CHAPTER 202

REGULATION OF PROFESSIONAL EMPLOYER ORGANIZATIONS AND THE SOLICITATION OF FUNDS FOR A CHARITABLE PURPOSE

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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.

(1m) "Application" includes an application for initial registration and an application for renewal of a registration.

(2) "Controlling person" has the meaning given in s. 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; 2015 a. 163; 2015 a. 197 s. 51.

202.021 Registration. (1) APPLICATIONS FOR REGISTRATION. (a) Applicants for registration under this chapter shall apply to the department, on forms and in the manner prescribed by the department. Forms prescribed by the department under this paragraph may contain any content or requirement that the department, in its discretion, determines necessary and these forms may be modified or updated as necessary by the department to carry out the purposes of this chapter.

(b) 1. The department shall require each applicant to provide his or her social security number with the applicant's application, or, if the applicant is not an individual, the department shall require the applicant to provide its federal employer identification number.

2. 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 subdivision is invalid.

3. The department may not disclose a social security number obtained under subd. 1. 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.

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

(2) COMPLETION OF REGISTRATION PROCESS. (a) The department may conduct an investigation of the applicant, including the applicant's members, officers, trustees, and directors, to determine whether the applicant satisfies all of the requirements specified for registration. The investigation may include determining whether any of the applicant's members, officers, trustees, or directors has 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.

(b) If an officer, director, or member of an applicant has been convicted or has an arrest or conviction record, the department may charge an applicant the fees, costs, or other expenses the department incurs for conducting an investigation under this subsection.

(bn) Subject to ss. 111.321, 111.322, and 111.335, the department may deny or limit the registration of an applicant or registrant that has a member, officer, trustee, or director who has been convicted of a felony or misdemeanor.

(c) Except as provided in sub. (4), the department shall, after its review of an application, issue a certificate of registration to the applicant.

(d) A registration issued under this chapter is not assignable or transferable.

(3) RENEWAL OF REGISTRATION. (a) The department shall give a notice of renewal to each registrant at least 30 days before the expiration 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 par. (c).

(c) 1. A registrant may apply to renew its registration by submitting to the department an application, fees, and any financial statement required by s. 202.22. For the renewal application to be timely, the renewal fee and application must be received by the department on or before the registration's expiration date.

2. Subject to subd. 4., a registrant whose renewal fee and completed application are not received by the department on or before the registration's expiration date, but are received within 60 days

after the expiration date, must pay the late fee determined by the department under s. 202.041.

3. A registrant whose renewal fee and completed application are not received by the department within 60 days after the expiration date of the registration must submit an application for a new registration.

4. After the expiration date, a registrant that is required to renew its registration may not continue to conduct the activity for which the registration is required unless the registrant's certificate has been renewed by the department or the registrant has paid the renewal fee and filed a completed renewal application on or before the registration's expiration date.

(4) DENIAL OF APPLICATION. (a) The department may not issue or renew a registration under this chapter if any of the following applies:

1. The applicant has failed to submit a complete application to the department. Before denying an incomplete application, the department shall notify the applicant of any deficiencies in the application and give the applicant a reasonable amount of time to resolve the deficiencies.

2. The department determines that the applicant has failed to comply with any applicable requirement for the issuance or renewal of registration.

3. The department determines that the denial of the application is necessary to protect the public health, safety, or welfare.

4. The department is not satisfied that the applicant or registrant will comply with this chapter and any rules promulgated under this chapter.

5. The department of revenue has certified under s. 73.0301 that the applicant is liable for delinquent taxes. An applicant whose application is denied under this subdivision for delinquent taxes is entitled to a notice under s. 73.0301 (2) (b) 1. b. and hearing under s. 73.0301 (5) (a) but is not entitled to any other notice or hearing under this section.

6. The department of workforce development has certified under s. 108.227 that the applicant is liable for delinquent unemployment insurance contributions. An applicant whose application is denied under this subdivision for delinquent unemployment insurance contributions is entitled to a notice under s. 108.227 (2) (b) 1. b. and hearing under s. 108.227 (5) (a) but is not entitled to any other notice or hearing under this section.

