

HOUSE BILL No. 4110

February 7, 1991, Introduced by Reps. Hoekman and Joe Young, Jr.,
and referred to the Committee on State Affairs.

A bill to amend sections 2401 and 2411 of Act No. 299 of the
Public Acts of 1980, entitled as amended
"Occupational code,"
section 2411 as amended by Act No. 6 of the Public Acts of 1990,
being sections 339.2401 and 339.2411 of the Michigan Compiled
Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 2401 and 2411 of Act No. 299 of the
2 Public Acts of 1980, section 2411 as amended by Act No. 6 of the
3 Public Acts of 1990, being sections 339.2401 and 339.2411 of the
4 Michigan Compiled Laws, are amended to read as follows:

5 Sec. 2401. As used in this article:

6 (a) "Residential builder" means a person engaged in the
7 construction of a residential structure or a combination
8 residential and commercial structure who, for a fixed sum, price,

1 fee, percentage, valuable consideration, or other compensation,
2 other than wages for personal labor only, undertakes with another
3 or offers to undertake or purports to have the capacity to under-
4 take with another for the erection, construction, replacement,
5 repair, alteration, or an addition to, subtraction from, improve-
6 ment, ~~movement of,~~ wrecking of, or demolition of, a residential
7 structure or combination residential and commercial structure; a
8 person who manufactures, assembles, constructs, deals in, or dis-
9 tributes a residential or combination residential and commercial
10 structure which is prefabricated, preassembled, precut, packaged,
11 or shell housing; or a person who erects a residential structure
12 or combination residential and commercial structure except for
13 the person's own use and occupancy on the person's property.

14 (b) "Residential maintenance and alteration contractor"
15 means a person who, for a fixed sum, price, fee, percentage,
16 valuable consideration, or other compensation, other than wages
17 for personal labor only, undertakes with another for the repair,
18 alteration, or an addition to, subtraction from, improvement of,
19 ~~movement of,~~ wrecking of, or demolition of a residential struc-
20 ture or combination residential and commercial structure, or
21 building of a garage, or laying of concrete on residential prop-
22 erty, or who engages in the purchase, substantial rehabilitation
23 or improvement, and resale of a residential structure, engaging
24 in that activity on the same structure more than twice in 1 cal-
25 endar year, except in the following instances:

26 (i) If the work is for the person's own use and occupancy.

1 (ii) If the rehabilitation or improvement work of
2 residential type property or a structure is contracted for, with,
3 or hired entirely to be done and performed for the owner by a
4 person licensed under this article.

5 (iii) If work is performed by a person employed by the owner
6 to perform work for which the person is licensed by the state.

7 (c) "Residential structure" means a premises used or
8 intended to be used for a residence purpose and related facili-
9 ties appurtenant to the premises, used or intended to be used, as
10 an adjunct of residential occupancy.

11 (d) "Salesperson" means an employee or agent, other than a
12 qualifying officer, of a licensed residential builder or residen-
13 tial maintenance and alteration contractor, who for a salary,
14 wage, fee, percentage, commission, or other consideration, sells
15 or attempts to sell, negotiates or attempts to negotiate, solici-
16 its for or attempts to solicit for, obtains or attempts to obtain
17 a contract or commitment for, or furnishes or attempts or agrees
18 to furnish, the goods and services of a residential builder or
19 residential maintenance and alteration contractor, except a
20 person working for a licensed residential builder or RESIDENTIAL
21 maintenance and alteration contractor who makes sales which are
22 occasional and incidental to the person's principal employment.

23 (e) "Wages" means money paid or to be paid on an hourly or
24 daily basis by an owner, lessor, or occupant of a residential
25 structure or combination residential and commercial structure as
26 consideration for the performance of personal labor on the
27 structure by a person who does not perform or promise to perform

1 the labor for any other fixed sum, price, fee, percentage,
2 valuable consideration, or other compensation and who does not
3 furnish or agree to furnish the material or supplies required to
4 be used in the performance of the labor or an act defined in sub-
5 division (A) OR (b). ~~or (c).~~

6 Sec. 2411. (1) A complaint filed as prescribed in article 5
7 shall be made within 18 months after completion, occupancy, or
8 purchase, whichever occurs later, of a residential STRUCTURE or a
9 combination of residential and commercial structure.

10 (2) A licensee or applicant who commits 1 or more of the
11 following shall be subject to the penalties set forth in article
12 6:

13 (a) Abandonment without legal excuse of a contract, con-
14 struction project, or operation engaged in or undertaken by the
15 licensee.

16 (b) Diversion of funds or property received for prosecution
17 or completion of a specific construction project or operation, or
18 for a specified purpose in the prosecution or completion of a
19 construction project or operation, and the funds or property
20 application or use for any other construction project or opera-
21 tion, obligation, or purposes.

