

SENATE SUBSTITUTE FOR
HOUSE BILL NO. 4584

A bill to amend 2010 PA 370, entitled
"Michigan professional employer organization regulatory act,"
by amending sections 7, 9, 13, 15, 17, 21, 23, and 27 (MCL
338.3727, 338.3729, 338.3733, 338.3735, 338.3737, 338.3741,
338.3743, and 338.3747).

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 7. (1) Except as otherwise provided in this act,
2 **BEGINNING SEPTEMBER 1, 2012**, a person shall not provide, advertise,
3 or otherwise hold itself out as providing professional employer
4 services in this state, unless licensed or exempt from licensure
5 under this act.

6 (2) An applicant for licensure shall submit to the department
7 the application fee imposed in section 13 and a completed

1 application ~~providing~~ **THAT PROVIDES** the following information:

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

3 (b) The address of the principal place of business of the PEO
4 and the address of each office it maintains ~~within Michigan~~. **IN THIS**
5 **STATE.**

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

7 (d) A list by jurisdiction of each name under which the PEO
8 has operated ~~within~~ **IN** the preceding 5 years, including any
9 alternative names, names of predecessors, and, if known, successor
10 business entities.

11 (e) A statement of ownership ~~, which shall include~~ **THAT**
12 **INCLUDES** the name and evidence of the business experience of any
13 person, individually or acting in concert with 1 or more other
14 persons, ~~owning or controlling,~~ **THAT** directly or indirectly ~~,~~ **OWNS**
15 **OR CONTROLS** 10% or more of the equity interests of the PEO.

16 (f) A statement of management ~~, which shall include~~ **THAT**
17 **INCLUDES** the name and evidence of the business experience of any
18 ~~person~~ **INDIVIDUAL** who serves as president ~~,~~ **OR** chief executive
19 officer ~~,~~ or otherwise has the authority to act as senior executive
20 officer of the PEO.

21 (g) A financial statement describing the financial condition
22 of the PEO or PEO group, ~~. Before December 31, 2010, applicants may~~
23 ~~file an unaudited financial statement. On or after January 1, 2011,~~
24 ~~the financial statement shall be prepared in accordance with~~
25 ~~generally accepted accounting principles and audited by an~~
26 ~~independent certified public accountant licensed to practice in the~~
27 ~~jurisdiction in which such~~ **THAT** accountant is located and ~~shall be~~

1 **IS** without qualification as to the going concern status of the PEO.
2 A PEO group may submit combined or consolidated audited financial
3 statements to meet the requirements of this subsection. A PEO that
4 has not had sufficient operating history to have audited financials
5 based ~~upon~~ **ON** at least 12 months of operating history must meet the
6 financial capacity requirements described in section 15 and present
7 financial statements reviewed by a licensed certified public
8 accountant.

9 (h) A financial audit of the applicant. At the time of
10 application for an initial license, the applicant shall submit ~~the~~
11 **ITS** most recent audit, which may not be older than 13 months.
12 Thereafter, a PEO or PEO group shall file on an annual basis,
13 within 270 days after the end of the PEO or PEO group's fiscal
14 year, a succeeding audit. An applicant may apply **TO THE DEPARTMENT**
15 for an extension, ~~with the department~~ except that any request must
16 ~~be accompanied by~~ **INCLUDE** a letter from the auditors stating the
17 reasons for the delay and the anticipated audit completion date.

18 (i) A certification that the PEO has made an election under
19 section 13m of the Michigan employment security act, 1936 (Ex Sess)
20 PA 1, MCL 421.13m.

21 (3) ~~A~~ **BEGINNING SEPTEMBER 1, 2012, A** person that has been
22 convicted of a felony related to the operation of a PEO shall not
23 own or control, directly or indirectly, a PEO doing business in
24 this state.

25 (4) Each PEO operating ~~within~~ **IN** this state on the effective
26 date of this act shall file its completed application and submit
27 the license fee **BY JULY 1, 2012**. ~~not later than 180 days after the~~

1 ~~effective date of this act. Initial licensure is valid until the~~
2 ~~end of the PEO's first fiscal year end that is more than 1 year~~
3 ~~after the effective date of this act. A PEO not operating within~~
4 ~~this state on the effective date of this act shall submit its~~
5 ~~initial licensure application prior to commencement of operations~~
6 ~~within this state.~~

7 (4) ~~(5) Within 180 days after the end of a licensee's fiscal~~
8 ~~year, BEFORE A LICENSE EXPIRES, the licensee shall MAY renew its~~
9 ~~license by submitting a renewal application to the department~~
10 ~~providing THAT INCLUDES any changes in the information provided in~~
11 ~~the licensee's prior application.~~