7. The applicant is an individual who fails to comply, after appropriate notice, with a subpoena or warrant issued by the department of children and families or a county child support agency under s. 59.53 (5) and related to child support or paternity proceedings or who is delinquent in making court−ordered payments of child or family support, maintenance, birth expenses, medical expenses, or other expenses related to the support of a child or former spouse, as provided in a memorandum of understanding entered into under s. 49.857. An applicant whose license is not issued or renewed under this subdivision for delinquent payments is entitled to a notice and hearing under s. 49.857 but is not entitled to any other notice or hearing under this section.

(b) If the department denies an application under par. (a) 1., 2., 3., or 4., 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.

History: 2015 a. 163 ss. 6, 8, 12 to 14, 17, 18, 20, 21, 24, 28.

202.031 General duties. (1) 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.

(2) 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, or on the registrant's Internet site, describing the procedures for filing a complaint against the registrant.

(3) A registrant, or a registrant's officer, director, trustee, or member, 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.

(4) A registrant may voluntarily surrender his, her, or its 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.

(5) (a) Applicants and registrants shall keep current and accurate all material information contained in the application or on file with the department. Material information includes name, mailing address, electronic mail address, and trade names.

(b) Notification of any change to material information shall be made to the department within 30 days after the change and shall be made in writing or in accordance with other notification procedures approved by the department.

(c) Any person who fails to comply with par. (b) shall be subject to a forfeiture of $50 for each violation.

(6) Before using any trade name in this state, the registrant shall inform the department in writing that the registrant intends to use the trade name. Unless the registrant is informed by the department within 30 days of submission of the trade name to the department that it may not use the proposed trade name, the registrant may use the trade name.

History: 2015 a. 163 ss. 2, 4, 5, 9, 25, 30, 33, 35.

202.041 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. 202.021 (3) (a). 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; 2015 a. 163 s. 46; 202.041, 2015 stats.

202.051 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; 2015 a. 163 s. 47; 202.051, 2015 stats.

202.06 Disciplinary proceedings; enforcement of laws requiring registration. (2) DISCIPLINARY ACTION. (c) 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:

1. Made a material misrepresentation or false statement in an application or in any other information submitted to the department or in a report under s. 108.067.

2. Violated this chapter or a rule promulgated under this chapter.

(d) Subject to ss. 111.321, 111.322, and 111.335, 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 the registrant has a member, officer, trustee, or director who has been convicted of a felony or misdemeanor.

(e) The department shall restrict or suspend a registration if the registrant is an individual who fails to comply, after appropriate notice, with a subpoena or warrant issued by the department of children and families or a county child support agency under s. 59.53 (5) and related to child support or paternity proceedings or who is delinquent in making court−ordered payments of child or family support, maintenance, birth expenses, medical expenses, or other expenses related to the support of a child or former spouse, as provided in a memorandum of understanding entered into under s. 49.857. An individual whose registration is restricted or suspended under this paragraph is entitled to a notice and hearing only as provided in a memorandum of understanding entered into under s. 49.857.

(f) The department shall revoke a registration if the department of revenue certifies under s. 73.0301 that the registrant is liable for delinquent taxes. A registrant whose registration is revoked under this paragraph for delinquent taxes is entitled to a notice under s. 73.0301 (2) (b) 1. b. and a hearing under s. 73.0301 (5) (a).

(g) The department shall revoke a registration if the department of workforce development certifies under s. 108.227 that the registrant is liable for delinquent unemployment insurance contributions. A registrant whose registration is revoked under this paragraph for delinquent unemployment insurance contributions is entitled to a notice under s. 108.227 (2) (b) 1. b. and a hearing under s. 108.227 (5) (a).

(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) (c), 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; 2015 a. 163. ss. 27, 36 to 40.

202.07 General powers of the department. (1m) (a) The department may conduct investigations and hold hearings to determine whether any person has violated this chapter or any rule promulgated under this chapter.

(b) The department may investigate whether a registrant, or an officer, director, trustee, or member of a registrant, has been charged with or convicted of a crime. In conducting this investigation, the department may require a person for whom the department conducts an investigation to provide any information that is necessary for the investigation.

(2m) 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.

(3m) 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.

(4m) The department may promulgate rules to implement this chapter.

(5m) (a) 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.

