

**STATE OF MICHIGAN
96TH LEGISLATURE
REGULAR SESSION OF 2011**

Introduced by Rep. Opsommer

ENROLLED HOUSE BILL No. 4584

AN ACT to amend 2010 PA 370, entitled “An act 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,” 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:

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

(2) An applicant for licensure shall submit to the department the application fee imposed in section 13 and a completed application that provides the following information:

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

(b) The address of the principal place of business of the PEO and the address of each office it maintains in this state.

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

(d) A list by jurisdiction of each name under which the PEO has operated in the preceding 5 years, including any alternative names, names of predecessors, and, if known, successor business entities.

(e) A statement of ownership that includes the name and evidence of the business experience of any person, individually or acting in concert with 1 or more other persons, that directly or indirectly owns or controls 10% or more of the equity interests of the PEO.

(f) A statement of management that includes the name and evidence of the business experience of any individual who serves as president or chief executive officer or otherwise has the authority to act as senior executive officer of the PEO.

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

(h) A financial audit of the applicant. At the time of application for an initial license, the applicant shall submit its most recent audit, which may not be older than 13 months. Thereafter, a PEO or PEO group shall file on an annual basis, within 270 days after the end of the PEO or PEO group's fiscal year, a succeeding audit. An applicant may apply to the department for an extension, except that any request must include a letter from the auditors stating the reasons for the delay and the anticipated audit completion date.

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

(3) Beginning September 1, 2012, a person that has been convicted of a felony related to the operation of a PEO shall not own or control, directly or indirectly, a PEO doing business in this state.

(4) Each PEO operating in this state on the effective date of this act shall file its completed application and submit the license fee by July 1, 2012.

(5) Before a license expires, the licensee may renew its license by submitting a renewal application to the department 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 if each member of the PEO group guarantees the obligations under this act of each other member of the PEO group. If a PEO group 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, accept electronic filing of applications, documents, reports, and other filings required under this act. The department may accept electronic filings and other assurance by an independent and qualified assurance organization that provides satisfactory assurance of compliance acceptable to the department consistent with, or in lieu of, the requirements of this section, sections 9 and 15, and other requirements of this act. The department shall allow a PEO to authorize an assurance organization, approved by the director, to act on the PEO's behalf in complying with the licensure requirements of this act including, but not limited to, electronic filings of information and payment of license fees. Use of an approved assurance organization by a PEO is optional. This subsection does not limit or change the department's authority to license, to rescind, revoke, or deny a license, or to investigate or enforce any provision of this act.

Sec. 9. (1) Beginning September 1, 2012, the department may issue a limited PEO license. A PEO seeking limited licensure under this section shall submit to the department a properly executed and completed application on a form provided by the department and include with the application the license fee for limited licensure established by the department.

(2) A PEO is eligible for a limited license if it meets all of the following conditions:

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

(b) Does not maintain an office in this state or does not directly solicit clients located or domiciled in this state.

(c) Does not have more than 50 covered employees employed or domiciled in 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 an applicant for a limited license.

Sec. 13. (1) The department may charge an application fee for an initial license under this act. The amount of the fee shall be determined by the department and shall not exceed \$1,500.00 for an individual license or \$1,500.00 for a PEO group license.

(2) Except for an initial license, the term of a license issued under this act 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.

(5) The department may adjust the license fees under this section every 2 years by an amount determined by the state treasurer to reflect the cumulative annual percentage change in the Detroit consumer price index in the preceding 2-year period and rounded to the nearest dollar. As used in this subsection, "Detroit consumer price index" means the most comprehensive index of consumer prices available for the Detroit area by the bureau of labor statistics of the United States department of labor.

Sec. 15. Unless otherwise exempt under this act, beginning September 1, 2012, each PEO or collectively each PEO group shall submit to the department evidence of and maintain either of the following:

(a) A minimum of \$100,000.00 in working capital, as defined by generally accepted accounting principles, as reflected in the financial statements submitted to the department with the initial license application and each annual renewal application. A PEO or PEO group with less than \$100,000.00 in working capital at renewal has 180 days to eliminate the deficiency in a manner acceptable to the department. During that 180-day period, the PEO or PEO group shall submit quarterly financial statements to the department accompanied by an attestation of the chief executive officer that all wages, taxes, worker's compensation premiums, and employee benefits have been paid by the PEO or members of the PEO group.

(b) A bond, irrevocable letter of credit, or securities with a minimum market value of \$100,000.00, acceptable to the department. The bond shall be held by a depository designated by the department to secure payment by the PEO of all taxes, wages, benefits, or other entitlements due to, or regarding, covered employees, if the PEO or PEO group does not make those payments when due. For any PEO or PEO group whose annual financial statements do not indicate positive working capital, the PEO shall provide a bond in the amount of \$100,000.00 plus an amount sufficient to cover the deficit in working capital.

Sec. 17. (1) Each professional employer agreement executed on or after September 1, 2012 shall include the following provisions:

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

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

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

(2) Each professional employer agreement executed on or after September 1, 2012 shall 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) Beginning September 1, 2012, a person that commits 1 or more of the following is subject to the penalties 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 that the person is exempt from licensure under this act.

(d) If the person is a licensee or an officer of a licensee, 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 if it determines that a person violated this act, a rule adopted under this act, or an order issued under this act:

(a) Place a limitation on a license.

(b) Suspend a license.

(c) Deny a license or renewal of a license.

(d) Revoke a license.

(e) Impose an administrative fine to be paid to the department, not to exceed \$5,000.00.

(f) Censure the person or license.

(g) Place the licensee on probation.

(h) Require restitution to be made, based on proofs submitted to and findings made by the hearing examiner after a contested case.

Sec. 23. Beginning September 1, 2012, a person that knowingly and willfully violates this act, or that aids and abets, directly or indirectly, a violation of this act, is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$10,000.00, or both.

Sec. 27. This act takes effect January 1, 2012.

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved

Governor