12 (5) ~~(6) PEOs in a PEO group may satisfy the reporting and~~
13 ~~financial requirements OF THIS SECTION on a combined or~~
14 ~~consolidated basis provided that IF each member of the PEO group~~
15 ~~guarantees the obligations under this act of each other member of~~
16 ~~the PEO group. In the case of IF a PEO group that submits a~~
17 ~~combined or consolidated audited financial statement, including~~
18 ~~entities that are not PEOs or that are not in the PEO group, the~~
19 ~~controlling entity of the PEO group under the consolidated or~~
20 ~~combined statement must guarantee the obligations of the PEOs in~~
21 ~~the PEO group. The department shall determine whether the~~
22 ~~requirements of this subsection are satisfied.~~

23 (6) ~~(7) The department shall, to the extent practical, allow~~
24 ~~the acceptance of ACCEPT electronic filings, including FILING OF~~
25 ~~applications, documents, reports, and other filings required under~~
26 ~~this act. The department may allow for the acceptance of ACCEPT~~
27 ~~electronic filings and other assurance by an independent and~~

1 qualified assurance organization that provides satisfactory
2 assurance of compliance acceptable to the department consistent
3 with, or in lieu of, the requirements of this section, ~~and sections~~
4 9 and 15, and other requirements of this act. The department shall
5 allow a PEO to authorize an assurance organization, approved by the
6 director, to act on the PEO's behalf in complying with the
7 licensure requirements of this act including, but not limited to,
8 electronic filings of information and payment of license fees. Use
9 of an approved assurance organization **BY A PEO** is optional. This
10 subsection does not limit or change the department's authority to
11 license, to rescind, revoke, or deny a license, or to investigate
12 or enforce any provision of this act.

13 Sec. 9. (1) ~~The BEGINNING SEPTEMBER 1, 2012, THE~~ department
14 may issue a limited PEO license. A PEO seeking limited licensure
15 under this section shall submit to the department a properly
16 executed and completed application on a form provided by the
17 department and **INCLUDE WITH THE APPLICATION THE** license fee for
18 limited licensure **ESTABLISHED BY THE DEPARTMENT.**

19 (2) A PEO is eligible for a limited license ~~upon meeting~~ **IF IT**
20 **MEETS ALL OF** the following conditions:

21 (a) Is domiciled outside ~~Michigan~~ **THIS STATE** and is licensed
22 or otherwise regulated as a PEO in another state.

23 (b) Does not maintain an office in ~~Michigan~~ **THIS STATE** or does
24 not directly solicit clients located or domiciled ~~within~~
25 ~~Michigan~~ **IN THIS STATE.**

26 (c) Does not have more than 50 covered employees employed or
27 domiciled in ~~Michigan~~ **THIS STATE** on any given day.

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

(4) Section 15 does not apply to ~~applicants~~ **AN APPLICANT** for a limited ~~license~~ **LICENSE**.

Sec. 13. (1) The department may charge an application fee for ~~AN initial license~~ **LICENSE UNDER THIS ACT. THE AMOUNT OF THE FEE SHALL BE DETERMINED BY THE DEPARTMENT AND SHALL** not ~~to~~ exceed \$1,500.00 for an individual license ~~and~~ **OR** \$1,500.00 for a PEO group license.

(2) ~~Except in the case of~~ **FOR** an initial license, **THE TERM OF** a license issued under this act ~~shall be issued for a term of 3 years. The per year~~ **IS 1 YEAR, BEGINNING ON SEPTEMBER 1 AND EXPIRING ON AUGUST 31 OF THE NEXT CALENDAR YEAR.**

(3) **THE DEPARTMENT SHALL ISSUE AN INITIAL LICENSE UNDER THIS ACT FOR A TERM FROM THE EFFECTIVE DATE OF THAT INITIAL LICENSE, AS DETERMINED BY THE DEPARTMENT, TO THE NEXT AUGUST 31 AFTER THAT EFFECTIVE DATE OR, AT THE OPTION OF THE DEPARTMENT, TO THE SECOND AUGUST 31 AFTER THE EFFECTIVE DATE. IF THE EFFECTIVE DATE OF THE LICENSE IS NOT SEPTEMBER 1, THE DEPARTMENT SHALL ADJUST THE AMOUNT OF THE ANNUAL LICENSE FEE UNDER SUBSECTION (4) FOR THAT INITIAL TERM ON A PRO RATA BASIS TO REFLECT THE LENGTH OF THE INITIAL TERM, AS DETERMINED BY THE DEPARTMENT.**

(4) **SUBJECT TO SUBSECTION (3), THE ANNUAL** license fee is \$1,500.00 for an individual license and \$1,500.00 for a PEO group license. ~~The renewal license fee shall include the license fee representing the 3 year term.~~

(5) ~~(3)~~ The department may adjust the license fees under this section every ~~3~~ **2** years by an amount determined by the state

1 treasurer to reflect the cumulative annual percentage change in the
2 Detroit consumer price index **IN THE PRECEDING 2-YEAR PERIOD** and
3 rounded to the nearest dollar. As used in this subsection, "Detroit
4 consumer price index" means the most comprehensive index of
5 consumer prices available for the Detroit area by the bureau of
6 labor statistics of the United States department of labor.

