

HOUSE BILL No. 4701

April 25, 1989, Introduced by Reps. Van Singel, Stabenow, Middaugh, London, Alley, Bryant, Walberg, Crandall and Fitzgerald and referred to the Committee on State Affairs.

A bill to amend sections 411, 504, 508, and 604 of Act No. 299 of the Public Acts of 1980, entitled

"Occupational code,"

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:

1 Section 1. Sections 411, 504, 508, and 604 of Act No. 299
2 of the Public Acts of 1980, section 411 as added by Act No. 463
3 of the Public Acts of 1988 and section 604 as amended by Act
4 No. 83 of the Public Acts of 1981, being sections 339.411,
5 339.504, 339.508, and 339.604 of the Michigan Compiled Laws, are

1 amended and sections 501a, 551, 553, 555, 557, and 559 are added
2 to read as follows:

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

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

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

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

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

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

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

6 (4) Except as otherwise provided in this act, ~~relicensure~~
7 ~~or reregistration~~ A PERSON MAY BE RELICENSED OR REREGISTERED
8 subsequent to 3 or more years after the expiration date of the
9 last license or registration ~~shall be subject to rules promul-~~
10 ~~gated by a board~~ UPON SHOWING THAT THE PERSON MEETS THE REQUIRE-
11 MENTS FOR LICENSURE OR REGISTRATION AS ESTABLISHED BY THE
12 DEPARTMENT which may require a person to pass all or part of a
13 required examination, to complete continuing education require-
14 ments, or to meet current education or training requirements.

15 (5) Unless otherwise provided in this act, a person who
16 seeks reinstatement of a license or registration shall file an
17 application on a form provided by the department, pay the appli-
18 cation processing fee, and file a petition to the department and
19 the appropriate board stating reasons for reinstatement and
20 including evidence that the person can and is likely to serve the
21 public in the regulated activity with competence and in con-
22 formance with all other requirements prescribed by law, rule, or
23 an order of the department or board. The procedure to be fol-
24 lowed in conducting the review of a petition for reinstatement is
25 prescribed in article 5. If approved for reinstatement, the
26 person shall pay the per year license or registration fee for the
27 upcoming license or registration period, in addition to

1 completing any requirements imposed in accordance with section
2 203(2).

3 SEC. 501A. AS USED IN THIS ARTICLE:

4 (A) "COMPLAINANT" MEANS A PERSON WHO HAS FILED A COMPLAINT
5 WITH THE DEPARTMENT ALLEGING THAT A PERSON HAS VIOLATED THIS ACT
6 OR A RULE PROMULGATED OR AN ORDER ISSUED UNDER THIS ACT. IF A
7 COMPLAINT IS MADE BY THE DEPARTMENT, THE DIRECTOR SHALL DESIGNATE
8 1 OR MORE EMPLOYEES OF THE DEPARTMENT TO ACT AS THE COMPLAINANT.

9 (B) "RESPONDENT" MEANS A PERSON AGAINST WHOM A COMPLAINT HAS
10 BEEN FILED WHO MAY BE A PERSON LICENSED OR REGISTERED UNDER THIS
11 ACT OR A PERSON WHO IS REQUIRED BY THIS ACT TO BE LICENSED OR
12 REGISTERED.

13 Sec. 504. (1) The investigative unit of the department,
14 within 30 days after the department receives the complaint, shall
15 report to the director on the status of the investigation. If,
16 for good cause shown, an investigation cannot be completed within
17 30 days, the director may extend the time in which a report may
18 be filed. The total number of extensions permitted under this
19 section shall be included in the report required by section 212.

