record, the department shall comply with the requirements under par. (d).

(b) A registrant who is convicted of a felony or misdemeanor anywhere shall send a notice of the conviction by 1st class mail to the department within 48 hours after the entry of the judgment of conviction.

(c) The department may investigate whether an applicant or registrant has been charged with or convicted of a crime.

(d) 1. Except as provided in subd. 2., the department may not require that an applicant or registrant be fingerprinted or submit fingerprints in connection with a registration.

2. The department may require a person for whom the department conducts an investigation under par. (c) to be photographed and fingerprinted on 2 fingerprint cards, each bearing a complete set of the person’s fingerprints. The department of justice may submit the fingerprint cards to the federal bureau of investigation

to verify the identity of the persons fingerprinted and obtain records of their criminal arrests and convictions.

(e) The department shall charge an applicant the fees, costs, or other expenses the department incurs for conducting an investigation under this subsection.

(7) The department may require the electronic submission of an application for registration or registration renewal or any other document or information that may be submitted to the department under this chapter.

History: 2013 a. 20, 276.

202.025 Registration renewal; denial of registration or registration renewal. (1) NOTICE OF RENEWAL. (a) The department shall give a notice of renewal to each registrant at least 30 days before the renewal date of the registration. The department may give that notice by electronic transmission.

(b) Failure to receive a notice of renewal is not a defense in any disciplinary proceeding against a registrant or in any proceeding against a former registrant for practicing without a registration. Failure to receive a notice of renewal does not relieve a registrant from the obligation to pay a penalty for late renewal under sub. (2).

(2) LATE RENEWAL. If the department does not receive an application to renew a registration before the applicable renewal date, the registrant may restore the registration by paying, within 60 days after the renewal date, the renewal fee and late fee determined by the department under s. 202.08.

(3) DENIAL OF REGISTRATION OR REGISTRATION RENEWAL. (a) 1. Notwithstanding ss. 202.12 to 202.14 and 202.23, if the department determines that an applicant for registration or registration renewal has failed to comply with any applicable requirement for renewal, or that the denial of an application for registration or registration renewal is necessary to protect the public health, safety, or welfare, the department may summarily deny the application for registration or registration renewal.

2. If the department denies an application for registration or registration renewal under subd. 1., the department shall provide the applicant with a notice of denial that states the facts or conduct giving rise to the denial and states that the applicant may, within 30 days after the date stated on the notice of denial, file a written request with the department for the department to review the denial at a hearing.

(b) This subsection does not apply to a denial of a registration or registration renewal under s. 202.03 or 202.035 (2) (b).

History: 2013 a. 20.

202.03 Registration denial, nonrenewal, or revocation based on delinquent taxes or unemployment insurance contributions. Notwithstanding ss. 202.12 to 202.14 and 202.22, the department shall deny an application for an initial registration or for registration renewal, or revoke a registration, if the department of revenue certifies under s. 73.0301 that the applicant or registrant is liable for delinquent taxes or if the department of workforce development certifies under s. 108.227 that the applicant or registrant is liable for delinquent unemployment insurance contributions.

History: 2013 a. 20, 276.

202.035 Delinquency in support payments; failure to comply with subpoena or warrant. (1) In this section, “support” has the meaning given in s. 49.857 (1) (g).

(2) Notwithstanding ss. 202.12 to 202.14 and 202.22, the department shall do all of the following, subject to the memorandum of understanding between the department and the department of children and families under s. 49.857:

(a) Restrict, limit, or suspend a registration, or deny an application for an initial registration, if the registrant, applicant, or a controlling person of the registrant or applicant is delinquent in paying support or fails to comply, after appropriate notice, with a subpoena or warrant related to support or paternity proceedings

that is issued by the department of children and families or a county child support agency under s. 59.53 (5).

(b) Deny an application for registration renewal if the registrant or a controlling person of the registrant is delinquent in paying support or fails to comply, after appropriate notice, with a subpoena or warrant related to support or paternity proceedings that is issued by the department of children and families or a county child support agency under s. 59.53 (5).

History: 2013 a. 20.

202.04 Voluntary surrender of registration. A registrant may voluntarily surrender his or her registration. The department may refuse to accept that surrender if a complaint has been filed or a disciplinary proceeding has been commenced against the registrant.

History: 2013 a. 20.

202.05 Nondisclosure of certain personal information.

(1) In this section:

(a) “List” means information compiled or maintained by the department that contains the personal identifiers of at least 10 individuals.

(b) “Personal identifier” means a social security number, telephone number, street name and number, electronic mail address, or post-office box number.

(2) If a form that the department requires an individual to complete in connection with a registration or registration renewal under this chapter requires the individual to provide a personal identifier of the individual, the form shall include a place for the individual to declare that the individual’s personal identifier may not be disclosed on any list that the department furnishes to another person.

(3) If the department requires an individual to provide in person or by telephone or other electronic means a personal identifier of the individual in connection with a registration or registration renewal under this chapter, the department shall provide the individual an opportunity to declare that the individual’s personal identifier may not be disclosed on any list that the department furnishes to another person.

(4) Upon request, the department shall provide to a registrant who is an individual a form that includes a place for the individual to declare that the individual’s personal identifier may not be disclosed on any list that the department furnishes to another person.

(5) (a) Except as provided in par. (b), the department may not disclose on any list that it furnishes to another person a personal identifier of any individual who has made a declaration under sub. (2), (3), or (4).

(b) Paragraph (a) does not apply to a list that the department furnishes to another state agency, a law enforcement agency, or a federal governmental agency. A state agency that receives a list from the department containing a personal identifier of an individual who has made a declaration under sub. (2), (3), or (4) may not disclose the personal identifier to any person other than a state agency, a law enforcement agency, or a federal governmental agency.

History: 2013 a. 20.

202.055 Change of name or address. (1) An applicant or registrant that undergoes a change of name or address shall notify the department of the applicant’s or registrant’s new name or address within 30 days after the change in writing or in accordance with other notification procedures approved by the department.

(2) The department may serve any process, notice, or demand on a registrant by mailing it to the last-known address of the registrant as indicated in the department’s records, or by other means established by the department by rule.

(3) Any person who fails to comply with sub. (1) shall be subject to a forfeiture of \$50.

History: 2013 a. 20.

202.06 Disciplinary proceedings; enforcement of laws requiring registration. (1) INVESTIGATIONS. The department may conduct investigations and hold hearings to determine whether any person has violated this chapter or any rule promulgated under this chapter.

(2) DISCIPLINARY ACTION. The department may reprimand a registrant or deny, limit, suspend, revoke, restrict, refuse to renew, or otherwise withhold a registration if the department finds that an applicant, registrant, or controlling person has done any of the following:

(a) Made a material misrepresentation or false statement in an application for registration or registration renewal or in any other information submitted to the department or in a report under s. 108.067.

(b) Violated this chapter or a rule promulgated under this chapter.

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

(5) INJUNCTION. If it appears upon complaint to the department or the department otherwise knows that any person has violated this chapter, the department or the district attorney of the proper county may investigate and may, in addition to any other remedies, bring action in the name of and on behalf of the state against that person to enjoin the person from committing further violations of this chapter.