7 Sec. 15. Unless otherwise exempt under this act, **BEGINNING**
8 **SEPTEMBER 1, 2012**, each PEO or collectively each PEO group shall
9 submit to the department evidence of and maintain either of the
10 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 ~~license~~**LICENSE APPLICATION** and each annual renewal **APPLICATION**.
15 A PEO or PEO group with less than \$100,000.00 in working capital at
16 renewal has 180 days to eliminate the deficiency in a manner
17 acceptable to the department. During that 180-day period, the PEO
18 or PEO group shall submit quarterly financial statements to the
19 department accompanied by an attestation of the chief executive
20 officer that all wages, taxes, worker's compensation premiums, and
21 employee benefits have been paid by the PEO or members of the PEO
22 group.

23 (b) A bond, irrevocable letter of credit, or securities with a
24 minimum market value of \$100,000.00, acceptable to the department.
25 The bond shall be held by a depository designated by the department
26 to secure payment by the PEO of all taxes, wages, benefits, or
27 other entitlements due to, or regarding, covered employees, if the

1 PEO or PEO group does not make those payments when due. For any PEO
2 or PEO group whose annual financial statements do not indicate
3 positive working capital, the **PEO SHALL PROVIDE A BOND IN THE**
4 amount of ~~the bond shall be~~ \$100,000.00 plus an amount sufficient
5 to cover the deficit in working capital.

6 Sec. 17. (1) Each professional employer agreement **EXECUTED ON**
7 **OR AFTER SEPTEMBER 1, 2012** shall include the following provisions:

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

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

25 (c) The responsibility of the client and the PEO to comply
26 with the worker's disability compensation act of 1969, 1969 PA 317,
27 MCL 418.101 to 418.941.

(2) Each professional employer agreement **EXECUTED ON OR AFTER SEPTEMBER 1, 2012** shall ~~provide~~**REQUIRE** that the PEO provide written notice to each covered employee affected by the agreement regarding the general nature of the coemployment relationship between and among the PEO, the client, and that covered employee.

Sec. 21. (1) ~~A BEGINNING SEPTEMBER 1, 2012, A person who~~**THAT** commits 1 or more of the following is subject to the penalties ~~prescribed under~~**DESCRIBED IN** subsection (2):

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

(b) Aids or abets another person in the unlicensed practice of an occupation.

(c) Engages in activities regulated under this section without obtaining a license **UNDER THIS ACT** or demonstrating ~~exemption~~**THAT THE PERSON IS EXEMPT** from licensure under this act.

(d) ~~In the case of~~**IF THE PERSON IS** a licensee or an officer of a licensee, ~~being~~**IS** convicted of a crime relating to the operation of a PEO.

(e) Engages in false advertising.

(2) After notice and opportunity for hearing under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, the department shall do 1 or more of the following ~~upon the determination of a violation of~~**IF IT DETERMINES THAT A PERSON VIOLATED** this act, a rule adopted under this act, or an order issued under this act:

(a) ~~Placement of~~**PLACE** a limitation on a license.

(b) ~~Suspension of~~**SUSPEND** a license.

- 1 (c) ~~Denial of~~ **DENY** a license or renewal of a license.
- 2 (d) ~~Revocation of~~ **REVOKE** a license.
- 3 (e) ~~Imposition of~~ **IMPOSE** an administrative fine to be paid to
- 4 the department, not to exceed \$5,000.00.
- 5 (f) Censure **THE PERSON OR LICENSE**.
- 6 (g) ~~Probation.~~ **PLACE THE LICENSEE ON PROBATION**.
- 7 (h) ~~A requirement that~~ **REQUIRE** restitution **TO** be made, based
- 8 ~~upon~~ **ON** proofs submitted to and findings made by the hearing
- 9 examiner after a contested case.

10 Sec. 23. ~~A person who~~ **BEGINNING SEPTEMBER 1, 2012, A PERSON**

11 **THAT** knowingly and willfully violates this act, or ~~who~~ **THAT** aids

12 and abets, directly or indirectly, ~~the~~ **A** violation of this act, is

13 guilty of a misdemeanor punishable by imprisonment for not more

14 than 1 year or a fine of not more than \$10,000.00, or both.

15 Sec. 27. This act takes effect ~~July 1, 2011.~~ **JANUARY 1, 2012.**