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

(c) 1. An administrative warning does not constitute an adjudication of guilt or the imposition of discipline and, except as provided in subd. 2., may not be used as evidence that the registrant is guilty of the alleged misconduct.

2. 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.

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

History: 2013 a. 20; 2015 a. 163 ss. 3, 10, 34, 37, 41 to 45, 49.

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 food, used clothing, or used 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 professional fund−raiser that is registered under this chapter.

(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 and is not a bona fide employee of a professional fund−raiser that is registered under this chapter.

History: 1991 a. 278, 315; 1999 a. 9; 2013 a. 20 ss. 1990, 2189 to 2208; Stats. 2013 s. 202.11; 2015 a. 163.

202.12 Regulation of charitable organizations. **(1)** 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) Applicants for a charitable organization registration shall apply to the department, in the form and manner prescribed by the department. Each application that is not a renewal application shall be accompanied by any information required by the department, including all of the following:

1m. The registration fee determined by the department under s. 202.041.

2g. A reviewed financial statement for the most recently completed fiscal year of the charitable organization, if the charitable organization received contributions in excess of $300,000, subject to adjustment under sub. (8), but not more than $500,000, subject to adjustment under sub. (8), during its most recently completed fiscal year. The statement shall be prepared in accordance with generally accepted accounting principles and include a review of the financial statement by an independent certified public accountant.

2r. An audited financial statement for the most recently completed fiscal year of the charitable organization, if the charitable

organization received contributions in excess of $500,000, subject to adjustment under sub. (8), during its most recently completed fiscal year. The statement shall be prepared in accordance with generally accepted accounting principles and include the opinion of an independent certified public accountant on the financial statement.

(e) All charitable organization registrations expire on July 31 of each year.

(3) ANNUAL REPORT. (a) A charitable organization registered under sub. (1) shall file with the department an annual 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 report shall be filed within 12 months after the end of that fiscal year.

(b) In addition to the annual report required under par. (a), if a charitable organization received contributions in excess of $500,000, subject to adjustment under sub. (8), during its most recently completed fiscal year, the charitable organization shall file with the department 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 12 months after the end of that fiscal year.

(bm) In addition to the annual report required under par. (a), if a charitable organization received contributions in excess of $300,000, subject to adjustment under sub. (8), but not more than $500,000, subject to adjustment under sub. (8), during its most recently completed fiscal year, the charitable organization shall file with the department 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 12 months after the end of that fiscal year.

(d) A charitable organization may apply to the department for a waiver of the requirement set forth in par. (b) or (bm). The waiver application shall be in writing, be received by the department within 90 days after the charitable organization's fiscal year−end, and include documentation to support all of the following:

1. The charitable organization's contributions were, during each of the past 3 fiscal years, less than $100,000, subject to adjustment under sub. (8).

2. During the fiscal year for which the waiver is being requested, the charitable organization received one or more contributions from one contributor that exceeded $200,000, subject to adjustment under sub. (8), if the charitable organization is applying for a waiver of the requirement set forth in par. (bm), or exceeded $400,000, subject to adjustment under sub. (8), if the charitable organization is applying for a waiver of the requirement set forth in par. (b).

(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. 11.0102 (1).

3. Except as provided in par. (b), a charitable organization that does not intend to raise or receive contributions in excess of $25,000, subject to adjustment under sub. (8), 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.

9. Any corporation established by an act of the United States Congress that is required by federal law to submit to Congress annual reports, fully audited by the United States Department of Defense, of its activities including itemized accounts of all receipts and expenditures.

(b) If a charitable organization would otherwise be exempt under par. (a) 3., but it raises or receives more than $25,000, subject to adjustment under sub. (8), in contributions, it shall, within 30 days after the date on which its contributions exceed this amount, 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.

(6m) UNPAID SOLICITOR DISCLOSURE REQUIREMENTS. (a) Prior to orally requesting a contribution or contemporaneously with a written request for a contribution, an unpaid solicitor shall clearly and conspicuously disclose all of the following:

1. The name of the charitable organization, as it appears on file with the department, on whose behalf the solicitation is being made.

