

SUBSTITUTE FOR  
HOUSE BILL NO. 6601

A bill to license and regulate professional employer organizations; to define certain relationships and allocate certain rights and duties between those relationships; to provide for certain powers and duties for state agencies; to impose certain fees and provide for certain security devices; and to provide for penalties and remedies.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Sec. 1. This act may be cited and shall be known as the  
2 "Michigan professional employer agreement regulatory act".

3       Sec. 3. As used in this act:

4       (a) "Client" means any person who enters into a professional  
5 employer agreement with a PEO.

6       (b) "Coemployer" means either a PEO or a client.

1 (c) "Coemployment relationship" means a relationship that is  
2 intended to be an ongoing relationship rather than a temporary or  
3 project-specific one, wherein the rights, duties, and obligations  
4 of an employer arising out of an employment relationship have been  
5 allocated between coemployers pursuant to a professional employer  
6 agreement.

7 (d) "Covered employee" means an individual having a  
8 coemployment relationship with a PEO and a client who has received  
9 written notice of coemployment with the PEO and the individual has  
10 created a coemployment relationship pursuant to a professional  
11 employer agreement. Covered employee includes individuals who are  
12 officers, directors, shareholders, partners, and managers of the  
13 client to the extent the PEO and the client have expressly agreed  
14 in the professional employer agreement that those individuals are  
15 considered covered employees and those individuals act as  
16 operational managers or perform day-to-day operational services for  
17 the client.

18 (e) "Department" means the department of energy, labor, and  
19 economic growth.

20 (f) "Director" means the director of the department.

21 (g) "PEO group" means 2 or more PEOs that are majority owned  
22 or commonly controlled by the same entity, parent, or controlling  
23 person.

24 (h) "Person" means any individual, partnership, corporation,  
25 limited liability company, association, or any other legal entity.

26 (i) "Professional employer agreement" means a written contract  
27 by and between a client and a PEO that provides for the following:

1           (i) Coemployment of covered employees.

2           (ii) The allocation of employer rights and obligations between  
3 the client and the PEO with respect to the covered employees.

4           (iii) Assumption of responsibilities by the PEO and the client  
5 to act as the PEO and client.

6           (j) "PEO" or "professional employer organization" means any  
7 person engaged in the business of providing professional employer  
8 services regardless of its use of a descriptive term other than  
9 "professional employer organization" or "PEO". PEO does not include  
10 any of the following:

11           (i) An arrangement in which a person, whose principal business  
12 activity is not entering into professional employer agreements and  
13 does not hold itself out as a PEO, shares employees with a commonly  
14 owned company within the meaning of section 414(b) and (c) of the  
15 internal revenue code of 1986, 26 USC 414.

16           (ii) A provider of temporary help services.

17           (k) "Professional employer service" means the service of  
18 entering into a coemployment relationship in which all or a  
19 majority of the employees providing services to a client or to a  
20 division or work unit of the client are covered employees.

21           (l) "Licensee" means a PEO licensed under this act.

22           Sec. 5. (1) Neither this act nor a professional employer  
23 agreement shall affect, modify, or amend any collective bargaining  
24 agreement, or the rights or obligations of any client, PEO, or  
25 covered employee under any state or federal act.

26           (2) Neither this act nor any professional employer agreement  
27 shall do any of the following:

1 (a) Diminish, abolish, or remove rights of covered employees  
2 owed to a client or obligations of that client to a covered  
3 employee regarding rights or obligations existing prior to the  
4 effective date of the professional employer agreement.

5 (b) Affect, modify, or amend any contractual relationship or  
6 restrictive covenant between a covered employee and any client in  
7 effect at the time a professional employer agreement becomes  
8 effective or that is entered into subsequently between a client and  
9 a covered employee.

10 (3) Neither this act nor any professional employer agreement  
11 shall affect, modify, or amend any state, local, or federal  
12 licensing, registration, certification, or other regulatory  
13 requirement applicable to any client or covered employee.

14 Sec. 7. (1) Except as otherwise provided in this act, a person  
15 shall not provide, advertise, or otherwise hold itself out as  
16 providing professional employer services in this state, unless  
17 licensed or exempt from licensure under this act.