20 (2) If the report of the investigative unit of the depart-
21 ment does not disclose a violation of this act or a rule promul-
22 gated or an order issued under this act, the complaint shall be
23 ~~considered unfounded~~ CLOSED by the department. The reasons for
24 ~~finding~~ CLOSING the complaint ~~to be unfounded~~ shall be for-
25 warded to the ~~person against whom the complaint was filed and~~
26 ~~the person who made the complaint~~ RESPONDENT AND COMPLAINANT,

1 who then may provide additional information to ~~reactivate an~~
2 ~~investigation of~~ REOPEN the complaint. ~~under section 502.~~

3 (3) If the report of the investigative unit made pursuant to
4 subsection (1) discloses evidence of a violation of this act or a
5 rule promulgated or an order issued under this act, the depart-
6 ment or the department of attorney general shall prepare ~~a~~ THE
7 APPROPRIATE ACTION AGAINST THE RESPONDENT WHICH MAY BE ANY OF THE
8 FOLLOWING:

9 (A) A formal complaint. ~~to be served on the person against~~
10 ~~whom the complaint is lodged and the person that filed the ini-~~
11 ~~tial complaint.~~

12 (B) A CEASE AND DESIST ORDER.

13 (C) A NOTICE OF SUMMARY SUSPENSION.

14 (D) A CITATION.

15 Sec. 508. (1) After an investigation has been conducted and
16 a formal complaint prepared, the department shall serve upon the
17 ~~person against whom the complaint was lodged~~ RESPONDENT and the
18 ~~person who filed the complaint~~ COMPLAINANT a notice of an
19 opportunity to settle the complaint through an informal confer-
20 ence, and a notice of ~~a hearing on the complaint~~ AN OPPORTUNITY
21 TO SHOW COMPLIANCE pursuant to section 92 of THE ADMINISTRATIVE
22 PROCEDURES ACT OF 1969, Act No. 306 of the Public Acts of 1969,
23 as amended, being section 24.292 of the Michigan Compiled Laws.

24 (2) A person upon whom service has been made pursuant to
25 this section may request, within 15 days after the receipt of
26 notice, an opportunity to settle a complaint in an informal
27 conference. An informal conference shall be held only if the

1 ~~person against whom a complaint has been lodged~~ RESPONDENT
2 agrees to the informal conference. If an informal conference is
3 held, the ~~hearing~~ COMPLIANCE CONFERENCE pursuant to section 92
4 of Act No. 306 of the Public Acts of 1969, as amended, ~~shall~~
5 MAY be postponed.

6 (3) An informal conference may be attended by a member of
7 the board, at the discretion of that board, or by a member of a
8 committee and may result in a settlement, consent order, waiver,
9 default, or other method of settlement agreed upon by the parties
10 and the department. A settlement may include ~~a license or cer-~~
11 ~~tificate of registration~~ THE revocation, suspension, or limita-
12 tion OF A LICENSE OR REGISTRATION; censure; probation; restitue-
13 tion; or a penalty provided for in article 6. A board may reject
14 an informal conference settlement and require a hearing under
15 section ~~92~~ 71 of Act No. 306 of the Public Acts of 1969, as
16 amended, BEING SECTION 24.271 OF THE MICHIGAN COMPILED LAWS.

17 (4) AN AUTHORIZED EMPLOYEE OR AGENT OF THE DEPARTMENT MAY
18 REPRESENT THE DEPARTMENT IN ANY HEARING HELD PURSUANT TO ACT
19 NO. 306 OF THE PUBLIC ACTS OF 1969.

20 SEC. 551. AS USED IN SECTIONS 553 TO 559:

21 (A) "EMPLOYEE OF THE DEPARTMENT" MEANS AN INDIVIDUAL
22 EMPLOYED BY THE DEPARTMENT OR A PERSON UNDER CONTRACT TO THE
23 DEPARTMENT WHOSE DUTY IT IS TO ENFORCE THE PROVISIONS OF THIS ACT
24 OR RULES PROMULGATED OR ORDERS ISSUED UNDER THIS ACT.

25 (B) "CITATION" MEANS A FORM PREPARED BY THE DEPARTMENT PUR-
26 SUANT TO SECTION 553.