2. A clear description of the primary charitable purpose for which the solicitation is made.

3. That the contribution is not tax−deductible, if this disclosure is applicable.

(b) In addition to the information required by par. (a), any written solicitation, and any confirmation, receipt, or reminder of a pledged amount, shall conspicuously state the following verbatim: "A financial statement of the charitable organization disclosing assets, liabilities, fund balances, revenue, and expenses for the preceding fiscal year will be provided to any person upon request."

(c) The financial statement under par. (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 financial information with its annual report under sub. (3), the financial statement under par. (b) shall be consistent with the financial information reported in that annual report.

(d) The disclosures required by this subsection are required unless the unpaid solicitor is soliciting a contribution for a charitable organization that is not required to be registered under sub. (1) or that has obtained a disclosure exemption under par. (e).

(e) 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 subsection. The department shall prescribe the forms and procedures for use in applying for an exemption.

(7) RELATIONSHIP WITH FUND−RAISING COUNSEL AND PROFESSIONAL FUND−RAISERS. (a) A charitable organization that is required to be registered under sub. (1), and that permits a fund−raising counsel to perform any material services for the charitable organization, shall do all of the following:

1. Before permitting the fund−raising counsel to perform any material services for the charitable organization, ensure the fund−raising counsel is registered under s. 202.13 (1) or is not required to be registered.

2. Before permitting the fund−raising counsel to perform any material services for the charitable organization, contract in writing with the fund−raising counsel, unless the fund−raising counsel is exempt under s. 202.13 (6) from contracting in writing with the charitable organization. Requirements for the contract are specified in s. 202.13 (3).

3. Retain, for at least 3 years, the accounting the fund−raising counsel is required to provide to the charitable organization under s. 202.13 (4) (a) and make this accounting available to the department upon request.

4. Maintain an account at a financial institution within which the fund−raising counsel shall deposit, in its entirety, within 5 days after its receipt, a contribution of money received by the fund−raising counsel on behalf of the charitable organization. The account shall be in the name of the charitable organization, and the charitable organization shall have sole control of all withdrawals from the account.

(b) A charitable organization that is required to be registered under sub. (1), and that permits a professional fund−raiser to perform any material services for the charitable organization, shall do all of the following:

1. Before permitting the professional fund−raiser to perform any material services for the charitable organization, ensure the professional fund−raiser is registered under s. 202.14 (1) or is not required to be registered.

2. Before permitting the professional fund−raiser to perform any material services for the charitable organization, contract in writing with the professional fund−raiser. Requirements for the contract are specified in s. 202.14 (4).

3. Before permitting the professional fund−raiser to perform any material services for the charitable organization, file with the department a written confirmation that any solicitation notice filed with the department under s. 202.14 (3), and any material accompanying that notice, are true and correct to the best of the charitable organization's knowledge.

4. Retain, for at least 3 years, the accounting the professional fund−raiser is required to provide to the charitable organization under s. 202.14 (7), and make this accounting available to the department upon request.

5. Maintain an account at a financial institution within which the professional fund−raiser shall deposit, in its entirety, within 5 days after its receipt, a contribution of money received by the professional fund−raiser on behalf of the charitable organization. The account shall be in the name of the charitable organization, and the charitable organization shall have sole control of all withdrawals from the account.

(8) CONTRIBUTION LIMITS. (a) Subject to par. (b), the department may adjust the threshold amounts in subs. (1) (b) 2g. and 2r., (3) (b), (bm), and (d) and (5) (a) 3. and (b) to account for inflation.

(b) Before the department makes any adjustment under par. (a), the department shall send a notification of the proposed adjustment to the cochairpersons of the joint committee for review of administrative rules. 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 adjustment, the adjustment may be made as proposed. 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 adjustment, the adjustment may be made only upon approval of the committee.

(c) The department shall notify registrants of any adjustment under this subsection by posting the adjustment on the department's Internet site.

History: 1991 a. 278; 1995 a. 27, 277; 2007 a. 20, 213; 2013 a. 20 s. 2209; Stats 2013 s. 202.12; 2015 a. 117; 2015 a. 163 ss. 53 to 78, 106 to 111, 116.

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

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) Applicants for a fund−raising counsel registration shall apply to the department, in the form and manner prescribed by the department. Each application that is not a renewal application shall be accompanied by any information required by the department, including all of the following:

1m. The registration fee determined by the department under s. 202.041, 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.

