

**SENATE BILL NO. 1299**

September 17, 1998, Introduced by Senators CONROY, CHERRY, PETERS, KOIVISTO, A. SMITH, YOUNG, DINGELL, V. SMITH and BERRYMAN and referred to the Committee on Economic Development, International Trade and Regulatory Affairs.

A bill to amend 1980 PA 299, entitled "Occupational code," by amending sections 2401, 2402, 2404, 2407, 2411, and 2412 (MCL 339.2401, 339.2402, 339.2404, 339.2407, 339.2411, and 339.2412), sections 2401 and 2411 as amended by 1991 PA 166, sections 2404 and 2407 as amended by 1985 PA 463, and section 2412 as amended by 1980 PA 496.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

- 1       Sec. 2401. As used in this article:
- 2       (A) "COMMERCIAL AND INDUSTRIAL BUILDER" MEANS A PERSON
- 3 ENGAGED IN THE CONSTRUCTION OF A COMMERCIAL OR INDUSTRIAL STRUC-
- 4 TURE OR A COMBINATION RESIDENTIAL AND COMMERCIAL OR INDUSTRIAL
- 5 STRUCTURE WHO, FOR A FIXED SUM, PRICE, FEE, PERCENTAGE, VALUABLE
- 6 CONSIDERATION, OR OTHER COMPENSATION, OTHER THAN WAGES FOR
- 7 PERSONAL LABOR ONLY, UNDERTAKES WITH ANOTHER OR OFFERS TO



1 UNDERTAKE OR PURPORTS TO HAVE THE CAPACITY TO UNDERTAKE WITH  
2 ANOTHER FOR THE ERECTION, CONSTRUCTION, REPLACEMENT, REPAIR,  
3 ALTERATION, OR AN ADDITION TO, SUBTRACTION FROM, IMPROVEMENT,  
4 WRECKING OF, OR DEMOLITION OF, A COMMERCIAL OR INDUSTRIAL STRUC-  
5 TURE OR COMBINATION RESIDENTIAL AND COMMERCIAL OR INDUSTRIAL  
6 STRUCTURE; A PERSON WHO MANUFACTURES, ASSEMBLES, CONSTRUCTS,  
7 DEALS IN, OR DISTRIBUTES A COMMERCIAL OR INDUSTRIAL OR COMBINA-  
8 TION RESIDENTIAL AND COMMERCIAL OR INDUSTRIAL STRUCTURE WHICH IS  
9 PREFABRICATED, PREASSEMBLED, PRECUT, PACKAGED, OR SHELL HOUSING;  
10 OR A PERSON WHO ERECTS A COMMERCIAL OR INDUSTRIAL STRUCTURE OR  
11 COMBINATION RESIDENTIAL AND COMMERCIAL OR INDUSTRIAL STRUCTURE  
12 EXCEPT FOR THE PERSON'S OWN USE AND OCCUPANCY ON THE PERSON'S  
13 PROPERTY.

14 (B) "COMMERCIAL OR INDUSTRIAL STRUCTURE" MEANS A PREMISES  
15 USED OR INTENDED TO BE USED FOR A COMMERCIAL, INDUSTRIAL, OR  
16 PUBLIC PURPOSE AND RELATED FACILITIES APPURTENANT TO THE PREMISES  
17 USED, OR INTENDED TO BE USED, AS AN ADJUNCT OF COMMERCIAL, INDUS-  
18 TRIAL, OR PUBLIC OCCUPANCY. COMMERCIAL OR INDUSTRIAL STRUCTURE  
19 INCLUDES A SCHOOL BUILDING OR OTHER STRUCTURE INTENDED FOR EDUCA-  
20 TIONAL PURPOSES.

21 (C) ~~(a)~~ "Residential builder" means a person engaged in  
22 the construction of a residential structure or a combination res-  
23 idential and commercial structure who, for a fixed sum, price,  
24 fee, percentage, valuable consideration, or other compensation,  
25 other than wages for personal labor only, undertakes with another  
26 or offers to undertake or purports to have the capacity to  
27 undertake with another for the erection, construction,

1 replacement, repair, alteration, or an addition to, subtraction  
2 from, improvement, wrecking of, or demolition of, a residential  
3 structure or combination residential and commercial structure; a  
4 person who manufactures, assembles, constructs, deals in, or dis-  
5 tributes a residential or combination residential and commercial  
6 structure which is prefabricated, preassembled, precut, packaged,  
7 or shell housing; or a person who erects a residential structure  
8 or combination residential and commercial structure except for  
9 the person's own use and occupancy on the person's property.