18 (2) An applicant for licensure shall submit to the department  
19 the license fee imposed in section 13 and a completed application  
20 providing the following information:

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

22 (b) The address of the principal place of business of the PEO  
23 and the address of each office it maintains within Michigan.

24 (c) The PEO's taxpayer or employer identification number.

25 (d) A list by jurisdiction of each name under which the PEO  
26 has operated within the preceding 5 years, including any  
27 alternative names, names of predecessors and, if known, successor

1 business entities.

2 (e) A statement of ownership, which shall include the name and  
3 evidence of the business experience of any person, individually or  
4 acting in concert with 1 or more other persons, owning or  
5 controlling, directly or indirectly, 10% or more of the equity  
6 interests of the PEO.

7 (f) A statement of management, which shall include the name  
8 and evidence of the business experience of any person who serves as  
9 president, chief executive officer, or otherwise has the authority  
10 to act as senior executive officer of the PEO.

11 (g) A financial statement describing the financial condition  
12 of the PEO or PEO group. The financial statement shall be prepared  
13 in accordance with generally accepted accounting principles and  
14 audited by an independent certified public accountant licensed to  
15 practice in the jurisdiction in which such accountant is located  
16 and shall be without qualification as to the going concern status  
17 of the PEO. A PEO group may submit combined or consolidated audited  
18 financial statements to meet the requirements of this subsection. A  
19 PEO that has not had sufficient operating history to have audited  
20 financials based upon at least 12 months of operating history must  
21 meet the financial capacity requirements described in section 15  
22 and present financial statements reviewed by a licensed certified  
23 public accountant.

24 (h) A financial audit of the applicant. At the time of  
25 application for an initial license, the applicant shall submit the  
26 most recent audit, which may not be older than 13 months.  
27 Thereafter, a PEO or PEO group shall file on an annual basis,

1 within 180 days after the end of the PEO or PEO group's fiscal  
2 year, a succeeding audit. An applicant may apply for an extension  
3 with the department except that any request must be accompanied by  
4 a letter from the auditors stating the reasons for the delay and  
5 the anticipated audit completion date.

6 (i) A certification that the PEO has made an election under  
7 section 13m of 1936 (Ex Sess) PA 1, MCL 421.13m.

8 (3) Each PEO operating within this state on the effective date  
9 of this act shall file its completed application and submit the  
10 license fee not later than 180 days after the effective date of  
11 this act. Initial licensure is valid until the end of the PEO's  
12 first fiscal year end that is more than 1 year after the effective  
13 date of this act. A PEO not operating within this state on the  
14 effective date of this act shall submit its initial licensure  
15 application prior to commencement of operations within this state.

16 (4) Within 180 days after the end of a licensee's fiscal year,  
17 the licensee shall renew its license by submitting a renewal  
18 application to the department providing any changes in the  
19 information provided in the licensee's prior application.

20 (5) PEOs in a PEO group may satisfy the reporting and  
21 financial requirements on a combined or consolidated basis provided  
22 that each member of the PEO group guarantees the obligations under  
23 this act of each other member of the PEO group. In the case of a  
24 PEO group that submits a combined or consolidated audited financial  
25 statement, including entities that are not PEOs or that are not in  
26 the PEO group, the controlling entity of the PEO group under the  
27 consolidated or combined statement must guarantee the obligations

1 of the PEOs in the PEO group. The department shall determine  
2 whether the requirements of this subsection are satisfied.

3 Sec. 9. (1) The department may issue a limited PEO license. A  
4 PEO seeking limited licensure under this section shall submit to  
5 the department a completed application and license fee for limited  
6 licensure.

7 (2) A PEO is eligible for a limited license upon meeting the  
8 following conditions:

9 (a) Is domiciled outside Michigan and is licensed or otherwise  
10 regulated as a PEO in another state.

11 (b) Does not maintain an office in Michigan or does not  
12 directly solicit clients located or domiciled within Michigan.

13 (c) Does not have more than 50 covered employees employed or  
14 domiciled in Michigan on any given day.

15 (3) A limited license is valid for 1 year and may be renewed.