2. A bond that is approved under sub. (2).

(e) All fund−raising counsel registrations expire on August 31 of each year.

(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. The fund−raising counsel shall maintain the bond in effect as long as the registration is in effect. The bond, which shall be in a form prescribed by and acceptable to the department, 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.

(2m) ANNUAL REPORT. Each fund−raising counsel registered under sub. (1) shall, on or before March 31 of each year, file a report with the department giving such reasonable and relevant information as the department may require concerning the business and operations conducted by the registrant. This report shall be in the form prescribed by the department.

(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 fund−raising counsel shall keep the accounting for at least 3 years after the date on which services under the contract are completed.

(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.

(d) All records described in this subsection shall be made available to the department upon the department's request.

(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; 2015 a. 163.

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) Applicants for a professional fund−raiser registration shall apply to the department, in the form and manner prescribed by the department. Each application that is not a renewal application shall be accompanied by any information required by the department, including all of the following:

1m. The registration fee determined by the department under s. 202.041, 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.

2. A bond that is approved under sub. (2).

(e) All professional fund−raiser registrations expire on August 31 of each year.

(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. 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 shall be in a form prescribed by and acceptable to the department, 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.

(2m) ANNUAL REPORT. Each professional fund−raiser registered under sub. (1) shall, on or before March 31 of each year, file a report with the department giving such reasonable and relevant information as the department may require concerning the business and operations conducted by the registrant. This report shall be in the form prescribed by the department.

(3) SOLICITATION NOTICE. (am) 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. Forms prescribed by the department under this paragraph may contain any content or requirement that the department, in its discretion, determines necessary. 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.

(bm) Within 7 days after any material change occurs in information filed with the department under par. (am), the professional fund−raiser shall report the change, in writing, to the department.

(4) CONTRACT. (a) A professional fund−raiser may not solicit contributions on behalf of a charitable organization that is required to be registered under s. 202.12 (1) unless the professional fund−raiser has executed a written contract with the charitable organization that clearly states the respective obligations of the professional fund−raiser and the charitable organization.

(e) The contract required under par. (a) shall include all of the following:

1. The name of the professional fund−raiser.

2. The name of the charitable organization.

3. The beginning and expiration dates of the contract.

4. The terms of the contract, including a clear description of the services to be performed by the professional fund−raiser.

5. A clear statement of the financial arrangement between the professional fund−raiser and the charitable organization, including, if applicable, a statement of all of the following:

a. The percentage or dollar amount of the total funds collected on behalf of the charitable organization that shall be paid to, or retained by, the charitable organization.

b. The percentage or dollar amount of the total funds collected on behalf of the charitable organization that shall be paid to the professional fund−raiser or any other person for purposes other than the exclusive benefit of the charitable organization's charitable purposes.

c. The fixed fee, if any, to be received by the professional fund−raiser.

d. All contractual expenses to be incurred by the professional fund−raiser but charged to the charitable organization. This list of expenses shall contain specific dollar amounts or projected estimates of these costs.

e. The costs per unit for the services to be provided and the projected number of units to be provided.

6. The signature of an owner or principal officer of the professional fund−raiser and the signatures of 2 authorized officers, directors, or trustees of the charitable organization.

(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 professional fund−raiser 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 professional 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).

(11) SOLICITATION DISCLOSURE REQUIREMENTS. (a) Prior to orally requesting a contribution or contemporaneously with a written request for a contribution, a professional fund−raiser shall clearly and conspicuously disclose all of the following:

1. The name of the charitable organization, as it appears on file with the department, on whose behalf the solicitation is being made.

2. A clear description of the primary charitable purpose for which the solicitation is made.

3. That the contribution is not tax−deductible, if this disclosure is applicable.

4. The name of the professional fund−raiser, as it appears on file with the department, and that the solicitation is being conducted by a professional fund−raiser who is being paid for his, her, or its services.

5. If the individual acting on behalf of the professional fund−raiser identifies himself or herself by name, the individual's legal name.

6. Upon request by a person from whom a charitable contribution is sought, the percentage of the contribution that will be paid to the charitable organization as a result of the person's contribution. If the professional fund−raiser does not receive a percentage of the contribution, the professional fund−raiser shall disclose the dollar amount it was to or will receive.