22 (c) Failure to account for or remit money coming into the
23 person's possession which belongs to others.

24 (d) A willful departure from or disregard of plans or speci-
25 fications in a material respect and prejudicial to another, with-
26 out consent of the owner or an authorized representative and
27 without the consent of the person entitled to have the particular

1 construction project or operation completed in accordance with
2 the plans and specifications.

3 (e) A willful violation of the building laws of the state or
4 of a political subdivision of the state.

5 (f) In a maintenance and alteration contract, failure to
6 furnish to a lender the purchaser's signed completion certificate
7 executed upon completion of the work to be performed under the
8 contract.

9 (g) If a licensed residential builder or licensed
10 RESIDENTIAL maintenance and alteration contractor, failure to
11 notify the department within 10 days of a change in the control
12 or direction of the business of the licensee resulting from a
13 change in the licensee's partners, directors, officers, or trust-
14 ees, or a change in the control or direction of the business of
15 the licensee resulting from any other occurrence or event.

16 (h) Failure to deliver to the purchaser the entire agreement
17 of the parties including finance and any other charge arising out
18 of or incidental to the agreement when the agreement involves
19 repair, alteration, or addition to, subtraction from, improvement
20 of, ~~movement of,~~ wrecking of, or demolition of a residential
21 structure or combination of residential and commercial structure,
22 or building of a garage, or laying of concrete on residential
23 property, or manufacture, assembly, construction, sale, or dis-
24 tribution of a residential or combination residential and commer-
25 cial structure which is prefabricated, preassembled, precut,
26 packaged, or shell housing.

1 (i) If a salesperson, failure to pay over immediately upon
2 receipt money received by the salesperson, in connection with a
3 transaction governed by this article to the residential builder
4 or residential maintenance and alteration contractor under whom
5 the salesperson is licensed.

6 (j) Aiding or abetting an unlicensed person to evade this
7 article, or knowingly combining or conspiring with, or acting as
8 agent, partner, or associate for an unlicensed person, or allow-
9 ing one's license to be used by an unlicensed person, or acting
10 as or being an ostensible licensed residential builder or
11 licensed residential maintenance and alteration contractor for an
12 undisclosed person who does or shall control or direct, or who
13 may have the right to control or direct, directly or indirectly,
14 the operations of a licensee.

15 (k) Acceptance of a commission, bonus, or other valuable
16 consideration by a salesperson for the sale of goods or the per-
17 formance of service specified in the article from a person other
18 than the residential builder or residential maintenance and
19 alteration contractor under whom the person is licensed.

20 (l) Becoming insolvent, filing a bankruptcy action, becoming
21 subject to a receivership, assigning for the benefit of credi-
22 tors, failing to satisfy judgments or liens, or failing to pay an
23 obligation as it becomes due in the ordinary course of business.

24 (m) Poor workmanship or workmanship not meeting the stan-
25 dards of the custom or trade verified by a building code enforce-
26 ment official.

1 (3) The department shall suspend or revoke the license of a
2 person licensed under this article whose failure to pay a lien
3 claimant results in a payment being made from the homeowner con-
4 struction lien recovery fund pursuant to the construction lien
5 act, Act No. 497 of the Public Acts of 1980, being sections
6 570.1101 to 570.1305 of the Michigan Compiled Laws, regardless of
7 whether the person was performing services as a licensee under
8 this article; under the electrical administrative act, Act
9 No. 217 of the Public Acts of 1956, as amended, being sections
10 338.881 to 338.892 of the Michigan Compiled Laws; or under Act
11 No. 266 of the Public Acts of 1929, as amended, being sections
12 338.901 to 338.917 of the Michigan Compiled Laws. The license
13 shall not be renewed nor shall a new license be issued until the
14 licensee has repaid in full to the fund the amount paid out plus
15 the costs of litigation and interest at the rate set by section
16 6013 of the revised judicature act of 1961, Act No. 236 of the
17 Public Acts of 1961, as amended, being section 600.6013 of the
18 Michigan Compiled Laws.

19 (4) The department shall conduct a review upon notice by the
20 department of public health that the licensee has violated the
21 asbestos abatement contractors licensing act, Act No. 135 of the
22 Public Acts of 1986, being sections 338.3101 to 338.3319 of the
23 Michigan Compiled Laws, or sections 57 to 60f of the Michigan
24 occupational safety and health act, Act No. 154 of the Public
25 Acts of 1974, being sections 408.1057 to 408.1060f of the
26 Michigan Compiled Laws and may suspend or revoke that person's
27 license for a knowing violation of those acts.