(6) PRACTICE WITHOUT A REGISTRATION. (a) If, after holding a public hearing, the department determines that a person has engaged in a practice or used a title without a required registration, the department may issue a special order enjoining the person from continuing the practice or use of the title.

(b) In lieu of holding a public hearing, if the department has reason to believe that a person has engaged in a practice or used a title without a required registration, the department may petition the circuit court for a temporary restraining order or an injunction as provided in ch. 813.

(c) 1. Any person who violates a special order issued under par. (a) may be required to forfeit not more than \$10,000 for each offense. Each day of continued violation constitutes a separate offense. The attorney general or any district attorney may commence an action in the name of the state to recover a forfeiture under this subdivision.

2. Any person who violates a temporary restraining order or an injunction issued by a court upon a petition under par. (b) may be fined not less than \$25 nor more than \$5,000 or imprisoned for not more than one year in the county jail or both.

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

History: 2013 a. 20.

202.07 Administrative warnings. (1) If the department determines during an investigation of a complaint against a registrant that there is evidence that the registrant committed misconduct, the department may close the investigation by issuing an administrative warning to the registrant if the department determines that no further disciplinary action is warranted, the complaint involves a first occurrence of a minor violation, and the issuance of an administrative warning adequately protects the public.

(2) A registrant may obtain review of an administrative warning through a personal appearance before the department.

(3) (a) An administrative warning does not constitute an adjudication of guilt or the imposition of discipline and, except as provided in par. (b), may not be used as evidence that the registrant is guilty of the alleged misconduct.

(b) If the department receives a subsequent complaint of misconduct by a registrant against whom the department issued an administrative warning, the department may reopen the matter that gave rise to the administrative warning and commence disciplinary proceedings against the registrant, and the administrative warning may be used as evidence that the registrant had actual notice that the misconduct that was the basis for the administrative warning was contrary to law.

(4) An administrative warning is a public record subject to inspection or copying under s. 19.35.

History: 2013 a. 20.

202.08 Fees. (1) The department shall determine the fees for an initial registration and for a registration renewal, including late fees for each type of registration under ss. 202.12 to 202.14 and 202.22, based on the department's administrative and enforcement costs under this chapter.

(2) Before the department makes any fee adjustment under sub. (1), the department shall send a notification of the proposed fee adjustments to the cochairpersons of the joint committee on finance. If the cochairpersons of the committee do not notify the secretary of financial institutions within 14 working days after the date of the department's notification that the committee has scheduled a meeting for the purpose of reviewing the proposed fee adjustments, the fee adjustments may be made as proposed. The department shall notify registrants of the fee adjustments by posting the fee adjustments on the department's Internet site and in registration renewal notices sent to affected registrants under s. 202.025 (1). If, within 14 working days after the date of the department's notification, the cochairpersons of the committee notify the secretary of financial institutions that the committee has scheduled a meeting for the purpose of reviewing the proposed fee adjustments, the fee adjustments may be made only upon approval of the committee.

History: 2013 a. 20.

202.09 Debit or credit card payments; collection of registration for nonpayment by financial institution.

(1) If the department permits the payment of a fee by use of a debit or credit card, the department may charge a service charge for each transaction in addition to the fee being paid. The service charge shall be sufficient to cover the cost to the department of permitting the payment of a fee by debit or credit card.

(2) If a registrant pays a fee required under this chapter by check or by debit or credit card and the check is not paid by the financial institution upon which the check is drawn or if the demand for payment under the debit or credit card transaction is not paid by the financial institution upon which demand is made, the department may cancel the registration after 60 days after the department receives a notice of nonpayment from the financial institution, subject to sub. (3).

(3) At least 20 days before canceling a registration under sub. (2), the department shall provide a notice to the registrant that informs the registrant that the check or demand for payment under the debit or credit card transaction was not paid by the financial institution and that the registrant's registration may be canceled, unless the registrant does all of the following before that date:

(a) Pays the fee for which the unpaid check or demand for payment under the debit or credit card transaction was issued.

(b) Pays any applicable late fee.

(c) Pays the charge for an unpaid draft established by the depository selection board under s. 20.905 (2).

(4) The department may extend the date for cancellation to allow the registrant additional time to comply with sub. (3) (a) to (c).

(5) The department may reinstate a registration that it cancelled under this section only if the former registrant complies with sub. (3) (a) to (c) and pays a \$30 reinstatement fee.

History: 2013 a. 20.

202.095 Rules. The department shall promulgate rules to implement this chapter.

History: 2013 a. 20.

SUBCHAPTER II

SOLICITATION OF FUNDS FOR CHARITABLE PURPOSES

202.11 Definitions. In this subchapter:

(1) “Charitable organization” means any of the following:

(a) An organization that is described in section 501 (c) (3) of the internal revenue code and that is exempt from taxation under section 501 (a) of the internal revenue code.

(b) A person who is or purports to be established for a charitable purpose.

(2) “Charitable purpose” means any of the following:

(a) A purpose described in section 501 (c) (3) of the internal revenue code.

(b) A benevolent, educational, philanthropic, humane, scientific, patriotic, social welfare or advocacy, public health, environmental conservation, civic, or other eleemosynary objective.

(3) “Charitable sales promotion” means an advertising or sales campaign that is conducted by a person who is regularly and primarily engaged in trade or commerce for profit other than in connection with soliciting and that represents that the purchase or use of goods or services offered will benefit, in whole or in part, a charitable organization or charitable purpose.

(4) “Commercial coventurer” means a person who is regularly and primarily engaged in trade or commerce for profit other than in connection with soliciting and who conducts a charitable sales promotion.

(5) “Contribution” means a grant or pledge of money, credit, property, or other thing of any kind or value, except used clothing or household goods, to a charitable organization or for a charitable purpose. “Contribution” does not include income from any of the following:

(a) Bingo or raffles conducted under ch. 563.

(b) A government grant.

(c) A bona fide fee, due, or assessment paid by a member of a charitable organization, except that, if initial membership in a charitable organization is conferred solely as consideration for making a grant or pledge of money to the charitable organization in response to a solicitation, that grant or pledge of money is a contribution.

(5m) “Department” means the department of financial institutions.

(6) “Fund-raising counsel” means a person who, for compensation, plans, manages, advises, consults, or prepares material for, or with respect to, solicitation in this state for a charitable organization, but who does not solicit in this state or employ, engage, or provide any person who is paid to solicit in this state. “Fund-raising counsel” does not include any of the following:

(a) An attorney, investment counselor, or employee of a financial institution who, in the normal course of his or her work as an attorney, investment counselor, or employee of a financial institution, advises a person to make a contribution.

(b) A bona fide employee, volunteer, or salaried officer of a charitable organization.

(7) “Professional fund-raiser” means a person who, for compensation, solicits in this state or employs, engages, or provides, directly or indirectly, another person who is paid to solicit in this state. “Professional fund-raiser” does not include any of the following:

(a) An attorney, investment counselor, or employee of a financial institution who, in the normal course of his or her work as an attorney, investment counselor, or employee of a financial institution, advises a person to make a charitable contribution.

