

SENATE BILL No. 1422

October 5, 2000, Introduced by Senator BULLARD and referred to the Committee on Human Resources, Labor, Senior Citizens and Veterans Affairs.

A bill to amend 1980 PA 299, entitled
"Occupational code,"
by amending sections 2411 and 2412 (MCL 339.2411 and 339.2412),
section 2411 as amended by 1991 PA 166 and section 2412 as
amended by 1980 PA 496.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2411. (1) A complaint filed as prescribed in article 5
2 shall be made within 18 months after completion, occupancy, or
3 purchase, whichever occurs later, of a residential structure or a
4 combination of residential and commercial structure. A COMPLAINT
5 FILED UNDER THIS SECTION SHALL BE FILED NO LONGER THAN 13 MONTHS
6 AFTER COMPLETION, OCCUPANCY, OR PURCHASE OF A RESIDENTIAL STRUC-
7 TURE OR A COMBINATION OF A RESIDENTIAL AND COMMERCIAL STRUCTURE,
8 WHICHEVER OCCURS LATER.

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

4 (a) Abandonment without legal excuse of a contract, con-
5 struction project, or operation engaged in or undertaken by the
6 licensee.

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

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

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

21 (e) A willful violation of the building laws OR ORDINANCES
22 of the state or of a political subdivision of the state.

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

1 (g) If a licensed residential builder or licensed
2 residential maintenance and alteration contractor, failure to
3 notify the department within 10 days of a change in the control
4 or direction of the business of the licensee resulting from a
5 change in the licensee's partners, directors, officers, or trust-
6 ees, or a change in the control or direction of the business of
7 the licensee resulting from any other occurrence or event.

8 (h) Failure to deliver to the purchaser the entire agreement
9 of the parties including finance and any other charge arising out
10 of or incidental to the agreement when the agreement involves
11 repair, alteration, or addition to, subtraction from, improvement
12 of, wrecking of, or demolition of a residential structure or com-
13 bination of residential and commercial structure, or building of
14 a garage, or laying of concrete on residential property, or manu-
15 facture, assembly, construction, sale, or distribution of a resi-
16 dential or combination residential and commercial structure which
17 is prefabricated, preassembled, precut, packaged, or shell
18 housing.

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

24 (j) Aiding or abetting an unlicensed person to evade this
25 article, or knowingly combining or conspiring with, or acting as
26 agent, partner, or associate for an unlicensed person, or
27 allowing one's license to be used by an unlicensed person, or

1 acting as or being an ostensible licensed residential builder or
2 licensed residential maintenance and alteration contractor for an
3 undisclosed person who does or shall control or direct, or who
4 may have the right to control or direct, directly or indirectly,
5 the operations of a licensee.

6 (k) Acceptance of a commission, bonus, or other valuable
7 consideration by a salesperson for the sale of goods or the per-
8 formance of service specified in the article from a person other
9 than the residential builder or residential maintenance and
10 alteration contractor under whom 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~~ DEPARTMENT shall
5 not ~~be renewed nor shall~~ RENEW A LICENSE OR ISSUE a new license
6 ~~be issued~~ until the licensee has repaid in full to the fund the
7 amount paid out plus the costs of litigation and interest at the
8 rate set by section 6013 of the revised judicature act of 1961,
9 ~~Act No. 236 of the Public Acts of 1961, as amended, being sec-~~
10 ~~tion 600.6013 of the Michigan Compiled Laws~~ 1961 PA 236,
11 MCL 600.6013.

12 (4) The department shall conduct a review upon notice by the
13 department of ~~public~~ COMMUNITY health that the licensee has
14 violated the asbestos abatement contractors licensing act, ~~Act~~
15 ~~No. 135 of the Public Acts of 1986, being sections 338.3101 to~~
16 ~~338.3319 of the Michigan Compiled Laws, or sections 57 to 60f of~~
17 ~~the Michigan occupational safety and health act, Act No. 154 of~~
18 ~~the Public Acts of 1974, being sections 408.1057 to 408.1060f of~~
19 ~~the Michigan Compiled Laws and~~ 1986 PA 135, MCL 338.3101 TO
20 338.3319. THE DEPARTMENT may suspend or revoke that person's
21 license for a knowing violation of ~~those acts~~ THE ASBESTOS
22 ABATEMENT CONTRACTORS LICENSING ACT, 1986 PA 135, MCL 338.3101 TO
23 338.3319.

24 (5) NOTWITHSTANDING ARTICLE 5, THE FOLLOWING APPLY TO ADMIN-
25 ISTRATIVE PROCEEDINGS REGARDING WORKMANSHIP UNDER SUBSECTION
26 (2)(M):

1 (A) A COMPLAINT SUBMITTED BY AN OWNER SHALL DESCRIBE IN
2 WRITING TO THE SATISFACTION OF THE DEPARTMENT THE FACTUAL BASIS
3 FOR THE ALLEGATION AND THE PROPOSED ACTION NECESSARY TO CORRECT
4 OR REMEDY THE CONDITIONS DESCRIBED IN THE COMPLAINT.

5 (B) THE DEPARTMENT SHALL PRESUME THE INNOCENCE OF THE
6 LICENSEE THROUGHOUT THE PROCEEDING UNTIL THE ADMINISTRATIVE LAW
7 HEARING EXAMINER FINDS OTHERWISE IN A DETERMINATION OF FINDINGS
8 OF FACT AND CONCLUSIONS OF LAW UNDER ARTICLE 5. THE LICENSEE HAS
9 THE BURDEN OF REFUTING EVIDENCE SUBMITTED BY A PERSON DURING THE
10 ADMINISTRATIVE HEARING. THE LICENSEE ALSO HAS THE BURDEN OF
11 PROOF REGARDING THE REASON DEFICIENCIES WERE NOT CORRECTED.

