

# HOUSE BILL No. 6601

November 6, 2008, Introduced by Rep. Condino and referred to the Committee on Labor.

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. A coemployment relationship shall contain all of the  
7 following elements:

8 (i) The PEO may enforce only those employer rights, and is  
9 subject to only those obligations, as specifically allocated to the  
10 PEO by the professional employer agreement or as provided for under  
11 this act.

12 (ii) The client may enforce those rights and shall provide and  
13 perform those employer obligations allocated to the client by the  
14 professional employer agreement and as provided for under this act.

15 (iii) The client may enforce any right, and is obligated to  
16 perform any obligation of an employer, not specifically allocated  
17 to the PEO by the professional employer agreement or as provided  
18 for under this act.

19 (d) "Covered employee" means an individual having a  
20 coemployment relationship with a PEO and a client who has received  
21 written notice of coemployment with the PEO and the individual has  
22 created a coemployment relationship pursuant to a professional  
23 employer agreement. Covered employee includes individuals who are  
24 officers, directors, shareholders, partners, and managers of the  
25 client to the extent the PEO and the client have expressly agreed  
26 in the professional employer agreement that those individuals are  
27 considered covered employees and those individuals act as

1 operational managers or perform day-to-day operational services for  
2 the client.

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

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

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

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

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

13 (i) Coemployment of covered employees.

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

16 (iii) Assumption of responsibilities by the PEO and the client  
17 to act as the PEO and client.

18 (j) "PEO" or "professional employer organization" means any  
19 person engaged in the business of providing professional employer  
20 services regardless of its use of a descriptive term other than  
21 "professional employer organization" or "PEO". PEO does not include  
22 any of the following:

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

1           (ii) An independent contractor arrangement by which a person  
2 assumes responsibility for the product produced or service  
3 performed by that person or his or her agents and retains and  
4 exercises primary direction and control over the work performed by  
5 the individuals whose services are supplied under such  
6 arrangements.

7           (iii) A provider of temporary help services.

8           (k) "Professional employer service" means the service of  
9 entering into a coemployment relationship in which all or a  
10 majority of the employees providing services to a client or to a  
11 division or work unit of the client are covered employees.

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

13          (m) "Temporary help services" means services consisting of a  
14 person engaged in any of the following:

15           (i) Recruiting and hiring its own employees.

16           (ii) Finding other organizations that need the services of  
17 those employees.

18           (iii) Assigning those employees to perform work at, or services  
19 for, the other organizations to support or supplement the other  
20 organizations' workforces, or to provide assistance in special work  
21 situations including, but not limited to, employee absences, skill  
22 shortages, seasonal workloads, or to perform special assignments or  
23 projects.

24           (iv) Customarily attempting to reassign the employees to other  
25 organizations when they finish each assignment.

26          Sec. 5. (1) Neither this act nor a professional employer  
27 agreement shall affect, modify, or amend any collective bargaining

1 agreement, or the rights or obligations of any client, PEO, or  
2 covered employee accrued under any state or federal act.

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

5 (a) Diminish, abolish, or remove rights of covered employees  
6 owed to a client or obligations of that client to a covered  
7 employee regarding rights or obligations existing prior to the  
8 effective date of the professional employer agreement.

9 (b) Affect, modify, or amend any contractual relationship or  
10 restrictive covenant between a covered employee and any client in  
11 effect at the time a professional employer agreement becomes  
12 effective or that is entered into subsequently between a client and  
13 a covered employee. A PEO shall have no responsibility or liability  
14 in connection with, or arising out of, any existing or new  
15 contractual relationship or restrictive covenant unless the PEO has  
16 specifically agreed otherwise in writing.

17 (c) Create any new or additional enforceable right of a  
18 covered employee against a PEO that is not specifically provided  
19 for by the professional employer agreement or as provided for under  
20 this act.

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

25 (4) A covered employee who must be licensed, registered,  
26 certified, or otherwise regulated according to law or rule is  
27 considered solely an employee of the client for purposes of that

1 license, registration, certification, or other regulatory  
2 requirement.

3 (5) A PEO is not considered to engage in any occupation,  
4 trade, profession, or other activity that is subject to licensing,  
5 registration, certification, or other regulatory requirements,  
6 solely by entering into and maintaining a coemployment relationship  
7 with a covered employee who is subject to those requirements.

8 (6) A client has the sole right of direction and control of  
9 the professional or regulated activities of covered employees and  
10 of the client's business. Covered employees and clients shall  
11 remain subject to regulation by the regulatory or governmental  
12 entity responsible for licensing, registration, certification, or  
13 other regulation of those covered employees or clients.