(b) A bona fide employee, volunteer, wholly owned subsidiary, or salaried officer of a charitable organization.

(c) An employee of a temporary help agency who is placed with a charitable organization.

(d) A bona fide employee of a person who employs another person to solicit in this state.

(8) “Solicit” means to request, directly or indirectly, a contribution and to state or imply that the contribution will be used for a charitable purpose or will benefit a charitable organization.

(9) “Solicitation” means the act or practice of soliciting, whether or not the person soliciting receives any contribution. “Solicitation” includes any of the following methods of requesting or securing a contribution:

(a) An oral or written request.

(b) An announcement to the news media or by radio, television, telephone, telegraph, or other transmission of images or information concerning a request for a contribution by or for a charitable organization or for a charitable purpose.

(c) The distribution or posting of a handbill, written advertisement, or other publication that directly or by implication seeks a contribution.

(d) The sale of, or offer or attempt to sell, a membership or an advertisement, advertising space, book, card, tag, coupon, device, magazine, merchandise, subscription, flower, ticket, candy, cookie, or other tangible item in connection with any of the following:

1. A request for financial support for a charitable organization or charitable purpose.

2. The use of or reference to the name of a charitable organization as a reason for making a purchase.

3. A statement that all or a part of the proceeds from the sale will be used for a charitable purpose or will benefit a charitable organization.

(10) “Unpaid solicitor” means a person who solicits in this state and who is not a professional fund-raiser.

History: 1991 a. 278, 315; 1999 a. 9; 2013 a. 20 ss. 1990, 2189 to 2208; Stats. 2013 s. 202.11.

202.12 Regulation of charitable organizations.

(1) **ANNUAL REGISTRATION REQUIREMENT.** (a) Except as provided in sub. (5), no charitable organization may solicit in this state or have contributions solicited in this state on its behalf unless it is registered with the department under this subsection.

(b) The department shall promptly register a charitable organization that does all of the following:

1. Submits to the department an application for registration on a form provided by the department.

2. Submits to the department a registration statement that complies with sub. (2).

2g. Submits to the department an annual financial report for the most recently completed fiscal year of the charitable organization, if the charitable organization received contributions in excess of \$5,000 but not more than \$100,000 during its most recently completed fiscal year.

2r. Submits to the department an audited financial statement for the most recently completed fiscal year of the charitable organization, if the charitable organization received contributions in excess of \$100,000 during its most recently completed fiscal year.

3. Pays to the department the registration fee determined by the department under s. 202.08.

(c) The department shall issue a certificate of registration to each charitable organization that is registered under this subsection. Renewal applications shall be submitted to the department, in a form and manner prescribed by the department, by August 1 of each year and shall include a registration statement that complies with sub. (2) and the renewal fee determined by the department under s. 202.08.

(d) Upon the department's review of an application for registration or for renewal of a registration under this subsection, the department shall notify the charitable organization of any deficiencies in the application, registration statement, or fee payment.

(2) REGISTRATION STATEMENT. Except as provided in sub. (3), a registration statement required under sub. (1) shall be signed and sworn to by 2 authorized officers, including the chief fiscal officer, of the charitable organization and shall include all of the following:

(a) The name of the charitable organization and the purpose for which it is organized.

(b) The address and telephone number, and electronic mail address, if available, of the charitable organization and the address and telephone number of any offices in this state or, if the charitable organization does not have an address, the name, address, and telephone number of the person having custody of its financial records.

(c) The names and the addresses of the officers, directors, trustees, and principal salaried employees of the charitable organization.

(f) A statement of whether the charitable organization is authorized by any other governmental authority to solicit.

(g) A statement of whether the charitable organization has ever had its authority to solicit denied, suspended, revoked, or enjoined by a court or other governmental authority.

(h) The charitable purpose or purposes for which contributions will be used.

(i) The name or names under which it intends to solicit.

(j) The names of the persons within the charitable organization who have final responsibility for the custody of contributions.

(k) The names of the persons within the charitable organization who are responsible for the final distribution of contributions.

(L) If the registration statement is submitted to the department with an initial application for registration, all of the following:

1. A copy of the charitable organization's charter, articles of organization, agreement of association, instrument of trust, constitution, or other organizational instrument and bylaws.

2. A statement of the place where and the date when the charitable organization was legally established, the form of its organization, and whether it has tax-exempt status.

3. Copies of any federal or state tax exemption determination letters received by the charitable organization.

(m) Any other information required by the department.

(3) ANNUAL FINANCIAL REPORT; AUDIT REQUIREMENT. (a) Except as provided in pars. (am), (b), and (bm), and in rules promulgated under sub. (8), a charitable organization that received contributions in excess of \$5,000 during its most recently completed fiscal year shall file with the department an annual financial report for the charitable organization's most recently completed fiscal year. The department shall prescribe the form of the report and shall prescribe standards for its completion. The annual financial report shall be filed within 12 months after the end of that fiscal year and shall include all of the following:

1. A balance sheet.

2. A statement of support, revenue, expenses, and changes in fund balance.

3. A statement of functional expenses that, at a minimum, is divided into categories of management and general, program services and fund-raising.

4. Other financial information that the department requires.

(am) A charitable organization that operates solely within one community and that received less than \$50,000 in contributions during its most recently completed fiscal year may apply to the department for an exemption from the reporting requirement under par. (a). The department shall promulgate rules specifying the criteria for eligibility for an exemption under this paragraph,

and shall grant exemptions from the reporting requirement under par. (a) to a charitable organization that satisfies those criteria.

(b) Except as provided in rules promulgated under sub. (8), if a charitable organization received contributions in excess of \$400,000 during its most recently completed fiscal year, the charitable organization shall file with the department, in lieu of a report under par. (a), an audited financial statement for the charitable organization's most recently completed fiscal year, prepared in accordance with generally accepted accounting principles, and the opinion of an independent certified public accountant on the financial statement. The audited financial statement shall be filed within 6 months after the end of that fiscal year.

(bm) Except as provided in rules promulgated under sub. (8), if a charitable organization received contributions in excess of \$200,000 but less than \$400,000 during its most recently completed fiscal year, the charitable organization shall file with the department, in lieu of a report under par. (a), a financial statement for the charitable organization's most recently completed fiscal year, prepared in accordance with generally accepted accounting principles, and a review of the financial statement by an independent certified public accountant. The financial statement shall be filed within 6 months after the end of that fiscal year.

(c) Except as provided in rules promulgated under sub. (8), a charitable organization that is registered under sub. (1) and that received \$5,000 or less in contributions during its most recently completed fiscal year shall file with the department an affidavit that the charitable organization received \$5,000 or less in contributions during that fiscal year. The affidavit shall be signed and sworn to by 2 authorized officers, including the chief fiscal officer, of the charitable organization and shall be filed within 6 months after the end of that fiscal year.

(4) ACCEPTANCE OF OTHER INFORMATION. The department may accept information filed by a charitable organization with another state or with the federal government instead of the information required to be included in a registration statement under sub. (2) if the information filed with the other state or with the federal government is substantially similar to the information required under this section.