(b) If a solicitation is made orally, including a solicitation made by telephone, the professional fund−raiser shall, within 5 days after the solicitation, send to each person contributing or pledging to contribute a written confirmation, receipt, or reminder of the contribution.

(c) In addition to the information required by par. (a) 1. to 5., any written solicitation, and any confirmation, receipt, or reminder required by par. (b), shall, unless the charitable organization has obtained a disclosure exemption under s. 202.12 (6m) (e), conspicuously state the following verbatim: "A financial statement of the charitable organization disclosing assets, liabilities, fund balances, revenue, and expenses for the preceding fiscal year will be provided to any person upon request."

(d) The financial statement under par. (c) 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 financial information with its annual report under s. 202.12 (3), the financial statement under par. (c) shall be consistent with the financial information reported in that annual report.

(e) 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.

(f) The disclosures required by this subsection are required unless the professional fund−raiser is soliciting a contribution for a charitable organization that is not required to be registered under s. 202.12 (1).

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; 2015 a. 163 ss. 89 to 105, 113, 115.

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.

202.16 Prohibited acts. (1) No charitable organization, fund−raising counsel, or professional fund−raiser may, in the conduct of his, her, or its affairs, including 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 total funds collected greater than that established under s. 202.14 (4).

(h) Represent or cause another to represent that contributions are tax−deductible unless they so qualify under the federal Internal Revenue Code.

(i) Represent or cause another to represent that the person has previously approved or agreed to make a contribution when in fact the person has not given this approval or agreement.

(j) Represent or cause another to represent that the person has previously contributed to the same organization or for the same purpose when in fact the person has not so contributed.

(k) Fail to apply contributions in a manner substantially consistent with the solicitation or the purposes expressed in the solicitation.

(L) Represent in any manner that registration constitutes an endorsement or approval by the department or the department of justice.

(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; 2015 a. 163.

202.17 Administration and investigations. (1) PUBLIC RECORDS. Except as provided in ss. 202.13 (5) and 202.14 (10), 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 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; 2015 a. 163.

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. 202.07 (4m) 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; 2015 a. 163.

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 initial or renewal 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 organization," "PEO," "staff leasing company," "registered staff leasing company," "employee leasing company," or "administrative employer," or uses any other name, as part of the person's business name or to describe the person's business. "Professional employer organization" does not mean a temporary help agency, as defined in s. 102.01 (2) (f), or a temporary help company, as defined in s. 108.02 (24m).

(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; 2015 a. 163.

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. Each application shall be accompanied by any information required by the department, including all of the following:

(am) The registration fee determined by the department under s. 202.041.

(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).

(3) REGISTRATION EXPIRATION. All professional employer organization and professional employer group registrations expire on July 31 of each year.

(4) UPDATED FINANCIAL STATEMENT. (a) Except as provided in par. (b) 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 whose fiscal year end is March 31, April 30, or May 31 may apply to the department for an extension until August 31, September 30, or October 31, respectively, to submit the updated financial statement required under par. (a). This application shall be accompanied by any information or documentation required by the department, and may be denied by the department.

(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. 202.041. An applicant that is seeking small operations registration shall, in addition to the information required under sub. (2), 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. (2), 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 subs. (2) and (4) (a) or sub. (5) on a combined or consolidated basis, paying the initial registration or renewal fee determined by the department under s. 202.041, 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. (b) The department may allow the 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. 202.07 (4m) 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. 202.07 (4m) or 202.26; to investigate an applicant or registrant and deny registration or renewal registration under s. 202.021, or to investigate an applicant, registrant. or controlling person and take disciplinary action under s. 202.06.

(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 upon request. 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; 2015 a. 163.

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) (a), or (6).

(2) ALTERNATIVE COMMITMENT. A bond 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 negative working capital, a bond in an amount that is not less than $100,000 plus an amount that is sufficient to cover that negative amount. The bond shall be in a form approved 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 bond shall be established in favor of 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; 2015 a. 163.

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. 202.07 (4m) that implement this subchapter may include rules providing for 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.

History: 2007 a. 189; 2013 a. 20 s. 2252; Stats. 2013 s. 202.26; 2015 a. 163.

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.