1 SEC. 553. (1) AN EMPLOYEE OF THE DEPARTMENT MAY ISSUE A
2 CITATION TO A PERSON LICENSED OR REGISTERED UNDER THIS ACT OR
3 REQUIRED TO BE LICENSED OR REGISTERED UNDER THIS ACT IF THE
4 EMPLOYEE OBSERVES OR DEDUCES FROM AN INVESTIGATION, INSPECTION,
5 OR COMPLAINT THAT CONDUCT OR CONDITIONS EXIST OR HAVE EXISTED
6 WHICH ARE IN VIOLATION OF THIS ACT, RULES PROMULGATED UNDER THIS
7 ACT, OR AN ORDER ISSUED UNDER THIS ACT.

8 (2) A CITATION MAY BE SENT TO A RESPONDENT BY CERTIFIED
9 MAIL, RETURN RECEIPT REQUESTED, OR BE DELIVERED IN PERSON BY THE
10 ISSUING EMPLOYEE.

11 (3) A CITATION SHALL CONTAIN ALL OF THE FOLLOWING:

12 (A) THE DATE OF THE CITATION.

13 (B) THE NAME AND TITLE OF THE INDIVIDUAL ISSUING THE
14 CITATION.

15 (C) THE NAME AND ADDRESS OF THE RESPONDENT, INDICATING THAT
16 THE RESPONDENT IS BEING CITED FOR A VIOLATION OF THE ACT OR RULES
17 PROMULGATED OR ORDERS ISSUED UNDER THE ACT.

18 (D) A BRIEF DESCRIPTION OF THE CONDUCT OR CONDITIONS WHICH
19 ARE CONSIDERED TO BE A VIOLATION OF THE ACT OR RULES OR ORDERS
20 ISSUED UNDER THE ACT AND A CITATION TO THE SECTION OF THE ACT,
21 THE RULE, OR ORDER THE RESPONDENT IS ALLEGED TO HAVE VIOLATED.

22 (E) THE PROPOSED PENALTIES OR ACTIONS REQUIRED FOR COMPLI-
23 ANCE, INCLUDING THE PAYMENT OF A FINE WHICH SHALL NOT EXCEED
24 \$100.00 FOR EACH VIOLATION.

25 (F) A SPACE FOR THE RESPONDENT TO SIGN AS A RECEIPT FOR THE
26 CITATION.

1 (G) A SPACE WHERE THE RESPONDENT MAY ACCEPT THE CITATION AND
2 AGREE TO COMPLY OR MAY INDICATE THAT THE ISSUANCE OF THE CITATION
3 IS CONTESTED.

4 (H) A NOTICE THAT THE RESPONDENT MUST ACCEPT OR REJECT THE
5 TERMS OF THE CITATION WITHIN 30 DAYS.

6 (I) A BRIEF DESCRIPTION OF THE HEARING PROCESS AND PROCESS
7 FOR SETTLEMENT THROUGH AN INFORMAL CONFERENCE AS DESCRIBED IN
8 SECTION 508.

9 SEC. 555. (1) A RESPONDENT SHALL HAVE 30 DAYS IN WHICH TO
10 NOTIFY THE DEPARTMENT IN WRITING THAT THE PERSON ACCEPTS THE CON-
11 DITIONS SET FORTH IN THE CITATION OR THAT THE PERSON DOES NOT
12 ADMIT TO THE VIOLATION CITED.

13 (2) IF THE RESPONDENT ACCEPTS THE CONDITIONS SET FORTH IN
14 THE CITATION, THE RESPONDENT, WITHIN 30 DAYS AFTER RECEIVING THE
15 CITATION, SHALL SIGN THE CITATION AND RETURN IT TO THE DEPARTMENT
16 ALONG WITH ANY FINE OR OTHER MATERIAL REQUIRED TO BE SUBMITTED BY
17 THE TERMS OF THE CITATION. THE CITATION AND ACCOMPANYING MATE-
18 RIAL SHALL BE PLACED IN THE PERSON'S RECORDS WITH THE DEPARTMENT,
19 INDICATING THE NATURE OF THE VIOLATION AND THAT THE PERSON
20 ACCEPTED THE CONDITIONS IMPOSED. A CITATION ISSUED UNDER THIS
21 SECTION SHALL HAVE THE SAME FORCE AND EFFECT AS A FINAL ORDER
22 ISSUED BY A BOARD AND MAY BE DISCLOSED TO THE PUBLIC. IF NO FUR-
23 THER COMPLAINTS OR DISCIPLINARY ACTIONS ARE PLACED UPON THE
24 PERSON'S RECORD WITHIN 5 CALENDAR YEARS AFTER THE CITATION IS
25 ISSUED, THE DEPARTMENT SHALL REMOVE THE CITATION AND ACCOMPANYING
26 MATERIAL FROM THE RECORDS. IF A RESPONDENT SO CHOOSES, A 1-PAGE
27 EXPLANATION PREPARED BY THE RESPONDENT SHALL BE PLACED IN THE

