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## ALLOW JOINDER OF PARTIES IN ADMINISTRATIVE ACTIONS

House Bill 6556 as introduced  
First Analysis (12-10-02)

Sponsor: Rep. Bruce Patterson  
Committee: Regulatory Reform

### ***THE APPARENT PROBLEM:***

The Department of Consumer and Industry Services licenses more than 75,000 individuals and corporations as residential builders and alteration contractors under Article 24 of the Occupational Code. Article 24 permits a person to file a complaint against a residential builder for a variety of reasons including, among others, a willful violation of the building laws of the state or of a political subdivision or for poor workmanship or workmanship not meeting the standards of the custom or trade verified by a building code enforcement official. Complaints are filed under Article 5 of the code, which sets forth the responsibilities of the Department of Consumer and Industry Services upon the receipt of a complaint. Under Article 5, any person may file a complaint with the Department of Consumer and Industry Services alleging that a person has violated the code (or a rule or order issued under the code). The department is required to investigate each complaint and after investigation may either close the complaint, if no evidence of a violation is found, or take other appropriate action, including preparing a formal complaint. The department is required to serve the formal complaint on the respondent (the person against whom the complaint is filed) and the complainant.

When a complaint is filed against a residential builder - or other respondents licensed under the Occupational Code, for that matter - the complaint may only be filed against one licensee, notwithstanding any apparent complaint against other related licensees (such as the building's architect) as well. As such, legislation has been introduced that would permit a respondent to a claim to bring other licensees into the complaint.

### ***THE CONTENT OF THE BILL:***

House Bill 6556 would amend the Occupational Code (MCL 339.101 et al.) to allow a respondent to "join" (or add) another licensee or registrant to the complaint as a respondent, either by so indicating in

writing to the department, or as part of a written response to a complaint. In such a case, the department would have to appropriately notify the co-respondent and serve all respondents with a notice describing the compliance conference and hearing process. All respondents would then have all of the options outlined in the code concerning resolving a complaint (i.e., negotiating a settlement, demonstration of compliance, or a contested case hearing). In addition, the bill would require that a copy of a hearing report be submitted to any person who had been joined as a respondent in a case.

If a hearing occurred, the bill would require the administrative law hearing examiner to make a determination of fault regarding a respondent, and among one or more respondents. If more than one respondent was determined to be at fault, the hearing examiner would make a determination of the percentage of total fault attributable to each respondent. Fault would be considered "several" (separately or individually) and not "joint" (shared).

After a hearing, an administrative law hearing examiner is required to submit a determination of findings of fact and conclusions of law to the department, the attorney general, and the appropriate licensing board. The bill would require that, in the case of findings involving licensees of different occupations licensed under the code, the hearing report would be submitted to the board governing the original respondent. And, if a case resulted in a determination of findings of fact and conclusions of law that involved respondents licensed or registered in different occupations, the board governing the original respondent would make the determinations of penalties, remedies, and sanctions.

Within 60 days after receipt of an administrative hearing examiner's hearing report, a licensing board is required to meet and determine the penalties to be assessed in a case. The bill would require a board to follow the allocation of the percentage of fault only

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under circumstances where restitution was ordered. A board would be specifically prohibited from awarding property or personal injury damages under the Occupational Code.

MCL 339.508 et al.

### ***BACKGROUND INFORMATION:***

The Department of Consumer and Industry Services regulates various professionals under the Occupational Code, generally through licensure or registration. Among the occupations regulated under the code are accountants, collection agents, barbers, cosmetologists, employment agents, hearing aid dealers, funeral directors, architects, engineers, surveyors, foresters, landscape architects, community planners, residential builders, real estate brokers, real estate appraisers, and ocularists.

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

Fiscal information is not available.

### ***ARGUMENTS:***

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

This bill attempts to assign responsibility to the actual party responsible. Under the Occupational Code, if a person has a complaint against a builder, there is a certain set of procedures that that person who filed the complaint, the builder, and the department of must follow. But, what happens if the situation also touches upon the work of another licensee, perhaps the real estate broker or the building's architect? A separate complaint must be followed. As a result, there are additional and separate complaint procedures taking place simultaneously and regarding the same complaint. This can be problematic in many ways. First, each hearing could be resolved in favor of the complainant. Notwithstanding the merits of a particular complainant's complaint, this sort of situation could unduly punish several respondents. For instance, there may be a complaint levied against a builder and an architect over the same matter. The hearings - held separately - could find that both the builder and the architect are wholly responsible, when in all actuality they are jointly responsible. As such, the builder and the architect are each subject to the full gamut of penalties, regardless of the fact that the other is at least partly responsible as well. Secondly, the hearings may find that the actions of each respondent, in and of themselves, may not rise to the level necessary to find in favor of the

complainant. For instance, there may be a complaint levied against a builder, an architect, and the real estate broker. However, each hearing may find that the actions of one licensee may not merit a judgment against the licensee, though the licensees, together, are entirely responsible. Finally, permitting a respondent to join others to the complaint would streamline the administrative processes utilized in resolving a complaint as one hearing and investigation would be held regarding a complaint.

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

The bill fails to adequately remedy the problem it attempts to address. Simply adding provisions to the Occupational Code fails to capture the licensees typically associated with construction projects, and covers other unrelated occupations. While the Occupational Code licenses and registers real estate brokers, real estate appraisers and architects, in addition to residential builders, it also includes a rather eclectic collection of other occupations including cosmetologists, foresters, funeral directors, and ocularists. The necessity to include these other occupations is not apparent. Other construction-related occupations are licensed individually and do not fall under the provisions of the code, including plumbers (Public Act 266 of 1929, MCL 338.951 et al.), boiler installers and examiners (Public Act 290 of 1965, MCL 408.751 et al.), electricians and electrical contractors (Public Act 217 of 1956, MCL 338.881 et al.), elevator technicians (Public Act 333 of 1976, 338.2151 et al.), and mechanical contractors (Public Act 192 of 1984). To that end, the bill should also permit residential builders to join subcontractors - plumbers, electricians, and mechanical contractors - to a complaint if it is to equitably assign fault regarding a complaint.

#### ***Response:***

The bill is not intended to add subcontractors to a complaint involving a residential builder. If a person has a complaint involving a plumber, for instance, he or she may take action under Public Act 266. Further, Article 6 [MCL 339.601(6)] of the code explicitly states that nothing in the act shall apply to plumbers, mechanical contractors, or electricians and electrical contractors.

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

From an administrative standpoint, this bill could very well turn into a nightmare. With the addition of each new respondent, the complaint process must be restarted, as new notices are sent out, new hearings are held, and new investigations are conducted. Further, it is entirely plausible that the original respondent could repeatedly seek to add other

respondents merely as a ploy to drag out the complaint process in hopes of the complainant dropping the complaint.

***Response:***

The Department of Consumer and Industry Services has suggested several amendments to the bill that would limit the ability of a respondent to join others to the claim by limiting the number of additional respondents and the time frame in which they may be added. In addition, there is another suggested amendment that would permit a licensee to rebut an allegation of a willful violation of state or local building laws. It is believed by some that this amendment would ameliorate the concerns of the Michigan Association of Home Builders that prompted the introduction of the legislation, and would make the original provisions of the bill unnecessary.

***POSITIONS:***

The Michigan Association of Homebuilders supports the bill. (12-10-02)

The Department of Consumer and Industry Services would support the bill with amendments expected to be added on the floor of the House. (12-10-02)

Analyst: M. Wolf

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.