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

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

23 (ii) If the rehabilitation or improvement work of residen-  
24 tial type property or a structure is contracted for, with, or  
25 hired entirely to be done and performed for the owner by a person  
26 licensed under this article.

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

3        (E) ~~(c)~~ "Residential structure" means a premises used or  
4 intended to be used for a residence purpose and related facili-  
5 ties appurtenant to the premises, used or intended to be used, as  
6 an adjunct of residential occupancy.

7        (F) ~~(d)~~ "Salesperson" means an employee or agent, other  
8 than a qualifying officer, of a licensed residential builder,  
9 COMMERCIAL AND INDUSTRIAL BUILDER, or residential maintenance and  
10 alteration contractor, who for a salary, wage, fee, percentage,  
11 commission, or other consideration, sells or attempts to sell,  
12 negotiates or attempts to negotiate, solicits for or attempts to  
13 solicit for, obtains or attempts to obtain a contract or commit-  
14 ment for, or furnishes or attempts or agrees to furnish, the  
15 goods and services of a residential builder, COMMERCIAL AND  
16 INDUSTRIAL BUILDER, or residential maintenance and alteration  
17 contractor, except a person working for a licensed residential  
18 builder, COMMERCIAL AND INDUSTRIAL BUILDER, or residential main-  
19 tenance and alteration contractor who makes sales which are occa-  
20 sional and incidental to the person's principal employment.

21        (G) ~~(e)~~ "Wages" means money paid or to be paid on an  
22 hourly or daily basis by an owner, lessor, or occupant of a resi-  
23 dential structure, COMMERCIAL OR INDUSTRIAL STRUCTURE, or combi-  
24 nation residential and commercial OR INDUSTRIAL structure as con-  
25 sideration for the performance of personal labor on the structure  
26 by a person who does not perform or promise to perform the labor  
27 for any other fixed sum, price, fee, percentage, valuable

1 consideration, or other compensation and who does not furnish or  
 2 agree to furnish the material or supplies required to be used in  
 3 the performance of the labor or an act defined in subdivision  
 4 (a), ~~or~~ (b), (C), OR (D).

5       Sec. 2402. A residential builders', COMMERCIAL AND INDUS-  
 6 TRIAL BUILDERS', and maintenance and alteration contractors'  
 7 board is created. ~~Four~~ TWO members shall be licensed residen-  
 8 tial builders, 2 MEMBERS SHALL BE LICENSED COMMERCIAL AND INDUS-  
 9 TRIAL BUILDERS, and 2 members shall be licensed maintenance and  
 10 alteration contractors.

11       Sec. 2404. (1) The department may require an applicant,  
 12 licensee, or each partner, trustee, director, officer, member, or  
 13 shareholder to submit evidence of good moral character and finan-  
 14 cial stability. Before the issuance of a license, an applicant  
 15 shall submit any amount required to be paid under the construc-  
 16 tion lien act, ~~Act No. 497 of the Public Acts of 1980, being~~  
 17 ~~sections 570.1101 to 570.1305 of the Michigan Compiled Laws~~ 1980  
 18 PA 497, MCL 570.1101 TO 570.1305.

19       (2) The department shall require an applicant for a license  
 20 to pass an examination establishing that the applicant has a fair  
 21 knowledge of the obligations of a residential builder, COMMERCIAL  
 22 AND INDUSTRIAL BUILDER, or residential maintenance and alteration  
 23 contractor to the public and the applicant's principal, and the  
 24 statutes relating to the applicant's licensure.

25       (3) The department, upon application, may issue a residen-  
 26 tial maintenance and alteration contractor's license to an  
 27 applicant who, upon examination, qualifies for a license, which

1 shall authorize the licensee according to the applicant's  
2 qualifications, crafts, and trades to engage in the activities of  
3 a residential maintenance and alteration contractor. A license  
4 shall include the following crafts and trades: carpentry; con-  
5 crete; swimming pool installation; waterproofing a basement;  
6 excavation; insulation work; masonry work; painting and decorat-  
7 ing; roofing; siding and gutters; screen or storm sash installa-  
8 tion; tile and marble work; and house wrecking. The license  
9 shall specify the particular craft or trade for which the  
10 licensee has qualified. This subsection shall not prohibit a  
11 specialty contractor from taking and executing a contract involv-  
12 ing the use of 2 or more crafts or trades if the performance of  
13 the work in the craft or trade, other than in which the person is  
14 licensed, is incidental and supplemental to the performance of  
15 work in the craft for which the specialty contractor is  
16 licensed.