12 (C) THE DEPARTMENT SHALL PROVIDE TO THE LICENSEE A COPY OF
13 THE COMPLAINT FILED AGAINST A LICENSEE WITHIN 30 DAYS AFTER
14 RECEIPT OF THE COMPLAINT BY THE DEPARTMENT. FAILURE OF THE
15 LICENSEE TO RECEIVE A COPY OF THE COMPLAINT WITHIN THE 30-DAY
16 PERIOD INVALIDATES THE COMPLAINT. PROOF OF RECEIPT OF A COPY OF
17 THE COMPLAINT IS A CONDITION PRECEDENT TO THE DEPARTMENT'S BRING-
18 ING OF AN ADMINISTRATIVE PROCEEDING UNDER THIS SUBSECTION.

19 (D) THE DEPARTMENT SHALL NOT INITIATE A PROCEEDING AGAINST A
20 LICENSEE UNDER THIS SUBSECTION IN THE CASE OF A LICENSEE WHO CON-
21 TRACTUALLY PROVIDES FOR AN ALTERNATE DISPUTE RESOLUTION PROCEDURE
22 THAT HAS NOT BEEN UTILIZED AND COMPLETED UNLESS IT IS DETERMINED
23 THAT THE LICENSEE HAS NOT COMPLIED WITH A DECISION OR ORDER
24 ISSUED AS A RESULT OF THAT ALTERNATE DISPUTE RESOLUTION PROCEDURE
25 OR THAT ALTERNATE DISPUTE RESOLUTION PROCEDURE WAS NOT FULLY COM-
26 PLETED WITHIN 90 DAYS AFTER THE FILING OF THE COMPLAINT WITH THE
27 DEPARTMENT.

1 (E) THE COMPLAINANT SHALL DEMONSTRATE IN A MANNER ACCEPTABLE
2 TO THE DEPARTMENT THAT NOTICE HAS BEEN PROVIDED TO THE LICENSEE
3 DESCRIBING REASONABLE TIMES AND DATES THAT THE RESIDENTIAL STRUC-
4 TURE WAS ACCESSIBLE FOR ANY NEEDED REPAIRS AND PROOF ACCEPTABLE
5 TO THE DEPARTMENT THAT THE REPAIRS WERE NOT MADE WITHIN 60 DAYS
6 AFTER THE SENDING OF THE NOTICE. THIS SUBDIVISION DOES NOT APPLY
7 WHERE THE DEPARTMENT DETERMINES A NECESSITY TO SAFEGUARD THE
8 STRUCTURE OR TO PROTECT THE OCCUPANT'S HEALTH AND SAFETY AND, IN
9 SUCH CASE, THE DEPARTMENT MAY UTILIZE ANY REMEDY AVAILABLE UNDER
10 SECTION 504(3)(A) THROUGH (D).

11 (F) IN THE CASE WHERE THE OWNER AND LICENSEE HAVE AGREED
12 CONTRACTUALLY ON MUTUALLY ACCEPTABLE PERFORMANCE GUIDELINES
13 RELATING TO WORKMANSHIP, THE DEPARTMENT SHALL CONSIDER THOSE
14 GUIDELINES IN ITS EVALUATION OF A COMPLAINT.

15 Sec. 2412. (1) A person or qualifying officer for a corpo-
16 ration or member of a residential builder or residential mainte-
17 nance and alteration contractor shall not bring or maintain an
18 action in a court of this state for the collection of compensa-
19 tion for the performance of an act or contract for which a
20 license is required by this article without alleging and proving
21 that the person was licensed under this article during the per-
22 formance of the act or contract.

23 (2) EITHER OR BOTH OF THE FOLLOWING SHALL BE AN AFFIRMATIVE
24 DEFENSE TO AN ACTION BROUGHT IN A COURT OF THIS STATE AGAINST A
25 LICENSEE UNDER THIS ARTICLE:

1 (A) THE PERSON BRINGING A COMPLAINT AGAINST THE LICENSEE HAS
2 FAILED TO UTILIZE TO COMPLETION A CONTRACTUALLY PROVIDED
3 ALTERNATE DISPUTE RESOLUTION PROCEDURE.

4 (B) THE COMPLAINT INVOLVES IN WHOLE OR PART THE ALLEGATION,
5 MADE BY ANY PARTY, OF A VIOLATION OF A PROVISION OF A BUILDING
6 CODE AND THE LOCAL UNIT OF GOVERNMENT ISSUING OR ENFORCING THE
7 CODE, OR BOTH, HAS NOT BEEN JOINED AS A PARTY IN THE ACTION RELA-
8 TIVE TO THAT ALLEGATION. THIS SUBDIVISION DOES NOT APPLY AFTER
9 THE COURT HAS MADE A SPECIFIC FINDING BY THE PREPONDERANCE OF THE
10 EVIDENCE ON THE MERITS OF THE ALLEGATION OF THE CODE VIOLATION TO
11 THE EFFECT THAT THE LOCAL UNIT OF GOVERNMENT IS FREE OF LIABILITY
12 REGARDING THAT VIOLATION.