(5) EXEMPTIONS FROM REGISTRATION. (a) The following are not required to register under sub. (1):

1. A person that is exempt from filing a federal annual information return under section 6033 (a) (3) (A) (i) and (iii) and (C) (i) of the Internal Revenue Code.

2. A candidate for national, state, or local office or a political party or other committee or group required to file financial information with the federal elections commission or a filing officer under s. 11.02.

3. Except as provided in par. (b) and in rules promulgated under sub. (8), a charitable organization that does not intend to raise or receive contributions in excess of \$5,000 during a fiscal year, if all of its functions, including solicitation, are performed by persons who are unpaid for their services and if no part of its assets or income inures to the benefit of, or is paid to, any officer or member of the charitable organization.

3m. A fraternal, civic, benevolent, patriotic, or social organization that solicits contributions solely from its membership.

4. A veterans organization incorporated under ch. 188 or chartered under federal law or the service foundation of such an organization recognized in the bylaws of the organization.

5. A nonprofit, postsecondary educational institution accredited by a regional accrediting agency or association approved under 20 USC 1099b, or an educational institution and its authorized charitable foundations that solicit contributions only from its students and their families, alumni, faculty, trustees, corporations, foundations, and patients.

6. A person soliciting contributions for the relief of a named individual if all contributions, without any deductions, are given to the named individual.

7. A state agency, as defined in s. 20.001 (1), or a local governmental unit, as defined in s. 605.01 (1).

8. A private school, as defined in s. 118.165.

(b) Except as provided in rules promulgated under sub. (8), if a charitable organization would otherwise be exempt under par. (a) 3., but it raises or receives more than \$5,000 in contributions, it shall, within 30 days after the date on which its contributions exceed \$5,000, register as required under sub. (1).

(6) REPORTING TAX EXEMPTION OR ORGANIZATIONAL CHANGES. If a charitable organization registered under sub. (1) receives any federal or state tax exemption determination letter or adopts any amendment to its organizational instrument or bylaws after it is registered under sub. (1), within 30 days after receipt of the letter or adoption of the amendment, the charitable organization shall file with the department a copy of the letter or amendment.

(7) CONTRACTS. (a) Before a fund-raising counsel performs any material services for a charitable organization that is required to be registered under sub. (1), the charitable organization shall contract in writing with the fund-raising counsel, except as provided in par. (c). Requirements for the contract are specified in s. 202.13 (3).

(b) Before a professional fund-raiser performs any material services for a charitable organization that is required to be registered under sub. (1), the charitable organization shall contract in writing with the professional fund-raiser. Requirements for the contract are specified in s. 202.14 (4).

(c) Paragraph (a) does not apply if the fund-raising counsel is exempt under s. 202.13 (6) from contracting in writing with the charitable organization.

(8) CONTRIBUTION LIMITS. The department may promulgate rules that adjust the threshold amounts in subs. (3) (a), (b), (bm), and (c) and (5) (a) 3. and (b) to account for inflation.

History: 1991 a. 278; 1995 a. 27, 277; 2007 a. 20, 213; 2013 a. 20 s. 2209; Stats 2013 s. 202.12.

Cross-reference: See also ch. DFI-Bkg 60, Wis. adm. code.

Complying With the Charitable Solicitations Act. Sweet & Petershack. Wis. Law. Oct. 1993.

202.13 Regulation of fund-raising counsel. (1) REGISTRATION REQUIREMENT. (a) Except as provided in sub. (6), no fund-raising counsel may at any time have custody of contributions from a solicitation for a charitable organization that is required to be registered under s. 202.12 (1) unless the fund-raising counsel is registered with the department under this subsection.

(b) The department shall promptly register a fund-raising counsel that does all of the following:

1. Submits to the department an application for registration on a form provided by the department.

2. Files with the department a bond that is approved under sub. (2).

3. Pays to the department the registration fee determined by the department under s. 202.08, except that no registration fee is required under this subdivision for an individual who is eligible for the veterans fee waiver program under s. 45.44.

(c) The department shall issue a certificate of registration to each fund-raising counsel that is registered under this subsection. Renewal applications shall be submitted to the department, in a form and manner prescribed by the department, by September 1 of each even-numbered year and shall include the renewal fee determined by the department under s. 202.08 and evidence satisfactory to the department that the fund-raising counsel maintains a bond that is approved under sub. (2).

(d) Within 20 days after receiving an application for registration or for renewal of a registration under this subsection, the department shall notify the fund-raising counsel of any deficiencies in the application, bond or fee payment.

(2) BOND. At the time of applying for registration under sub. (1), the fund-raising counsel shall file with and have approved by the department a bond, in which the fund-raising counsel is the

principal obligor, in the sum of \$20,000, with one or more responsible sureties whose liability in the aggregate as sureties at least equals that sum. The fund-raising counsel shall maintain the bond in effect as long as the registration is in effect. The bond, which may be in the form of a rider to a larger blanket liability bond, shall run to the state and to any person who may have a cause of action against the principal obligor of the bond for any liabilities resulting from the obligor's conduct of any activities as a fund-raising counsel or arising out of a violation of this subchapter or the rules promulgated under this subchapter.

(3) CONTRACT. Except as provided in sub. (6), before a fund-raising counsel performs any material services for a charitable organization that is required to be registered under s. 202.12 (1), the charitable organization and the fund-raising counsel shall contract in writing, and the fund-raising counsel shall file the contract with the department. The contract shall contain information that will enable the department to identify the services that the fund-raising counsel is to provide, including whether the fund-raising counsel will at any time have custody of contributions.

(4) ACCOUNTS; DEPOSITS; RECORD KEEPING. (a) Within 90 days after services under a contract required under sub. (3) are completed, and on the anniversary of the signing of a contract lasting more than one year, the fund-raising counsel shall account in writing to the charitable organization with which the fund-raising counsel has contracted for all contributions received and expenses incurred under the contract. The charitable organization shall keep the accounting for at least 3 years after the date on which services under the contract are completed and make it available to the department upon request.

(b) The fund-raising counsel shall deposit, in its entirety, a contribution of money received by the fund-raising counsel in an account at a financial institution within 5 days after its receipt. The account shall be in the name of the charitable organization with which the fund-raising counsel has contracted. The charitable organization shall have sole control of all withdrawals from the account.

(c) The fund-raising counsel shall keep for the duration of a contract, and for not less than 3 years after its completion, all of the following:

1. A record of all contributions at any time in the custody of the fund-raising counsel, including the name and address of each contributor and the date and amount of the contribution.

2. A record of the location and account number of each financial institution account in which the fund-raising counsel deposits contributions.

(5) DEPARTMENT DISCLOSURE. The department shall not disclose information under sub. (4) (c) 1. except to the extent necessary for investigative or law enforcement purposes and except that the department may, if requested under s. 49.22 (2m), disclose information regarding the name, address, or employer of or financial information related to an individual to the department of children and families or a county child support agency under s. 59.53 (5).