16 (4) Section 15 does not apply to applicants for limited  
17 licensure.

18 Sec. 11. The department shall maintain a list of PEOs licensed  
19 under this act. The list shall be readily available to the public  
20 by electronic or other means.

21 Sec. 13. (1) The department may charge an application fee for  
22 initial licensure, not to exceed \$250.00.

23 (2) Except in the case of an initial license, a license issued  
24 under this act shall be issued for a term of 3 years. The per year  
25 license fee is \$100.00. The renewal license fee shall include the  
26 license fee representing the 3-year term.

27 (3) The department shall determine by rule promulgated under

1 the administrative procedures act of 1969, 1969 PA 306, MCL 24.201  
2 to 24.328, the application and license fees to be charged for a PEO  
3 group license.

4 (4) The department may adjust the license fees under this  
5 section every 3 years by an amount determined by the state  
6 treasurer to reflect the cumulative annual percentage change in the  
7 Detroit consumer price index and rounded to the nearest dollar.

8 (5) The department may promulgate rules under the  
9 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to  
10 24.328, as are necessary and appropriate to enable the department  
11 to implement this act.

12 Sec. 15. Unless otherwise exempt under this act, each PEO or  
13 collectively each PEO group shall submit evidence of and maintain  
14 either of the following:

15 (a) A minimum of \$150,000.00 in working capital, as defined by  
16 generally accepted accounting principles, as reflected in the  
17 financial statements submitted to the department with the initial  
18 licensure and each annual renewal. A PEO or PEO group with less  
19 than \$100,000.00 in working capital at renewal has 180 days to  
20 eliminate the deficiency in a manner acceptable to the department.  
21 During that 180 days the PEO or PEO group shall submit quarterly  
22 financial statements to the department accompanied by an  
23 attestation of the chief executive officer that all wages, taxes,  
24 workers' compensation premiums, and employee benefits have been  
25 paid by the PEO or members of the PEO group.

26 (b) A bond, irrevocable letter of credit, or securities with a  
27 minimum market value of \$100,000.00, acceptable to the department.



1 the bond shall be held by a depository designated by the department  
2 to secure payment by the PEO of all taxes, wages, benefits, or  
3 other entitlement due to, or regarding, covered employees, if the  
4 PEO or PEO group does not make those payments when due. For any PEO  
5 or PEO group whose annual financial statements do not indicate  
6 positive working capital, the amount of the bond shall be  
7 \$100,000.00 plus an amount sufficient to cover the deficit in  
8 working capital.

9 Sec. 17. (1) Each professional employer agreement shall  
10 include the following provisions:

11 (a) The responsibility of the PEO to pay wages to covered  
12 employees; to withhold, collect, report and remit payroll-related  
13 and unemployment taxes; and, to the extent the PEO has assumed  
14 responsibility in the professional employer agreement, to make  
15 payments for employee benefits for covered employees. For purposes  
16 of this subsection, wages do not include any obligation between a  
17 client and a covered employee for payments beyond, or in addition  
18 to, the covered employee's salary, draw, or regular rate of pay,  
19 including bonuses, commissions, severance pay, deferred  
20 compensation, profit sharing, or vacation, sick, or other paid time  
21 off pay, unless the PEO has expressly agreed to assume liability  
22 for those payments in the professional employer agreement.

23 (b) The hiring, disciplining, and termination by the PEO of a  
24 covered employee, as may be necessary to fulfill the PEO's  
25 responsibilities under this act and the professional employer  
26 agreement. The client may also hire, discipline, and terminate a  
27 covered employee.

1 (c) The responsibility to obtain workers' compensation  
2 insurance coverage under the workers disability compensation act of  
3 1969, 1969 PA 317, MCL 418.101 to 418.941, for covered employees  
4 shall be specifically allocated in the professional employer  
5 agreement to either the client or to the PEO and shall provide that  
6 the workers' compensation coverage provide for the exclusive remedy  
7 provisions of the workers disability compensation act of 1969, 1969  
8 PA 317, MCL 418.101 to 418.941, to apply to both the client and the  
9 PEO for co-employees of the client. Coverage may be obtained from a  
10 workers' compensation insurer or through self-insurance and  
11 includes the ability for a PEO to purchase workers' compensation  
12 coverage on a multiple coordinated policy basis with the policy  
13 providing coverage to the client and to the PEO for co-employees of  
14 the client. If workers' compensation coverage is allocated to the  
15 PEO under the professional employment agreement, that agreement  
16 shall require that the PEO provide to the client, upon request,  
17 loss experience related to the client's covered employees.

