

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, 15, 17, 21, 23, and 27 (MCL 338.3727,
338.3729, 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 JULY 1, 2012**, a person shall not provide, advertise, or
3 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 JULY 1, 2012, A** person that has been convicted
22 of a felony related to the operation of a PEO shall not own or
23 control, directly or indirectly, a PEO doing business in this
24 state.

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

~~days after the effective date of this act.~~ **FEBRUARY 1, 2013.**

Initial licensure is valid until the end of the PEO's first fiscal year end that is ~~more than 1 year after the effective date of this act.~~ **ON OR AFTER JULY 1, 2012.** A PEO not operating ~~within~~ **IN** this state on ~~the effective date of this act~~ **JULY 1, 2012** shall submit its initial licensure application ~~prior to commencement of~~ **BEFORE COMMENCING** operations ~~within~~ **IN** this state.

(5) Within 180 days after the end of a licensee's fiscal year, the licensee shall renew its license by submitting a renewal application to the department ~~providing~~ **THAT INCLUDES** any changes in the information provided in the licensee's prior application.

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

(7) The department shall, to the extent practical, ~~allow the acceptance of~~ **ACCEPT** electronic filings, including **FILING OF** applications, documents, reports, and other filings required under this act. The department may ~~allow for the acceptance of~~ **ACCEPT** 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 JULY 1, 2012, THE** department may
 14 issue a limited PEO license. A PEO seeking limited licensure under
 15 this section shall submit to the department a properly executed and
 16 completed application on a form provided by the department and
 17 **INCLUDE WITH THE APPLICATION THE** license fee for limited licensure
 18 **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.

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

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

4 Sec. 15. Unless otherwise exempt under this act, **BEGINNING**
5 **JULY 1, 2012**, each PEO or collectively each PEO group shall submit
6 to the department evidence of and maintain either of the following:

7 (a) A minimum of \$100,000.00 in working capital, as defined by
8 generally accepted accounting principles, as reflected in the
9 financial statements submitted to the department with the initial
10 ~~license~~ **LICENSE APPLICATION** and each annual renewal **APPLICATION**.

11 A PEO or PEO group with less than \$100,000.00 in working capital at
12 renewal has 180 days to eliminate the deficiency in a manner
13 acceptable to the department. During that 180-day period, the PEO
14 or PEO group shall submit quarterly financial statements to the
15 department accompanied by an attestation of the chief executive
16 officer that all wages, taxes, worker's compensation premiums, and
17 employee benefits have been paid by the PEO or members of the PEO
18 group.

19 (b) A bond, irrevocable letter of credit, or securities with a
20 minimum market value of \$100,000.00, acceptable to the department.
21 The bond shall be held by a depository designated by the department
22 to secure payment by the PEO of all taxes, wages, benefits, or
23 other entitlements due to, or regarding, covered employees, if the
24 PEO or PEO group does not make those payments when due. For any PEO
25 or PEO group whose annual financial statements do not indicate
26 positive working capital, the **PEO SHALL PROVIDE A BOND IN THE**
27 amount of ~~the bond shall be~~ \$100,000.00 plus an amount sufficient

1 to cover the deficit in working capital.

2 Sec. 17. (1) ~~Each~~**BEGINNING JULY 1, 2012, EACH** professional
3 employer agreement shall include the following provisions:

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

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

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

24 (2) ~~Each~~**BEGINNING JULY 1, 2012, EACH** professional employer
25 agreement shall ~~provide~~**REQUIRE** that the PEO provide written notice
26 to each covered employee affected by the agreement regarding the
27 general nature of the coemployment relationship between and among

1 the PEO, the client, and that covered employee.

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

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

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

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

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

15 (e) Engages in false advertising.

16 (2) After notice and opportunity for hearing under the
17 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to
18 24.328, the department shall do 1 or more of the following ~~upon the~~
19 ~~determination of a violation of~~**IF IT DETERMINES THAT A PERSON**
20 **VIOLATED** this act, a rule adopted under this act, or an order
21 issued under this act:

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

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

24 (c) ~~Denial of~~**DENY** a license or renewal of a license.

25 (d) ~~Revocation of~~**REVOKE** a license.

26 (e) ~~Imposition of~~**IMPOSE** an administrative fine to be paid to
27 the department, not to exceed \$5,000.00.

1 (f) Censure **THE PERSON OR LICENSE.**

2 (g) ~~Probation.~~**PLACE THE LICENSEE ON PROBATION.**

3 (h) ~~A requirement that~~**REQUIRE** restitution **TO** be made, based
4 ~~upon~~**ON** proofs submitted to and findings made by the hearing
5 examiner after a contested case.

6 Sec. 23. ~~A person who~~**BEGINNING JULY 1, 2012, A PERSON THAT**
7 knowingly and willfully violates this act, or ~~who~~**THAT** aids and
8 abets, directly or indirectly, ~~the~~**A** violation of this act, is
9 guilty of a misdemeanor punishable by imprisonment for not more
10 than 1 year or a fine of not more than \$10,000.00, or both.

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