(6) EXCEPTIONS. This section does not apply to a fund-raising counsel who does not intend to earn more than \$1,000 per year as a fund-raising counsel, except that a fund-raising counsel who does not intend to earn more than \$1,000 but does earn more than \$1,000 in a year shall, beginning 30 days after actually earning more than \$1,000 in a year, comply with sub. (3) and, if the fund-raising counsel at any time has custody of contributions for a charitable organization that is required to be registered under s. 202.12 (1), register under sub. (1).

History: 1991 a. 278; 1995 a. 27; 1997 a. 191; 2007 a. 20; 2013 a. 20 s. 2210; Stats. 2013 s. 202.13.

202.14 Regulation of professional fund-raisers.

(1) REGISTRATION REQUIREMENT. (a) No professional fund-raiser may solicit in this state for a charitable organization that is required to be registered under s. 202.12 (1) unless the professional fund-raiser is registered under this subsection.

(b) The department shall promptly register a professional fund–raiser that does all of the following:

1. Submits to the department an application for registration on a form provided by the department.
2. Files with the department a bond that is approved under sub. (2).
3. Pays the registration fee determined by the department under s. 202.08, except that no registration fee is required under this subdivision for an individual who is eligible for the veterans fee waiver program under s. 45.44.

(c) The department shall issue a certificate of registration to each professional fund–raiser that is registered under this subsection. Renewal applications shall be submitted to the department, in a form and manner prescribed by the department, by September 1 of each even–numbered year and shall include the renewal fee determined by the department under s. 202.08 and evidence satisfactory to the department that the professional fund–raiser maintains a bond that is approved under sub. (2).

(d) Upon the department’s review of an application for registration or for renewal of a registration under this subsection, the department shall notify the professional fund–raiser of any deficiencies in the application, bond, or fee payment.

(2) BOND. At the time of applying for registration under sub. (1), a professional fund–raiser shall file with and have approved by the department a bond, in which the professional fund–raiser is the principal obligor, in the sum of \$20,000, with one or more responsible sureties whose liability in the aggregate as sureties at least equals that sum. If a professional fund–raiser does not at any time have custody of any contributions, the bond shall be in the sum of \$5,000. The professional fund–raiser shall maintain the bond in effect as long as the registration is in effect. The bond, which may be in the form of a rider to a larger blanket liability bond, shall run to the state and to any person who may have a cause of action against the principal obligor of the bond for any liabilities resulting from the obligor’s conduct of any activities as a professional fund–raiser or arising out of a violation of this subchapter or the rules promulgated under this subchapter.

(3) SOLICITATION NOTICE. Before performing services under a contract with a charitable organization that is required to be registered under s. 202.12 (1), a professional fund–raiser shall file with the department a completed solicitation notice in the form and manner prescribed by the department. The charitable organization on whose behalf the professional fund–raiser is acting shall file with the department a written confirmation that the solicitation notice and any accompanying material are true and complete to the best of its knowledge. The solicitation notice shall include all of the following:

- (a) A copy of the contract described in sub. (4).
- (b) The projected period during which the soliciting will take place.
- (c) The location and telephone number from which the soliciting will be conducted.
- (d) The name and residence address of each person responsible for directing and supervising the conduct of services under the contract described in sub. (4).
- (e) A statement of whether the professional fund–raiser will at any time have custody of contributions.
- (f) A full and fair description of the charitable purpose for which solicitations will be made.

(4) CONTRACT. (a) A professional fund–raiser and a charitable organization that is required to be registered under s. 202.12 (1) shall enter into a written contract that clearly states the respective obligations of the professional fund–raiser and the charitable organization and states the amount of gross revenue, raised under the contract, that the charitable organization will receive. The amount of the gross revenue that the charitable organization will receive shall be expressed as a fixed percentage of the gross revenue

or as an estimated percentage of the gross revenue, as provided in pars. (b) to (d).

(b) If the compensation received by the professional fund–raiser is contingent upon the amount of revenue received, the amount of the gross revenue that the charitable organization will receive shall be expressed as a fixed percentage of the gross revenue.

(c) If the compensation received by the professional fund–raiser is not contingent upon the amount of revenue received, the amount of the gross revenue that the charitable organization will receive shall be expressed as an estimated percentage of the gross revenue. The estimate shall be reasonable and the contract shall clearly disclose the assumptions upon which the estimate is based. The assumptions shall be based upon all of the relevant facts known to the professional fund–raiser regarding the solicitation to be conducted and upon the past performance of solicitations conducted by the professional fund–raiser. If the amount of the gross revenue that the charitable organization will receive is expressed as an estimated percentage of the gross revenue, the contract shall also guarantee that the charitable organization will receive a percentage of the gross revenue that is not less than the estimated percentage minus 10% of the gross revenue.

(d) The estimated or fixed percentage of the gross revenue that the charitable organization will receive excludes any amount which the charitable organization is to pay under the contract as expenses, including the cost of merchandise or services sold or events staged.

(5) REPORTING CHANGES. Within 7 days after any material change occurs in information filed with the department under this section, the professional fund–raiser shall report the change, in writing, to the department.

(7) FINANCIAL REPORT. Within 90 days after completing services under a contract described in sub. (4), and on the anniversary of the signing of a contract described under sub. (4) lasting more than one year, the professional fund–raiser shall, if the charitable organization is required to be registered under s. 202.12 (1), account in writing to the charitable organization for all contributions received and all expenses incurred under the contract. The charitable organization shall retain the accounting for at least 3 years and make it available to the department upon request.

(8) DEPOSITING CONTRIBUTIONS. A professional fund–raiser shall deposit, in its entirety, a contribution of money received by the professional fund–raiser, on behalf of a charitable organization required to be registered under s. 202.12 (1), in an account at a financial institution within 5 days after its receipt. The account shall be in the name of the charitable organization. The charitable organization shall have sole control of all withdrawals from the account.

(9) RECORD KEEPING. (a) During the period in which a contract described in sub. (4) is in effect and for not less than 3 years after its completion, a professional fund–raiser shall retain all of the following records:

1. The name and, if known to the professional fund–raiser, the address of each person contributing and the date and amount of the contribution.
2. The name and residence address of each employee, agent, or other person involved in the solicitation.
3. A record of all contributions that are at any time in the custody of the professional fund–raiser.
4. A record of all expenses incurred by the professional fund–raiser which the charitable organization is required to pay.
5. A record of the location and account number of each financial institution account in which the professional fund–raiser deposits contributions.

(b) If under a contract described in sub. (4) the professional fund–raiser sells tickets to an event and represents that the tickets will be donated to an organization for use by others, the profes-

sional fund–raiser shall retain for the period specified in par. (a) all of the following:

1. The name and address of the donors and the number of tickets donated by each donor.

2. The name and address of the organization receiving donated tickets and the number of donated tickets received by the organization.

(c) The professional fund–raiser shall make all records described in this subsection available for inspection by the department upon request.

(10) NONDISCLOSURE. The department may not disclose information under sub. (9) (a) 1. to any person except to the extent necessary for investigative or law enforcement purposes and except that the department may, if requested under s. 49.22 (2m), disclose information regarding the name, address, or employer of or financial information related to an individual to the department of children and families or a county child support agency under s. 59.53 (5).