17 (4) BEGINNING THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT  
18 ADDED THIS SUBSECTION AND FOR A PERIOD OF 12 MONTHS AFTERWARDS,  
19 THE DEPARTMENT SHALL ISSUE A COMMERCIAL AND INDUSTRIAL BUILDER  
20 LICENSE TO A PERSON WHO APPLIES TO THE DEPARTMENT, PAYS THE  
21 APPLICABLE LICENSE AND APPLICATION FEES, AND DEMONSTRATES IN A  
22 MANNER ACCEPTABLE TO THE DEPARTMENT THAT HE OR SHE HAS BEEN  
23 ENGAGED AS A COMMERCIAL AND INDUSTRIAL BUILDER FOR AT LEAST 12 OF  
24 THE PRECEDING 24 MONTHS.

25 (5) ~~(4)~~ A residential builder, COMMERCIAL AND INDUSTRIAL  
26 BUILDER, or residential maintenance and alteration contractor  
27 shall maintain a place of business in this state. If a

1 residential builder, COMMERCIAL AND INDUSTRIAL BUILDER, or  
2 residential maintenance and alteration contractor maintains more  
3 than 1 place of business within this state, a branch office  
4 license shall be issued to the builder or contractor for each  
5 place of business so maintained.

6       Sec. 2407. (1) A salesperson shall be licensed in the  
7 employ of only 1 residential builder, COMMERCIAL AND INDUSTRIAL  
8 BUILDER, or maintenance and alteration contractor. If a sales-  
9 person desires to change employment from 1 residential builder,  
10 COMMERCIAL AND INDUSTRIAL BUILDER, or maintenance and alteration  
11 contractor to another, the license shall be forwarded to the  
12 department and application made for a transfer and the issuance  
13 of a new license under the salesperson's new employer.

14       (2) An application for a salesperson's license shall be sub-  
15 mitted by the employing residential builder, COMMERCIAL AND  
16 INDUSTRIAL BUILDER, or residential maintenance and alteration  
17 contractor.

18       Sec. 2411. (1) A complaint filed as prescribed in article 5  
19 shall be made within 18 months after completion, occupancy, or  
20 purchase, whichever occurs later, of a residential structure,  
21 COMMERCIAL OR INDUSTRIAL STRUCTURE, or a combination of residen-  
22 tial and commercial OR INDUSTRIAL structure.

23       (2) A licensee or applicant who commits 1 or more of the  
24 following shall be subject to the penalties set forth in article  
25 6:

1 (a) Abandonment without legal excuse of a contract,  
2 construction project, or operation engaged in or undertaken by  
3 the licensee.

4 (b) Diversion of funds or property received for prosecution  
5 or completion of a specific construction project or operation, or  
6 for a specified purpose in the prosecution or completion of a  
7 construction project or operation, and the funds or property  
8 application or use for any other construction project or opera-  
9 tion, obligation, or purposes.

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

12 (d) A willful departure from or disregard of plans or speci-  
13 fications in a material respect and prejudicial to another, with-  
14 out consent of the owner or an authorized representative and  
15 without the consent of the person entitled to have the particular  
16 construction project or operation completed in accordance with  
17 the plans and specifications.

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

20 (f) In a maintenance and alteration contract, failure to  
21 furnish to a lender the purchaser's signed completion certificate  
22 executed upon completion of the work to be performed under the  
23 contract.

24 (g) If a licensed residential builder, LICENSED COMMERCIAL  
25 AND INDUSTRIAL BUILDER, or licensed residential maintenance and  
26 alteration contractor, failure to notify the department within 10  
27 days of a change in the control or direction of the business of

1 the licensee resulting from a change in the licensee's partners,  
2 directors, officers, or trustees, or a change in the control or  
3 direction of the business of the licensee resulting from any  
4 other occurrence or event.

