

Act No. 261  
Public Act of 1989  
December 28, 1989  
Filed by the Secretary of State  
December 28, 1989

**STATE OF MICHIGAN  
85TH LEGISLATURE  
REGULAR SESSION OF 1989**

Introduced by Reps. Van Singel, Stabenow, Middaugh, London, Alley, Bryant, Walberg, Crandall and Fitzgerald

# **ENROLLED HOUSE BILL No. 4701**

AN ACT to amend sections 411, 504, 508, and 604 of Act No. 299 of the Public Acts of 1980, entitled "An act to revise, consolidate, and classify the laws of this state regarding the regulation of certain occupations; to create a board for each of those occupations; to establish the powers and duties of the department of licensing and regulation and the boards of each occupation; to provide for the promulgation of rules; to provide for certain fees; to provide for penalties and civil fines; and to repeal certain acts and parts of acts," section 411 as added by Act No. 463 of the Public Acts of 1988 and section 604 as amended by Act No. 83 of the Public Acts of 1981, being sections 339.411, 339.504, 339.508, and 339.604 of the Michigan Compiled Laws; and to add sections 501a, 551, 553, 555, 557, and 559.

*The People of the State of Michigan enact:*

Section 1. Sections 411, 504, 508, and 604 of Act No. 299 of the Public Acts of 1980, section 411 as added by Act No. 463 of the Public Acts of 1988 and section 604 as amended by Act No. 83 of the Public Acts of 1981, being sections 339.411, 339.504, 339.508, and 339.604 of the Michigan Compiled Laws, are amended and sections 501a, 551, 553, 555, 557, and 559 are added to read as follows:

Sec. 411. (1) Subject to subsection (2), a person who fails to renew a license or registration on or before the expiration date shall not practice the occupation, operate, or use the title after the expiration date printed on the license or registration. A license or registration shall lapse on the day after the expiration date.

(2) A person who fails to renew a license or registration on or before the expiration date shall be permitted to renew the license or registration by payment of the required license or registration fee and a late renewal fee within 60 days after the expiration date.

(3) Except as otherwise provided in this act, a person who fails to renew a license or registration within the time period set forth in subsection (2) may be relicensed or reregistered without examination and without meeting additional education or training requirements in force at the time of application for relicensure or reregistration if all of the following conditions are met:

(a) The person applies within 3 years after the expiration date of the last license or registration.

(b) The person pays an application processing fee, the late renewal fee, and the per year license or registration fee for the upcoming licensure or registration period.

(c) Penalties and conditions imposed by disciplinary action in this state or any other jurisdiction have been satisfied.

(d) The person submits proof of having completed the equivalent of 1 year of continuing education within the 12 months immediately preceding the date of application, if continuing education is required of licensees or registrants under a specific article.

(4) Except as otherwise provided in this act, a person may be relicensed or reregistered subsequent to 3 or more years after the expiration date of the last license or registration upon showing that the person meets the requirements for licensure or registration as established by the department in rules or procedures which may require a person to pass all or part of a required examination, to complete continuing education requirements, or to meet current education or training requirements.

(5) Unless otherwise provided in this act, a person who seeks reinstatement of a license or registration shall file an application on a form provided by the department, pay the application processing fee, and file a petition to the department and the appropriate board stating reasons for reinstatement and including evidence that the person can and is likely to serve the public in the regulated activity with competence and in conformance with all other requirements prescribed by law, rule, or an order of the department or board. The procedure to be followed in conducting the review of a petition for reinstatement is prescribed in article 5. If approved for reinstatement, the person shall pay the per year license or registration fee for the upcoming license or registration period, in addition to completing any requirements imposed in accordance with section 203(2).

Sec. 501a. As used in this article:

(a) "Complainant" means a person who has filed a complaint with the department alleging that a person has violated this act or a rule promulgated or an order issued under this act. If a complaint is made by the department, the director shall designate 1 or more employees of the department to act as the complainant.

(b) "Respondent" means a person against whom a complaint has been filed who may be a person who is or is required to be licensed or registered under this act.

Sec. 504. (1) The investigative unit of the department, within 30 days after the department receives the complaint, shall report to the director on the status of the investigation. If, for good cause shown, an investigation cannot be completed within 30 days, the director may extend the time in which a report may be filed. The total number of extensions permitted under this section shall be included in the report required by section 212.

(2) If the report of the investigative unit of the department does not disclose a violation of this act or a rule promulgated or an order issued under this act, the complaint shall be closed by the department. The reasons for closing the complaint shall be forwarded to the respondent and complainant, who then may provide additional information to reopen the complaint.

(3) If the report of the investigative unit made pursuant to subsection (1) discloses evidence of a violation of this act or a rule promulgated or an order issued under this act, the department or the department of attorney general shall prepare the appropriate action against the respondent which may be any of the following:

- (a) A formal complaint.
- (b) A cease and desist order.
- (c) A notice of summary suspension.
- (d) A citation.

(4) At any time during its investigation or after the issuance of a formal complaint, the department may bring together the complainant and the respondent for an informal conference. At the informal conference, the department shall attempt to resolve issues raised in the complaint and may attempt to aid the parties in reaching a formal settlement or stipulation.

