



**House  
Legislative  
Analysis  
Section**

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**OCCUPATIONS/UNLIC'D. PERSON**

**House Bills 5099 and 5100  
(Substitutes H-1)  
First Analysis (11-10-93)**

**Sponsor: Rep. Thomas C. Mathieu  
Committee: Judiciary**

***THE APPARENT PROBLEM:***

Most people have heard of home repair scams in which a stranger knocks on a homeowner's door, claims to be able for one reason or another to offer an exceptionally good deal on roofing or siding, then accepts payment and departs, leaving shoddy or unfinished work behind. People are often left with little recourse against fly-by-nighters who operate unlicensed and without a permanent place of business. However, even when such operators can be located, the law lacks what many think would be sufficiently stiff penalties, and statute fails to provide explicit authority for properly licensed individuals to commence a court action to halt unlicensed activity. Legislation to address such concerns has been proposed.

***THE CONTENT OF THE BILLS:***

In general, the bills would increase penalties for practicing a regulated occupation without a required license or registration, and would provide additional remedies for persons (including boards of regulated occupations) affected by unlicensed activity. Neither bill could take effect unless both were enacted.

House Bill 5099 would amend the Public Health Code (MCL 333.2255 et al.) to specify that in addition to any other remedy, an affected person could obtain an injunction or restraining order to prevent a person from doing any of the following: practicing a health profession without a required license or registration, improperly using a protected title, or aiding and abetting another in practicing a health profession without a license or registration. An "affected person" could be a health profession board, an association of practitioners, or a person who has utilized the services of the unlicensed person.

Maximum allowable fines for practicing without a license, improper use of a title, and aiding and abetting would be increased, as follows:

\*\* for practicing without a license, which is and would remain a four-year felony, the maximum fine would be increased from \$2,000 to \$10,000.

\*\* for improper use of a title, maximum fines for first and second offenses would be increased, minimum penalties for second offenses would be eliminated, and felony penalties for third offenses would be added. For a first offense, which is and would remain a 90-day misdemeanor, the maximum fine would be increased from \$100 to \$2,000. The maximum fine for a second offense, a misdemeanor punishable by up to one year in jail, would be increased from \$1,000 to \$5,000. A third or subsequent offense would be a felony punishable by up to four years in prison, a fine of up to \$10,000, or both.

\*\* for aiding or abetting another in practicing without a license, the maximum fine for a first offense, which is and would remain a 90-day misdemeanor, would be increased from \$100 to \$2,000. A second offense would remain a misdemeanor, but mandatory minimum penalties would be eliminated, the maximum jail term would be increased from six months to one year, and the maximum fine would be increased from \$500 to \$5,000. New third offense penalties would be established; a third or subsequent offense would be a felony punishable by imprisonment for up to four years, a fine of up to \$10,000, or both.

House Bill 5100 would amend the Occupational Code (MCL 339.601) to specify that in addition to any other remedy, an affected person (including a board, association, or customer) could obtain an injunction or restraining order to prevent a person from practicing a regulated occupation or using a protected title without having a required license or registration. The bill would further specify that various remedies would be independent and cumulative, and that the use of one remedy by a

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person would not bar the use of other lawful remedies by another person.

Penalties for failing to be licensed or registered would be increased. A first offense would remain a misdemeanor, but the maximum jail term would be increased from 90 days to one year, and the maximum fine would be increased from \$500 to \$5,000. A second or subsequent offense, now a one-year misdemeanor, would be a felony punishable by up to four years in prison, and the maximum fine for the offense would be increased from \$1,000 to \$10,000.

### ***FISCAL IMPLICATIONS:***

There is no fiscal information at present. (11-9-93)

### ***ARGUMENTS:***

#### ***For:***

By hiking criminal penalties and offering injunctive relief, the bills would help concerned citizens and law enforcement in their efforts to put a halt to the unlicensed practice of a wide range of regulated occupations and professions. With explicit authority to seek injunctions, professional boards and associations could obtain court orders against known violators without the necessity of pursuing criminal prosecution. However, criminal prosecution would be more likely to be undertaken, as stiff criminal penalties not only would deter and punish violators, but also would send a strong message to prosecutors that these are serious offenses meriting their share of limited prosecutorial resources.

#### ***Against:***

The impact of the bills would be uncertain. Some of the worst abuses involve anonymous fly-by-nighters who are difficult to locate and who move on before authorities can act against them. The strength of a penalty can be irrelevant against a person who cannot be found.

### ***POSITIONS:***

The Michigan Association of Homebuilders supports House Bill 5100. (9-9-93)

A representative of the Consulting Engineers Council of Michigan testified in support of the bills. (9-9-93)

A representative of the Michigan Society of Architects testified in support of the legislation. (9-9-93)

A representative of the Michigan Surveyors Association testified in support of the legislation. (9-9-93)

The Department of Commerce has no position on the bills. (9-9-93)

The Prosecuting Attorneys Association of Michigan has no position on the bills. (9-9-93)