18 (2) Each professional employer agreement shall provide that  
19 the PEO provide written notice to each covered employee affected by  
20 the agreement regarding the general nature of the coemployment  
21 relationship between and among the PEO, the client, and that  
22 covered employee.

23 Sec. 19. (1) Except to the extent otherwise expressly provided  
24 for by the professional employer agreement, the following apply:

25 (a) A client is solely responsible for the quality, adequacy,  
26 or safety of the goods or services produced or sold in the client's  
27 business.

1 (b) A client is solely responsible for directing, supervising,  
2 training, and controlling the work of the covered employees with  
3 respect to the business activities of the client and is solely  
4 responsible for the acts, errors, or omissions of the covered  
5 employees regarding those activities.

6 (c) A client is not liable for the acts, errors, or omissions  
7 of a PEO or of any covered employee of the client and a PEO when  
8 the covered employee is acting under the express direction and  
9 control of the PEO.

10 (d) A PEO is not liable for the acts, errors, or omissions of  
11 a client or of any covered employee of the client when the covered  
12 employee is acting under the express direction and control of the  
13 client.

14 (2) This section does not limit any contractual liability or  
15 obligation specifically provided in the written professional  
16 employer agreement.

17 (3) A covered employee is not, solely as the result of being a  
18 covered employee of a PEO, an employee of the PEO for purposes of  
19 general liability insurance, fidelity bonds, surety bonds,  
20 employer's liability not covered by worker's compensation, or  
21 liquor liability insurance carried by the PEO unless covered  
22 employees are included by specific reference in the professional  
23 employer agreement and applicable prearranged employment contract,  
24 insurance contract, or bond.

25 (4) A PEO is not considered engaged in the sale of insurance  
26 or in acting as a third party administrator by offering, marketing,  
27 selling, administering, or providing professional employer services

1 that include services and employee benefit plans for covered  
2 employees.

3 (5) A client and a PEO are each considered an employer for  
4 purposes of sponsoring retirement and welfare benefit plans for its  
5 covered employees, unless otherwise prohibited by law.

6 (6) If a PEO offers to its covered employees a health benefit  
7 plan that is not fully insured, the PEO shall use a third party  
8 administrator with a certificate of authority under the third party  
9 administrator act, 1984 PA 218, MCL 550.901 to 550.960, to  
10 administer the plan and shall follow all state and federal law in  
11 establishing and operating the plan.

12 Sec. 21. (1) A person who commits 1 or more of the following  
13 is subject to the penalties prescribed under subsection (2):

14 (a) Practices fraud or deceit in obtaining or renewing a  
15 license.

16 (b) Practices false advertising.

17 (c) Aids or abets another person in the unlicensed practice of  
18 an occupation.

19 (d) Engages in activities regulated under this section without  
20 obtaining a license or demonstrating exemption from licensure under  
21 this act.

22 (e) In the case of a licensee or an officer of a licensee,  
23 being convicted of a crime relating to the operation of a PEO.

24 (2) After notice and opportunity for hearing under the  
25 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to  
26 24.328, the department shall do the following upon the  
27 determination of a violation of this act, a rule adopted under this

1 act, or an order issued under this act:

2 (a) Placement of a limitation on a license.

3 (b) Suspension of a license.

4 (c) Denial of a license or renewal of a license.

5 (d) Revocation of a license.

6 (e) Imposition of an administrative fine to be paid to the  
7 department, not to exceed \$5,000.00.

8 (f) Censure.

9 (g) Probation.

10 (h) A requirement that restitution be made, based upon proofs  
11 submitted to and findings made by the hearing examiner after a  
12 contested case.

13 Sec. 23. This act takes effect January 1, 2010.