Sec. 508. (1) After an investigation has been conducted and a formal complaint prepared, the department shall serve the formal complaint upon the respondent and the complainant. At the same time, the department shall serve the respondent with a notice describing the compliance conference and hearing processes and offering the respondent a choice of 1 of the following opportunities:

- (a) An opportunity to meet with the department to negotiate a settlement of the matter.
- (b) If the respondent is a licensee or registrant under this act, an opportunity to demonstrate compliance prior to holding a contested case hearing, as required by section 92 of the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being section 24.292 of the Michigan Compiled Laws.
- (c) An opportunity to proceed to a contested case hearing as set forth in section 71 of Act No. 306 of the Public Acts of 1969, being section 24.271 of the Michigan Compiled Laws.

(2) A respondent upon whom service of a formal complaint has been made pursuant to this section may select, within 15 days after the receipt of notice, 1 of the options described in subsection (1). If a respondent does not select 1 of those options within the time period described in this section, then the department shall proceed to a contested case hearing as described in subsection (1)(c).

(3) An informal conference may be attended by a member of the board, at the discretion of that board, or by a member of a committee and may result in a settlement, consent order, waiver, default, or other method of settlement agreed upon by the parties and the department. A settlement may include the revocation, suspension, or limitation of a license or registration; censure; probation; restitution; or a penalty provided for in article 6. A board may reject a settlement and require a contested case hearing under section 71 of Act No. 306 of the Public Acts of 1969, as amended, being section 24.271 of the Michigan Compiled Laws.

(4) An authorized employee or agent of the department may represent the department in any contested case hearing held pursuant to Act No. 306 of the Public Acts of 1969.

Sec. 551. As used in sections 553 to 559:

(a) "Employee of the department" means an individual employed by the department or a person under contract to the department whose duty it is to enforce the provisions of this act or rules promulgated or orders issued under this act.

(b) "Citation" means a form prepared by the department pursuant to section 553.

Sec. 553. (1) An employee of the department may issue a citation to a person licensed or registered under this act or required to be licensed or registered under this act if the employee observes or deduces from an investigation, inspection, or complaint that conduct or conditions exist or have existed which are in violation of this act or rules promulgated or orders issued under this act.

(2) A citation may be sent to a respondent by certified mail, return receipt requested, or may be delivered in person by the issuing employee.

(3) A citation shall contain all of the following:

(a) The date of the citation.

(b) The name and title of the individual issuing the citation.

(c) The name and address of the respondent, indicating that the respondent is being cited for a violation of the act or rules promulgated or orders issued under the act.

(d) A brief description of the conduct or conditions which are considered to be a violation of the act or rules or orders issued under the act and a reference to the section of the act, the rule, or order the respondent is alleged to have violated.

(e) The proposed penalties or actions required for compliance, including the payment of a fine which shall not exceed \$100.00 for each violation.

(f) A space for the respondent to sign as a receipt for the citation.

(g) A space where the respondent may accept the citation and agree to comply or may indicate that the violation contained in the citation is contested.

(h) A notice that the respondent must accept or reject the terms of the citation within 30 days.

(i) A brief description of the hearing process and the process for settlement through an informal conference as described in section 508.

Sec. 555. (1) A respondent shall have 30 days in which to notify the department in writing that the person accepts the conditions set forth in the citation or that the person does not admit to the violation cited.

(2) If the respondent accepts the conditions set forth in the citation, the respondent, within 30 days after receiving the citation, shall sign the citation and return it to the department along with any fine or other material required to be submitted by the terms of the citation. The citation and accompanying material shall be placed in the person's records with the department, indicating the nature of the violation and that the person accepted the conditions imposed. A citation issued under this section shall have the same force and effect as a final order issued by a board and may be disclosed to the public. If no further disciplinary actions are placed upon the person's record within 5 calendar years after the citation is issued, the department shall remove the citation and accompanying material from the records. If a respondent so chooses, a 1-page explanation prepared by the respondent shall be placed in the department's files and shall be disclosed each time the issuance of the citation is disclosed.

(3) If the respondent does not admit to the violation cited, the person may so state on the citation and return 1 copy to the department within the 30 days after the receipt of the citation. Upon receiving a copy of the citation not admitting to the violation, the process initiated by section 508 of the act shall be invoked, with the citation serving as the formal complaint.

Sec. 557. The signing of a citation as an indication that the citation was received by the respondent shall be considered to be only a receipt of, not an admission to, the violation cited.

Sec. 559. Beginning on January 1, 1990, the department may review all pending cases and identify those matters occurring before January 1, 1990 which would have been addressed by a citation, had such a program existed at the time the complaint was filed with the department. The department shall notify each respondent that the person may conclude the department's proceedings by accepting the penalties and proposed compliance actions as set forth in a citation or may continue the proceedings under the provisions of the process initiated in section 508.

Sec. 604. A person who violates 1 or more of the provisions of an article which regulates an occupation or who commits 1 or more of the following shall be subject to the penalties prescribed in section 602:

- (a) Practices fraud or deceit in obtaining a license or registration.
- (b) Practices fraud, deceit, or dishonesty in practicing an occupation.
- (c) Violates a rule of conduct of an occupation.
- (d) Demonstrates a lack of good moral character.
- (e) Commits an act of gross negligence in practicing an occupation.
- (f) Practices false advertising.
- (g) Commits an act which demonstrates incompetence.
- (h) Violates any other provision of this act or a rule promulgated under this act for which a penalty is not otherwise prescribed.
- (i) Fails to comply with a subpoena issued under this act.
- (j) Fails to respond to a citation as required by section 555.
- (k) Violates or fails to comply with a final order issued by a board, including a stipulation, settlement agreement, or a citation.

Section 2. This amendatory act shall take effect January 1, 1990.

This act is ordered to take immediate effect.

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Clerk of the House of Representatives.

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Secretary of the Senate.

Approved .....

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Governor.