

SFA

BILL ANALYSIS

Senate Fiscal Agency

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STATE OF MICHIGAN
PUBLIC DOCUMENT COLLECTION
MICHIGAN DOCUMENTS

House Bill 4701 (Substitute S-1 as reported)
Sponsor: Representative Donald Van Singel
House Committee: State Affairs
Senate Committee: Economic Development

Date Completed: 12-7-89

RATIONALE

The Department of Licensing and Regulation reports a backlog of cases awaiting disciplinary action under the Occupational Code. The Department contends that many of these cases are of a relatively minor or routine nature, and could be handled by a citation system analogous to that used for traffic tickets. Since such a system does not currently exist, however, these cases will continue to be put through the full disciplinary process, with its reportedly time-consuming and cumbersome paperwork and lengthy hearing procedures.

CONTENT

The bill would amend the Occupational Code to create a citation program for violations of the Code, as an alternative to the formal complaint process, and prescribe penalties for failure to respond to a citation. The bill would take effect January 1, 1990.

Allowable Actions Against Alleged Violators

Under the Code, if the investigative unit of the Department of Licensing and Regulation issues a report that gives evidence that the Code (or a rule or order issued under the Code) was violated, the Department or the Attorney General can prepare a formal complaint to be served on the person against whom the complaint was lodged (the "respondent"). The complainant is given notice of the opportunity to settle the complaint through an informal

conference after an investigation has been conducted and a formal complaint prepared. The bill would allow the Department or Attorney General to pursue one of four "appropriate" actions against a respondent: a) a formal complaint, b) a cease and desist order, c) a notice of summary suspension, or d) a citation. At any time during its investigation or after the issuance of a formal complaint, the Department could bring together the complainant and the respondent for an informal conference at which the Department would be required to attempt to resolve issues raised in the complaint and could attempt to aid the parties in reaching a formal settlement or stipulation.

Under the bill, the Department at the time of serving a formal complaint on the respondent, also would have to serve the respondent with a notice describing the compliance conference and hearing processes and offering the respondent the choice of:

- Meeting with the Department to negotiate a settlement of the matter.
- Demonstrating compliance prior to a contested case hearing.
- Proceeding to a contested case hearing.

If the respondent did not select one of these options, the Department would have to proceed to a contested case hearing. (Currently, the respondent's only option other than a hearing is settling the complaint in an informal

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conference.)

Citation Program

Under the bill, if an employee of the Department of Licensing and Regulation (DLR) believed that someone had violated the Occupational Code, the employee could issue a citation to that person, by certified mail, return receipt requested, or deliver the citation in person to the respondent. The citation would have to contain the following:

- The date of the citation.
- The name and title of the person issuing the citation.
- The name and address of the respondent, indicating that he or she was being cited for a violation of the Code.
- A brief description of the alleged violation.
- The proposed penalties or actions required for compliance (including a fine of up to \$100).
- A space for the respondent to sign to indicate receipt of the citation.
- A space where the respondent could either accept the citation and agree to comply or contest the violation.
- A notice that the respondent had 30 days to accept or reject the terms of the citation.
- A description of the hearing process and the process of settlement through an informal conference.

The respondent would have 30 days to notify the DLR in writing whether he or she accepted the conditions set forth in the citation. If the respondent accepted the conditions, he or she would have 30 days to sign the citation and return it to the DLR along with any fine or other material required by the citation to be submitted. The citation (and accompanying material) would be placed in the person's records with the DLR, and would have the same force and effect as a final order issued by a board and could be disclosed to the public. If no further disciplinary actions were placed in the respondent's record for five calendar years after the citation was issued, the DLR would have to remove the citation and accompanying material from the records. At the respondent's request, a one-page explanation prepared by the respondent would have to be placed in his or

her record and disclosed each time the citation was disclosed.

If the respondent did not admit to the violation, he or she could say so on the citation and return one copy to the DLR within 30 days after receiving the citation. When the Department received this copy, the process initiated under the Code after an investigation had been conducted and a formal complaint prepared would be invoked, with the citation serving as the formal complaint. The signing of a citation as an indication that the citation was received by the respondent would be considered to be only a receipt of, not an admission to, the violation cited.

Beginning January 1, 1990, the DLR could review all pending cases and identify all those that would fall under the citation program. The Department would notify each respondent in these cases that he or she could end the Department's proceedings by accepting the penalties and proposed compliance actions as set forth in a citation, or could continue the proceedings under the Code's regular complaint process.

Penalties

Someone who failed to respond to a citation or who violated or failed to comply with a final order issued by a board (including a stipulation, settlement agreement, or a citation) would be subject to the same penalties as those prescribed for a violation of the Code (including license limitation, suspension, or revocation; censure; probation; and a civil fine of up to \$10,000).

MCL 339.411 et al.

SENATE COMMITTEE ACTION

The Senate Committee adopted a substitute that:

- Added an effective date of January 1, 1990.
- Would allow the Department at any time to bring together for an informal conference the complainant and respondent who had been served with a formal complaint.
- Would give a respondent who had been

served with a formal complaint a choice of meeting with the Department to negotiate a settlement, demonstrating compliance, or proceeding with a contest case hearing.

The House-passed version of the bill would have granted a respondent who had been served with a formal complaint the choice of settling the complaint through an informal conference or showing compliance.

FISCAL IMPACT

The bill would have no fiscal impact on State or local government. The additional costs to develop the citation form would be offset by a reduction in administrative costs.

ARGUMENTS

Supporting Argument

The bill would provide a simplified process under which minor and uncontested violations of the Occupational Code could be handled in a manner analogous to the handling of traffic tickets.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.