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, 25% 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 Sec. 15. Unless otherwise exempt under this act, each PEO or  
9 collectively each PEO group shall submit evidence of and maintain  
10 either of the following:

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

22 (b) A bond, irrevocable letter of credit, or securities with a  
23 minimum market value of \$100,000.00, acceptable to the department.  
24 the bond shall be held by a depository designated by the department  
25 to secure payment by the PEO of all taxes, wages, benefits, or  
26 other entitlement due to, or regarding, covered employees, if the  
27 PEO or PEO group does not make those payments when due. For any PEO

1 or PEO group whose annual financial statements do not indicate  
2 positive working capital, the amount of the bond shall be  
3 \$100,000.00 plus an amount sufficient to cover the deficit in  
4 working capital.

5 Sec. 17. (1) Except as specifically provided for in this act  
6 or in the professional employer agreement, the allocation of  
7 rights, duties, and obligations in each coemployment relationship  
8 shall be as follows:

9 (a) The client may exercise all rights and shall perform all  
10 duties and responsibilities otherwise applicable to an employer in  
11 an employment relationship.

12 (b) The PEO may exercise only those rights and shall perform  
13 only those duties and responsibilities specifically required by  
14 this act or set forth in the professional employer agreement. The  
15 rights, duties, and obligations of the PEO as coemployer with  
16 respect to any covered employee is limited to those rights, duties,  
17 and obligations arising pursuant to the professional employer  
18 agreement and this act during the term of coemployment by the PEO  
19 of the covered employee.

20 (c) Unless otherwise expressly agreed by the PEO and the  
21 client in a professional employer agreement, the client retains the  
22 exclusive right to direct and control the covered employees as is  
23 necessary to conduct the client's business, to discharge any of the  
24 client's fiduciary responsibilities, and to comply with any  
25 licensure requirements applicable to the client or to the covered  
26 employees.

27 (2) Except as specifically provided in this act, the

1 coemployment relationship between the client and the PEO, and  
2 between each coemployer and each covered employee, is governed by  
3 the professional employer agreement. Each professional employer  
4 agreement shall include the following provisions:

5 (a) The allocation of rights, duties and obligations.

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

18 (c) The hiring, disciplining, and termination by the PEO of a  
19 covered employee, as may be necessary to fulfill the PEO's  
20 responsibilities under this act and the professional employer  
21 agreement. The client may also hire, discipline, and terminate a  
22 covered employee.

23 (d) The responsibility to obtain workers' compensation  
24 insurance coverage under the workers disability compensation act of  
25 1969, 1969 PA 317, MCL 418.101 to 418.941, for covered employees  
26 shall be specifically allocated in the professional employer  
27 agreement to either the client or to the PEO and shall provide that

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

13 (3) Each professional employer agreement shall provide that  
14 the PEO provide written notice to each covered employee affected by  
15 the agreement regarding the general nature of the coemployment  
16 relationship between and among the PEO, the client, and that  
17 covered employee.

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

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

23 (b) A client is solely responsible for directing, supervising,  
24 training, and controlling the work of the covered employees with  
25 respect to the business activities of the client and is solely  
26 responsible for the acts, errors, or omissions of the covered  
27 employees regarding those activities.

1 (c) A client is not liable for the acts, errors, or omissions  
2 of a PEO or of any covered employee of the client and a PEO when  
3 the covered employee is acting under the express direction and  
4 control of the PEO.

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

9 (2) This section does not limit any contractual liability or  
10 obligation specifically provided in the written professional  
11 employer agreement.

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

20 (4) A PEO is not considered engaged in the sale of insurance  
21 or in acting as a third party administrator by offering, marketing,  
22 selling, administering, or providing professional employer services  
23 that include services and employee benefit plans for covered  
24 employees.

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

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

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

9           (a) Practices fraud or deceit in obtaining or renewing a  
10 license.

11           (b) Practices false advertising.

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

14           (d) Engages in activities regulated under this section without  
15 obtaining a license or demonstrating exemption from licensure under  
16 this act.

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

19           (2) After notice and opportunity for hearing under the  
20 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to  
21 24.328, the department shall do the following upon the  
22 determination of a violation of this act, a rule adopted under this  
23 act, or an order issued under this act:

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

25           (b) Suspension of a license.

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

27           (d) Revocation of a license.

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

3           (f) Censure.

4           (g) Probation.

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

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