

Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

SFA**BILL ANALYSIS**

Telephone: (517) 373-5383
Fax: (517) 373-1986
TDD: (517) 373-0543

Senate Bill 351 (as enrolled)
Sponsor: Senator Glenn D. Steil
Senate Committee: Human Resources and Labor
House Committee: Regulatory Reform

PUBLIC ACT 113 of 2001

Date Completed: 7-30-01

RATIONALE

Article 24 of the Occupational Code provides for the licensure and regulation of residential builders. Article 24 allows a complaint to be filed against a residential builder licensee for any of 13 actions listed in the article; if found in violation, the licensee may be subject to penalties specified in the Code. Complaints may be filed against a licensee for such reasons as abandonment of a construction project; failure to account for or remit money that belongs to others; a willful violation of the State's building laws; and insolvency. In addition, a complaint may be filed against a licensee 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 prescribes the powers and duties of the Department of Consumer and Industry Services (DCIS) when it receives complaints, and provides for investigations of complaints, administrative hearings in complaint disputes, and determinations of penalties. A complaint must be made within 18 months after completion, occupancy, or purchase, whichever occurs later, of a residential structure or a combination of a residential and commercial structure.

To file a complaint with the DCIS, an individual must contact the Department and obtain a complaint package, which includes a building inspection report. The complainant must give the report to the local building inspector for completion. The building inspection report asks the inspector to enter information regarding the nature of the complaint, location, and whether there is an

issue of workmanship, code violations, or no violations. Reportedly, reports completed by inspectors often do not identify specific grounds for a complaint, but instead simply state "poor workmanship". It has been pointed out that such a report leaves the builder, and the DCIS, unsure of how to address the complaint. Some people suggested that the complaint process could be improved if, in questions of workmanship, more specific complaint procedures were required, and if the use of alternative dispute resolution procedures were encouraged.

CONTENT

The bill amended Article 24 of the Occupational Code to establish standards and procedures for administrative proceedings regarding workmanship complaints against residential builders.

The bill specifies that, notwithstanding Article 5, the provisions described below apply to administrative proceedings regarding workmanship.

A complaint submitted by an owner must describe in writing to the DCIS the factual basis for the allegation. The homeowner must send a copy of the initial complaint to the DCIS.

The DCIS must presume the innocence of a licensee throughout the proceeding until the administrative law hearing examiner finds otherwise in a determination of findings of fact and conclusions of law under Article 5. The licensee has the burden of refuting evidence submitted by a person during the

administrative hearing, and the burden of proof regarding the reason deficiencies were not corrected.

Upon receiving a building inspection report issued to the DCIS by a local or State building enforcement official under the Single State Construction Code Act that verifies or confirms the substance of the complaint, the DCIS must send by certified mail a copy of the verified complaint (a complaint in which the report has confirmed all or a portion of the allegations) to both the complainant and the licensee. If the DCIS fails to send a copy of the verified complaint within 30 days, the DCIS may not assess a fine against the licensee under the Code, but may pursue restitution, license suspension, or other remedies provided under the Code.

A licensee may contractually provide for an alternative dispute resolution procedure to resolve complaints filed with the DCIS. The procedure must be conducted by a neutral third party for determining the rights and responsibilities of the parties and must be initiated by the licensee. The licensee also must give notice of the initiation of the procedure to the complainant by certified mail within 30 days before the procedure starts. The procedure must be conducted at a location mutually agreed to by the parties.

The DCIS may not initiate a proceeding against a licensee who contractually provides for an alternate dispute resolution procedure that has not been used and completed, unless it is determined that the licensee has not complied with a decision or order issued as a result of that procedure, the procedure was not fully completed within 90 days after the complaint was filed with the DCIS, or the procedure is not available to the complainant.

The complainant must demonstrate that the licensee has been given notice describing reasonable times and dates that the residential structure was accessible for any needed repairs, and proof acceptable to the DCIS that the repairs were not made within 60 days after the notice was sent. The bill specifies that this provision does not apply if the DCIS determines a necessity to safeguard the structure or to protect the occupant's health and safety; in this case, the DCIS may issue a formal complaint or citation to the licensee, issue a cease and desist order, or

summarily suspend the residential builder's license.

If the owner and licensee have agreed contractually on mutually acceptable performance guidelines relating to workmanship, the DCIS must consider those guidelines in its evaluation of a complaint. The guidelines must be consistent with the Single State Construction Code Act.

The bill also provides that it is an affirmative defense to an action brought in a court against a residential builder licensee that the complainant failed to use a contractually provided alternate dispute resolution.

As required for complaints filed under Article 5, the bill provides that a complaint filed under Article 24 must be made within 18 months after completion, occupancy, or purchase, whichever occurs later.

MCL 339.2411 & 339.2412

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

Within 18 months of occupancy, if an individual has a complaint about a residential builder or remodeler, he or she can notify the DCIS and obtain a packet of materials, which can be completed and filed with the DCIS as a complaint. Part of the packet includes a building inspection report which the complainant must give to the local building inspector for completion. While the report asks the inspector to cite code violations and describe problems, too often returned reports only state "poor workmanship", describe the building's condition in vague terms, or simply indicate that a job meets building code requirements. The lack of detail leaves the report open to interpretation by DCIS personnel, and leaves the builder in doubt as to how to respond.

Further, it has been pointed out that these procedures give inspectors little incentive to file the reports at all, let alone accurately. Before a dwelling may be occupied, a local building inspector must inspect the premises for compliance with building codes and

construction standards. Once approved by the inspector, the premises may be occupied. If a complaint is filed shortly after an individual occupies the premises, the inspector is then asked to cite problems or violations in a dwelling that he or she just approved for occupancy. The bill helps to eliminate these problems, by requiring that complaints include greater specificity. This will allow builders to respond more appropriately and efficiently to complaints, and thus reduce the number of complaints that result in DCIS administrative hearings and procedures.

Supporting Argument

The bill will aid homeowners and builders by creating an incentive for builders to provide contractually for alternative dispute resolution procedures to resolve complaints alleging poor workmanship. This is a nonjudicial process agreed upon by the builder and the customer in which disputes are presented to a neutral third party. The bill provides that the DCIS may not initiate proceedings against a licensee in cases in which contracted alternate dispute resolution procedures have not been completed. This means that the procedures must be followed to completion before the DCIS acts on a complaint. These provisions may encourage builders and owners to settle disputes before involving the DCIS and perhaps will reduce the overall participation of the DCIS in addressing complaints.

Legislative Analyst: G. Towne

FISCAL IMPACT

The bill requires the DCIS to send, by certified mail, a verified complaint to the complainant and the licensee. There will be additional costs associated with the expense of certified mail. According to the Department, the cost will be less than \$10,000 per year.

Fiscal Analyst: M. Tyszkiewicz

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.