5 (h) Failure to deliver to the purchaser the entire agreement  
6 of the parties including finance and any other charge arising out  
7 of or incidental to the agreement when the agreement involves  
8 repair, alteration, or addition to, subtraction from, improvement  
9 of, wrecking of, or demolition of a residential structure, COM-  
10 MERCIAL OR INDUSTRIAL STRUCTURE, or combination of residential  
11 and commercial OR INDUSTRIAL structure, or building of a garage,  
12 or laying of concrete on residential property, or manufacture,  
13 assembly, construction, sale, or distribution of a residential  
14 STRUCTURE, COMMERCIAL OR INDUSTRIAL STRUCTURE, or combination  
15 residential and commercial OR INDUSTRIAL structure which is pre-  
16 fabricated, preassembled, precut, packaged, or shell housing.

17 (i) If a salesperson, failure to pay over immediately upon  
18 receipt money received by the salesperson, in connection with a  
19 transaction governed by this article to the residential builder,  
20 COMMERCIAL AND INDUSTRIAL BUILDER, or residential maintenance and  
21 alteration contractor under whom the salesperson is licensed.

22 (j) Aiding or abetting an unlicensed person to evade this  
23 article, or knowingly combining or conspiring with, or acting as  
24 agent, partner, or associate for an unlicensed person, or allow-  
25 ing one's license to be used by an unlicensed person, or acting  
26 as or being an ostensible licensed residential builder,  
27 COMMERCIAL AND INDUSTRIAL BUILDER, or licensed residential

1 maintenance and alteration contractor for an undisclosed person  
2 who does or shall control or direct, or who may have the right to  
3 control or direct, directly or indirectly, the operations of a  
4 licensee.

5 (k) Acceptance of a commission, bonus, or other valuable  
6 consideration by a salesperson for the sale of goods or the per-  
7 formance of service specified in the article from a person other  
8 than the residential builder, COMMERCIAL AND INDUSTRIAL BUILDER,  
9 or residential maintenance and alteration contractor under whom  
10 the person is licensed.

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

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

18 (3) The department shall suspend or revoke the license of a  
19 person licensed under this article whose failure to pay a lien  
20 claimant results in a payment being made from the homeowner con-  
21 struction lien recovery fund pursuant to the construction lien  
22 act, ~~Act No. 497 of the Public Acts of 1980, being sections~~  
23 ~~570.1101 to 570.1305 of the Michigan Compiled Laws~~ 1980 PA 497,  
24 MCL 570.1101 TO 570.1305, regardless of whether the person was  
25 performing services as a licensee under this article; under the  
26 electrical administrative act, ~~Act No. 217 of the Public Acts of~~  
27 ~~1956, as amended, being sections 338.881 to 338.892 of the~~

1 ~~Michigan Compiled Laws~~ 1956 PA 217, MCL 338.881 TO 338.892; or  
2 under ~~Act No. 266 of the Public Acts of 1929, as amended, being~~  
3 ~~sections 338.901 to 338.917 of the Michigan Compiled Laws~~ 1929  
4 PA 266, MCL 338.901 TO 338.917. The license shall not be renewed  
5 nor shall a new license be issued until the licensee has repaid  
6 in full to the fund the amount paid out plus the costs of litiga-  
7 tion and interest at the rate set by section 6013 of the revised  
8 judicature act of 1961, ~~Act No. 236 of the Public Acts of 1961,~~  
9 ~~as amended, being section 600.6013 of the Michigan Compiled Laws~~  
10 1961 PA 236, MCL 600.6013.

11 (4) The department shall conduct a review upon notice by the  
12 department of public health that the licensee has violated the  
13 asbestos abatement contractors licensing act, ~~Act No. 135 of the~~  
14 ~~Public Acts of 1986, being sections 338.3101 to 338.3319 of the~~  
15 ~~Michigan Compiled Laws, or sections 57 to 60f of the Michigan~~  
16 ~~occupational safety and health act, Act No. 154 of the Public~~  
17 ~~Acts of 1974, being sections 408.1057 to 408.1060f of the~~  
18 ~~Michigan Compiled Laws~~ 1986 PA 135, MCL 338.3101 TO 338.3319,  
19 and may suspend or revoke that person's license for a knowing  
20 violation of ~~those acts~~ THAT ACT.

21 Sec. 2412. A person or qualifying officer for a corporation  
22 or member of a residential builder, COMMERCIAL AND INDUSTRIAL  
23 BUILDER, or residential maintenance and alteration contractor  
24 shall not bring or maintain an action in a court of this state  
25 for the collection of compensation for the performance of an act  
26 or contract for which a license is required by this article