History: 1991 a. 278, 315; 1995 a. 27; 1997 a. 191; 2007 a. 20; 2011 a. 209; 2013 a. 20 s. 2211; Stats. 2013 s. 202.14.

202.15 Charitable sales promotions. If a commercial coventurer conducts a charitable sales promotion on behalf of a charitable organization that is required to be registered under s. 202.12 (1), the commercial coventurer shall disclose in each advertisement for the charitable sales promotion the dollar amount, or percentage of price, per unit of goods or services purchased or used that will benefit the charitable organization or charitable purpose. If the actual dollar amount or percentage cannot reasonably be determined on the date of the advertisement, the commercial coventurer shall disclose an estimated dollar amount or percentage. The estimate shall be based upon all of the relevant facts known to the commercial coventurer and to the charitable organization regarding the charitable sales promotion.

History: 1991 a. 278; 2013 a. 20 s. 2212; Stats. 2013 s. 202.15.

202.155 Solicitation disclosure requirements.

(1) Except as provided in sub. (4), if a professional fund–raiser or unpaid solicitor solicits a contribution for a charitable organization that is required to be registered under s. 202.12 (1), the professional fund–raiser or unpaid solicitor shall, at the time of the solicitation or with a written confirmation of a solicitation, prior to accepting a contribution, make the following disclosures to the person from whom the contribution is solicited:

(a) The name and location of the charitable organization.

(b) That a financial statement of the charitable organization disclosing assets, liabilities, fund balances, revenue, and expenses for the preceding fiscal year will be provided to the person upon request.

(c) A clear description of the primary charitable purpose for which the solicitation is made.

(2) The financial statement under sub. (1) (b) shall, at a minimum, divide expenses into categories of management and general, program services and fund–raising. If the charitable organization is required to file an annual financial report under s. 202.12 (3) (a), the financial statement under sub. (1) (b) shall be consistent with that annual financial report.

(3) In addition to the requirements under subs. (1) and (2), except as provided in sub. (4), if a professional fund–raiser solicits on behalf of a charitable organization that is required to be registered under s. 202.12 (1), all of the following apply:

(a) If a solicitation is made orally, including a solicitation made by telephone, the professional fund–raiser shall send a written confirmation, within 5 days after the solicitation, to each person contributing or pledging to contribute. The written confirmation shall include a clear and conspicuous disclosure of the name of the professional fund–raiser and that the solicitation is being conducted by a professional fund–raiser.

(b) The professional fund–raiser may not represent that any part of the contributions received by the professional fund–raiser

will be given or donated to a charitable organization unless that charitable organization has, prior to the solicitation, consented in writing, signed by 2 authorized officers, directors or trustees of that other charitable organization, to the use of its name.

(c) The professional fund–raiser may not represent that tickets to an event will be donated to an organization for use by others unless all of the following conditions are met:

1. The professional fund–raiser has a commitment, in writing, from the organization stating that the organization will accept donated tickets and specifying the number of donated tickets that the organization is willing to accept.

2. The professional fund–raiser solicits contributions for donated tickets from no more contributors than the number of tickets that the organization has agreed to accept under subd. 1.

(4) A charitable organization that operates solely within one community and that received less than \$50,000 in contributions during its most recently completed fiscal year may apply to the department for an exemption from the disclosure requirements under this section. The department shall promulgate rules specifying the criteria for eligibility for an exemption under this paragraph, and shall grant exemptions from the disclosure requirements under this section to a charitable organization that satisfies those criteria.

History: 1991 a. 278, 315; 2013 a. 20 s. 2213; Stats. 2013 s. 202.155.

Cross-reference: See also ch. DFL–Bkg 60, Wis. adm. code.

202.16 Prohibited acts. (1) No person may, in the planning, management, or execution of a solicitation or charitable sales promotion, do any of the following:

(a) Use an unfair or deceptive act or practice.

(b) Imply that a contribution is for or on behalf of a charitable organization or use any emblem, device, or printed matter belonging to or associated with a charitable organization without first being authorized in writing to do so by the charitable organization.

(c) Use a name, symbol, or statement so closely related or similar to that used by another charitable organization that the use of the name, symbol, or statement would tend to confuse or mislead a person being solicited.

(d) Represent or lead anyone in any manner to believe that the person on whose behalf a solicitation or charitable sales promotion is being conducted is a charitable organization or that the proceeds of the solicitation or charitable sales promotion will be used for charitable purposes if that is not the fact.

(e) Lead anyone in any manner to believe that another person sponsors, endorses, or approves a solicitation or charitable sales promotion if the other person has not sponsored, endorsed, or approved the solicitation or charitable sales promotion in writing.

(f) Use the fact of registration to lead any person to believe that the registration constitutes an endorsement or approval by the state.

(g) Represent directly or by implication that a charitable organization will receive a fixed or estimated percentage of the gross revenue raised greater than that established under s. 202.14 (4).

(2) In deciding whether an act or practice is unfair or deceptive within the meaning of sub. (1) (a), definitions, standards and interpretations relating to unfair or deceptive acts or practices under chs. 421 to 427 apply.

History: 1991 a. 278; 2013 a. 20 s. 2214; Stats. 2013 s. 202.16.

202.17 Administration and investigations. (1) PUBLIC RECORDS. Except as provided in ss. 202.13 (5) and 202.14 (10), registration statements, applications, reports, contracts, and agreements of charitable organizations, fund–raising counsel, professional fund–raisers, and unpaid solicitors and all other documents and information retained by or filed with the department under this subchapter are available for inspection or copying under s. 19.35 (1).

(2) FISCAL RECORDS; INSPECTION; RETENTION. All charitable organizations, fund–raising counsels, professional fund–raisers, and unpaid solicitors shall keep true records concerning activities

regulated by this subchapter in a form that will enable them accurately to provide the information required by this subchapter. Upon demand, those records shall be made available to the department for inspection and copying. The records shall be retained by the charitable organization, fund-raising counsel, professional fund-raiser, or unpaid solicitor for at least 3 years after the end of the fiscal year to which they relate.

(3) EXCHANGE OF INFORMATION. The department may exchange with the appropriate authority of any other state or of the United States information with respect to charitable organizations, fund-raising counsel, professional fund-raisers, unpaid solicitors, and commercial coventurers.

(4) EXAMINATION OF DOCUMENTS AND WITNESSES. (a) If the department or the department of justice has reason to believe a person has violated or is violating this subchapter or the rules promulgated under this subchapter, it may conduct an investigation to determine whether the person has violated or is violating those provisions. The department of justice may subpoena persons and require the production of books and other documents to aid in its investigations of alleged violations of this subchapter.

(b) A person upon whom a notice of the taking of testimony or examination of documents is served under this subsection shall comply with the terms of the notice unless otherwise provided by the order of a court of this state.

(c) The department of justice may file in the circuit court for the county in which a person resides or in which the person's principal place of business is located, or in the circuit court for Dane County if the person is a nonresident or has no principal place of business in this state, and serve upon the person, a petition for an order of the court for the enforcement of this subsection. Disobedience of a final order entered under this paragraph by a court is punishable as a contempt of court under ch. 785.

