

HOUSE BILL No. 4584

April 26, 2011, Introduced by Rep. Opsommer and referred to the Committee on Commerce.

A bill to amend 2010 PA 370, entitled
"Michigan professional employer organization regulatory act,"
by amending sections 7, 9, 15, 17, 19, 21, 23, and 27 (MCL
338.3727, 338.3729, 338.3735, 338.3737, 338.3739, 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~~

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

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

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

12 (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 (7) The department shall, to the extent practical, ~~allow the~~
24 ~~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 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. 19. (1) Except to the extent otherwise expressly provided
3 for by the professional employer agreement, **BEGINNING JULY 1, 2012,**
4 **ALL OF** the following apply:

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

8 (b) A client is solely responsible for directing, supervising,
9 training, and controlling the work of the covered employees with
10 respect to the business activities of the client and is solely
11 responsible for the acts, errors, or omissions of the covered
12 employees regarding those activities.

13 (c) A client is not liable for the acts, errors, or omissions
14 of a PEO or of any covered employee of the client and a PEO ~~when~~ **IF**
15 the covered employee is acting under the express direction and
16 control of the PEO.

17 (d) A PEO is not liable for the acts, errors, or omissions of
18 a client or of any covered employee of the client ~~when~~ **IF** the
19 covered employee is acting under the express direction and control
20 of the client.

21 (2) This section does not limit any contractual liability or
22 obligation specifically provided in the written professional
23 employer agreement.

24 (3) **BEGINNING JULY 1, 2012, ALL OF THE FOLLOWING APPLY:**

25 **(A)** A covered employee is not, solely as the result of being a
26 covered employee of a PEO, an employee of the PEO for purposes of
27 general liability insurance, fidelity bonds, surety bonds,

1 employer's liability not covered by worker's compensation, or
2 liquor liability insurance carried by the PEO unless covered
3 employees are included by specific reference in the professional
4 employer agreement and applicable prearranged employment contract,
5 insurance contract, or bond.

6 (B) ~~(4)~~—A PEO is not considered engaged in the sale of
7 insurance or in acting as a third party administrator by offering,
8 marketing, selling, administering, or providing professional
9 employer services that include services and employee benefit plans
10 for covered employees.

11 (C) ~~(5)~~—A client and a PEO are each considered an employer for
12 purposes of sponsoring retirement and welfare benefit plans for its
13 covered employees. A fully insured welfare benefit plan offered to
14 the covered employees of a single PEO shall be treated, for
15 purposes of state law, as a single employer welfare benefit plan.

16 (D) ~~(6)~~—For purposes of this state or any political
17 subdivision of this state and except as otherwise specifically
18 provided for PEO arrangement by law, covered employees whose
19 services are subject to sales tax are considered the employees of
20 the client for purposes of collecting and levying sales tax on the
21 services performed by the covered employee. This act does not
22 relieve a client of any sales tax liability with respect to its
23 goods or services.

24 (4) ~~(7)~~—Except as otherwise specifically provided for PEO
25 arrangement by law, ~~a~~**ALL OF THE FOLLOWING APPLY BEGINNING JULY 1,**
26 **2012:**

27 (A) ~~A~~ tax or assessment imposed ~~upon~~**ON** professional employer

1 services or any business license or other fee that is based ~~upon~~ **ON**
2 gross receipts shall allow a deduction from the gross income or
3 receipts of the business derived from performing professional
4 employer services that is equal to that portion of the fee charged
5 to a client that represents the actual cost of wages and salaries,
6 benefits, worker's compensation insurance, payroll taxes,
7 withholding, or other assessments paid to, or on behalf of, a
8 covered employee by the professional employer organization under a
9 professional employer agreement.

10 (B) ~~(8) Except as otherwise specifically provided for PEO~~
11 ~~arrangement by law, a~~ **A** tax assessed, assessment, or mandated
12 expenditure on a per capita or per employee basis shall be assessed
13 against the client for covered employees and against the
14 professional employer organization for its employees who are not
15 covered employees co-employed with a client. Benefits or monetary
16 consideration that meet the requirements of mandates imposed on a
17 client and that are received by covered employees through the PEO,
18 either through payroll or through benefit plans sponsored by the
19 PEO, shall be credited against the client's obligation to fulfill
20 those mandates.

21 (C) ~~(9) Except as otherwise specifically provided for PEO~~
22 ~~arrangement by law and in the case of~~ **IF** a tax or an assessment **IS**
23 imposed or calculated ~~upon~~ **ON** the basis of total payroll, the
24 professional employer organization is eligible to apply any small
25 business allowance or exemption available to the client for the
26 covered employees for the purpose of computing the tax.

27 Sec. 21. (1) ~~A~~ **BEGINNING JULY 1, 2012, A** person ~~who~~ **THAT**

1 commits 1 or more of the following is subject to the penalties
2 ~~prescribed under~~ **DESCRIBED IN** subsection (2):

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

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

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

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

13 (e) Engages in false advertising.

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

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

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

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

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

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

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

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

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

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

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