1 DEPARTMENT'S FILES AND SHALL BE DISCLOSED EACH TIME THE ISSUANCE
2 OF THE CITATION IS DISCLOSED.

3 (3) IF THE RESPONDENT DOES NOT ADMIT TO THE VIOLATION CITED,
4 THE PERSON MAY SO STATE ON THE CITATION AND RETURN 1 COPY TO THE
5 DEPARTMENT WITHIN THE 30 DAYS AFTER THE RECEIPT OF THE CITATION.
6 UPON RECEIVING A COPY OF THE CITATION NOT ADMITTING TO THE VIOLA-
7 TION, THE PROCESS INITIATED BY SECTION 508 OF THE ACT SHALL BE
8 INVOKED, WITH THE CITATION SERVING AS THE FORMAL COMPLAINT.

9 SEC. 557. THE SIGNING OF A CITATION AS AN INDICATION THAT
10 THE CITATION WAS RECEIVED BY THE RESPONDENT SHALL BE CONSIDERED
11 TO BE ONLY A RECEIPT OF, NOT AN ADMISSION TO, THE VIOLATION
12 CITED.

13 SEC. 559. BEGINNING ON THE EFFECTIVE DATE OF THIS SECTION,
14 THE DEPARTMENT MAY REVIEW ALL PENDING CASES AND IDENTIFY THOSE
15 MATTERS OCCURRING BEFORE THE EFFECTIVE DATE OF THIS SECTION WHICH
16 WOULD HAVE BEEN ADDRESSED BY A CITATION, HAD SUCH A PROGRAM
17 EXISTED AT THE TIME THE COMPLAINT WAS FILED WITH THE DEPARTMENT.
18 THE DEPARTMENT SHALL NOTIFY EACH RESPONDENT THAT THE PERSON MAY
19 CONCLUDE THE DEPARTMENT'S PROCEEDINGS BY ACCEPTING THE PENALTIES
20 AND PROPOSED COMPLIANCE ACTIONS AS SET FORTH IN A CITATION OR MAY
21 CONTINUE THE PROCEEDINGS UNDER THE PROVISIONS OF THE PROCESS INI-
22 TIATED IN SECTION 508.

23 Sec. 604. A person who violates 1 or more of the provisions
24 of an article which regulates an occupation or who commits 1 or
25 more of the following shall be subject to the penalties pre-
26 scribed in section 602:

1 (a) Practices fraud or deceit in obtaining a license or
2 ~~certificate of~~ registration.

3 (b) Practices fraud, deceit, or dishonesty in practicing an
4 occupation.

5 (c) Violates a rule of conduct of an occupation.

6 (d) Demonstrates a lack of good moral character.

7 (e) Commits an act of gross negligence in practicing an
8 occupation.

9 (f) Practices false advertising.

10 (g) Commits an act which demonstrates incompetence.

11 (h) Violates any other provision of this act or a rule
12 promulgated under this act for which a penalty is not otherwise
13 prescribed.

14 (i) Fails to comply with a subpoena issued under this act.

15 (J) FAILS TO RESPOND TO A CITATION AS REQUIRED BY
16 SECTION 555.

17 (K) VIOLATES OR FAILS TO COMPLY WITH A FINAL ORDER ISSUED BY
18 A BOARD, INCLUDING A STIPULATION, SETTLEMENT AGREEMENT, OR A
19 CITATION.