(5) SUBSTITUTE SERVICE UPON DEPARTMENT. A charitable organization, fund-raising counsel, professional fund-raiser, or commercial coventurer that has its principal place of business outside of this state or is organized under laws other than the laws of this state and that is subject to this subchapter shall be considered to have irrevocably appointed the department as its agent for the service of process or notice directed to the charitable organization, fund-raising counsel, professional fund-raiser, or commercial coventurer or to any of its partners, principal officers, or directors in an action or proceeding brought under this subchapter. Service of process or notice upon the department shall be made by personally delivering to and leaving with the department a copy of the process or notice. That service shall be sufficient service if the department immediately sends notice of the service and a copy of the process or notice to the charitable organization, fund-raising counsel, professional fund-raiser, commercial coventurer, or other person to whom it is directed by registered mail, with return receipt requested, at the last address known to the department.

History: 1991 a. 278; 1995 a. 27; 2013 a. 20 s. 2215; Stats. 2013 s. 202.17.

202.18 Penalties and enforcement. (1) (a) The department of justice may bring an action to prosecute a violation of this subchapter or the rules promulgated under this subchapter, including an action for temporary or permanent injunction.

(b) Upon finding that a person has violated this subchapter or the applicable rules promulgated under s. 202.095 or this subchapter, the court may make any necessary order or judgment, including but not limited to injunctions, restitution, and, notwithstanding s. 814.04, award of reasonable attorney fees and costs of investigation and litigation, and, except as provided in par. (c), may impose a forfeiture of not less than \$100 nor more than \$10,000 for each violation.

(c) 1. A person who violates s. 202.17 (4) (b) may be required to forfeit not more than \$5,000, unless the person establishes reasonable cause for the violation.

2. A person who, with intent to avoid, prevent, or interfere with a civil investigation under this subsection, does any of the following may be required to forfeit not more than \$5,000:

a. Alters or by any other means falsifies, removes from any place, conceals, withholds, destroys, or mutilates any documentary material in the possession, custody, or control of a person subject to notice of the taking of testimony or examination of documents under s. 202.17 (4).

b. Knowingly conceals relevant information.

(d) A charitable organization, fund-raising counsel, professional fund-raiser, commercial coventurer, or any other person who violates the terms of an injunction or other order entered under this subsection may be required to forfeit, in addition to all other remedies, not less than \$1,000 nor more than \$10,000 for each violation. The department of justice may recover the forfeiture in a civil action. Each separate violation of an order entered under this subsection is a separate offense, except that each day of a violation through continuing failure to obey an order is a separate offense.

(e) No charitable organization may indemnify an officer, employee, or director for any costs, fees, restitution, or forfeitures assessed against that individual by the court under par. (b), (c), or (d) unless the court determines that the individual acted in good faith and reasonably believed the conduct was in or not opposed to the best interests of the charitable organization.

(2) The department or the department of justice may accept a written assurance of discontinuance of any act or practice alleged to be a violation of this subchapter or the rules promulgated under this subchapter from the person who has engaged in the act or practice. The assurance may, among other terms, include a stipulation for the voluntary payment by the person of the costs of investigation, or of an amount to be held in escrow pending the outcome of an action or as restitution to aggrieved persons, or both. The department or department of justice may at any time reopen a matter in which an assurance of discontinuance is accepted for further proceedings if the department or department of justice determines that reopening the matter is in the public interest.

History: 1991 a. 278; 2013 a. 20 s. 2217; Stats. 2013 s. 202.18.

SUBCHAPTER III

PROFESSIONAL EMPLOYER ORGANIZATIONS

202.21 Definitions. In this subchapter:

(1) "Applicant" means a professional employer organization or a professional employer group that applies for registration under s. 202.22.

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

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

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

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

(3m) "Department" means the department of financial institutions.

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

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

nization,” “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).

(6) “Registrant” means a professional employer organization or a professional employer group that is registered under s. 202.22.

History: 2007 a. 189; 2009 a. 174; 2013 a. 20 ss. 1990, 2233; Stats. 2013 s. 202.21.

202.22 Registration requirements. (1) REGISTRATION REQUIRED: USE OF TITLES. (a) No person may operate as a professional employer organization or professional employer group, advertise that the person is a professional employer organization or professional employer group, or otherwise hold itself out as a professional employer organization or professional employer group unless the person first registers with the department as provided in this section.

(b) No person may designate as the person’s title, or append to the person’s name the words or letters, “professional employer organization,” “P.E.O.,” “professional employer group,” “P.E.G.,” “staff leasing company,” “registered staff leasing company,” “employee leasing company,” or “administrative employer,” or other similar titles or letters, or use those titles, words, or letters to describe the person’s business or represent that the person or the person’s business is registered or licensed as a “professional employer organization,” “P.E.O.,” “professional employer group,” “P.E.G.,” “staff leasing company,” “registered staff leasing company,” “employee leasing company,” or “administrative employer,” unless the person is registered under this section.

(2) APPLICATION FOR REGISTRATION. Except as provided in sub. (7) (b), an applicant for registration under this section shall submit to the department an application for registration in a form and manner prescribed by the department, together with the registration fee determined by the department under s. 202.08 and all of the following:

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

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

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

(d) A statement of ownership, which shall include the name and business experience of every controlling person, as defined in s. 202.21 (3) (a), of the applicant.

(e) A statement of management, which shall include the name and business experience of every controlling person, as defined in s. 202.21 (3) (b), of the applicant.

(f) 1. Except as provided under subd. 2., 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 subdivision by submitting a combined or consolidated audited financial statement. An applicant that does not have sufficient operating history to have an audited financial statement that is based on at least 12 months of operating history may meet the requirements of this subdivision by submitting financial statements that have been reviewed by an independent certified public accountant.

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

(4) REGISTRATION RENEWAL; EXTENSION FOR FILING UPDATED FINANCIAL STATEMENT. (a) A registrant shall submit a renewal application, together with the renewal fee determined by the department under s. 202.08, to the department in a form and manner prescribed by the department by July 31 of each year. Except as provided in pars. (b) and (c) and sub. (7) (b), a registrant shall submit with each renewal application a financial statement, as specified in sub. (2) (f) 1., updated to reflect the current financial condition of the registrant.

(b) A registrant may apply to the department for an extension of the time within which to submit the updated financial statement required under par. (a) by providing with the renewal application a letter from the certified public accountant who is auditing the registrant’s financial statement stating the reasons for the delay and the anticipated completion date of the audit.

(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.

(5) SMALL OPERATIONS REGISTRATION. (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 small operations registration under this section by submitting to the department an application for small operations registration in a form and manner prescribed by the department and paying the initial registration fee determined by the department under s. 202.08. An applicant that is seeking small operations registration shall, in addition to the information 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 small operations registration.

(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 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 small operations registration.

(e) A professional employer organization or professional employer group registered under this subsection is not required to comply with the financial capability requirement under s. 202.23.

(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 registration or renewal fee determined by the department under s. 202.08, 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 controlling person shall guarantee the obligations of the professional employer organizations in the professional employer group.

(7) ALTERNATIVE REGISTRATION. (a) The department shall by rule provide for registration of a professional employer organization or professional employer group on acceptance by the department of a registration form, financial statement, or any other information or documentation required under sub. (2), (4), (5), or (6), s. 202.23, or rules promulgated under s. 202.095 or 202.26 in the

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

(b) The department may by rule provide for registration of a professional employer organization or professional employer group without compliance with sub. (2), (4), (5), or (6), s. 202.23, or rules promulgated under s. 202.095 or 202.26 on acceptance by the department of assurance, provided by a bonded, independent, and qualified assurance organization that has been approved by the department, satisfactory to the department that the professional employer organization or professional employer group is qualified to operate as a professional employer organization or a professional employer group in this state.

(c) This subsection does not limit the authority of the department to require a professional employer organization or professional employer group to register as provided in sub. (2), (4), (5), or (6), to maintain proof of financial capability as required under s. 202.23, or to comply with this chapter and the rules promulgated under s. 202.095 or 202.26; to investigate an applicant or registrant and deny registration or renewal registration under sub. (8), or to investigate an applicant, registrant, or controlling person and take disciplinary action under s. 202.06.

(8) ISSUANCE OF REGISTRATION. The department shall investigate each applicant or registrant who submits to the department an application for registration or registration renewal under this section, together with the applicable registration or registration renewal fee, to determine whether the applicant or registrant is qualified for registration or for renewal registration. Except as provided in ss. 202.03 and 202.035, the department shall issue a registration or renewal registration if, after completing the investigation, the department determines that the applicant or registrant meets the applicable requirements under this chapter and rules promulgated under s. 202.095 or 202.26 for issuance or renewal of a registration and is satisfied that the applicant or registrant will comply with this chapter and those rules.

(9) LIST OF REGISTRANTS; CONFIDENTIALITY. (am) The department shall maintain and periodically update a list of all professional employer organizations and professional employer groups registered under this section, and shall make the list available 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:

1. Disclosure of the record is necessary for the administration of this section.
2. A court of competent jurisdiction in this state orders the department to release the record.
3. The requester is the department of children and families or a county child support agency under s. 59.53 (5), the request is made under s. 49.22 (2m), and the request is limited to the name, home address, and business address of the applicant, registrant, or controlling person who is the subject of the request and any financial information about the applicant, registrant, or controlling person contained in the record.
4. The department of revenue requests the record for the purpose of locating a person, or the assets of a person, who has failed to file tax returns, who has underreported taxable income, or who is a delinquent taxpayer; identifying fraudulent tax returns; or providing information for tax-related prosecutions.

History: 2007 a. 189; 2009 a. 29, 174, 180; 2013 a. 20 ss. 2234 to 2236, 2238 to 2240, 2243 to 2248; Stats. 2013 s. 202.22.

202.23 Financial capability. Except as provided in s. 202.22 (5) (e) or (7) (b), a professional employer organization or professional employer group shall maintain one of the following:

(1) WORKING CAPITAL REQUIREMENT. Working capital, as defined by generally accepted accounting principles, of not less

than \$100,000, as shown in the financial statement submitted to the department under s. 202.22 (2) (f) 1., (4), or (6). If a professional employer organization or professional employer group has less than \$100,000 in working capital, the department may issue a registration or renewal registration contingent on the registrant meeting the working capital requirement of this subsection no later than 180 days after the issuance of the registration or renewal registration. During the period of contingent registration, the registrant shall submit quarterly financial statements to the department accompanied by an attestation by the chief executive officer of the registrant that all wages, salaries, employee benefits, worker's compensation insurance premiums, payroll taxes, unemployment insurance contributions, and other amounts that are payable to or with respect to an employee of the registrant performing services for a client were paid by the registrant when due.

(2) ALTERNATIVE COMMITMENT. A bond, certificate of deposit, escrow account, or irrevocable letter of credit in an amount that is not less than \$100,000 or, if the financial statement submitted to the department under s. 202.22 (2) (f) 1., (4), or (6) indicates a deficit in working capital, a bond, certificate of deposit, escrow account, or irrevocable letter of credit in an amount that is not less than \$100,000 plus an amount that is sufficient to cover that deficit. The commitment described in this subsection shall be in a form approved by the department, shall be held in a depository designated by the department, and shall secure the payment by the professional employer organization or professional employer group of any wages, salaries, employee benefits, worker's compensation insurance premiums, payroll taxes, unemployment insurance contributions, or other amounts that are payable to or with respect to an employee performing services for a client if the professional employer organization or professional employer group does not make those payments when due. The commitment shall be established in favor of or be made payable to the department, for the benefit of the state and any employee to whom or with respect to whom the professional employer organization or professional employer group does not make a payment described in this subsection when due. The professional employer organization or professional employer group shall file with the department any agreement, instrument, or other document that is necessary to enforce the commitment against the professional employer organization or professional employer group, or against any relevant 3rd party, or both.

History: 2007 a. 189; 2009 a. 174; 2013 a. 20 s. 2249; Stats. 2013 s. 202.23; 2013 a. 168 s. 21.

202.24 Rights, duties, and obligations unaffected.

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

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

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

professional employer group performing services for a client and all beneficiaries of those employees.

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

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

(4) TAX CREDITS AND OTHER ECONOMIC DEVELOPMENT INCENTIVES; TAXES, ASSESSMENTS, EXPENDITURES, AND BENEFITS. (a) In this subsection, “local governmental unit” has the meaning given in s. 19.42 (7u).

(b) For purposes of determining tax credits, other economic development incentives provided by the state or a local governmental unit that are based on providing employment, or any other benefits that arise out of the employment of an employee of a professional employer organization or professional employer group who is performing services for a client, such an employee is considered to be an employee solely of the client, and the client is entitled to the benefit of the tax credit, economic development incentive, or other benefit. If the amount of a tax credit, incentive, or benefit described in this paragraph is based on the number of employees employed by a client, only those employees of a professional employer organization or professional employer group who are performing services for the client shall be treated as employees employed by the client, and employees of the professional employer organization or professional employer group who are performing services for the professional employer organization or professional employer group or for another client shall not be treated as employees employed by the client. On request of a client that is seeking a tax credit, incentive, or other benefit described in this paragraph or on request of an agency of this state

or local governmental unit that is responsible for administering such a tax credit, incentive, or benefit, a professional employer organization or professional employer group shall provide any employment information requested and reasonably required by the agency or local governmental unit that is necessary to support a claim, application, or other action by the client.

(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.

History: 2007 a. 189; 2009 a. 29, 174; 2013 a. 20 s. 2250; Stats. 2013 s. 202.24.

202.26 Rules. The rules the department promulgates under s. 202.095 that implement this subchapter shall include rules providing for all of the following:

(1) Alternative registration of professional employer organizations under s. 202.22 (7) (a) and (b).

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

(3) Minimum requirements for issuance or renewal of a registration under s. 202.22 (8).

History: 2007 a. 189; 2013 a. 20 s. 2252; Stats. 2013 s. 202.26.

202.29 Short title. This subchapter shall be known as the “Wisconsin Professional Employer Organizations Act.”

History: 2009 a. 174; 2013 a. 20 s. 2253; Stats. 2013 s. 202.29.