

HOUSE BILL No. 6556

December 3, 2002, Introduced by Rep. Patterson and referred to the Committee on Regulatory Reform.

A bill to amend 1980 PA 299, entitled
"Occupational code,"
by amending sections 508, 511, 513, and 514 (MCL 339.508,
339.511, 339.513, and 339.514), section 508 as amended by 1989 PA
261.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 508. (1) After an investigation has been conducted and
2 a formal complaint prepared, the department shall serve the
3 formal complaint upon the respondent and the complainant. THE
4 RESPONDENT MAY JOIN A LICENSEE OR REGISTRANT UNDER THIS ACT AS A
5 RESPONDENT BY SO INDICATING IN WRITING TO THE DEPARTMENT OR AS
6 PART OF A WRITTEN RESPONSE TO A COMPLAINT. IN SUCH A CASE, THE
7 DEPARTMENT SHALL APPROPRIATELY NOTIFY THE CO-RESPONDENT. At the
8 same time, the department shall serve ~~the respondent~~ ALL
9 RESPONDENTS with a notice describing the compliance conference

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1 and hearing processes and offering ~~the respondent~~ ALL
2 RESPONDENTS a choice of 1 of the following opportunities:

3 (a) An opportunity to meet with the department to negotiate
4 a settlement of the matter.

5 (b) If the respondent is a licensee or registrant under this
6 act, an opportunity to demonstrate compliance prior to holding a
7 contested case hearing, as required by section 92 of the adminis-
8 trative procedures act of 1969, ~~Act No. 306 of the Public Acts~~
9 ~~of 1969, being section 24.292 of the Michigan Compiled Laws~~ 1969
10 PA 306, MCL 24.292.

11 (c) An opportunity to proceed to a contested case hearing as
12 set forth in section 71 of ~~Act No. 306 of the Public Acts of~~
13 ~~1969, being section 24.271 of the Michigan Compiled Laws~~ THE
14 ADMINISTRATIVE PROCEDURES ACT OF 1969, 1969 PA 306, MCL 24.271.

15 (2) ~~A respondent~~ ALL RESPONDENTS upon whom service of a
16 formal complaint has been made pursuant to this section may
17 select, within 15 days after the receipt of notice, 1 of the
18 options described in subsection (1). If a respondent does not
19 select 1 of those options within the time period described in
20 this section, then the department shall proceed to a contested
21 case hearing as described in subsection (1)(c).

22 (3) An informal conference may be attended by a member of
23 the board, at the discretion of that board, or by a member of a
24 committee and may result in a settlement, consent order, waiver,
25 default, or other method of settlement agreed upon by the parties
26 and the department. A settlement may include the revocation,
27 suspension, or limitation of a license or registration; censure;

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1 probation; restitution; or a penalty provided for in article 6.
2 A board may reject a settlement and require a contested case
3 hearing under section 71 of ~~Act No. 306 of the Public Acts of~~
4 ~~1969, as amended, being section 24.271 of the Michigan Compiled~~
5 ~~Laws~~ THE ADMINISTRATIVE PROCEDURES ACT OF 1969, 1969 PA 306, MCL
6 24.271.

7 (4) An authorized employee or agent of the department may
8 represent the department in any contested case hearing. ~~held~~
9 ~~pursuant to Act No. 306 of the Public Acts of 1969.~~

10 Sec. 511. (1) If an informal conference is not held or does
11 not result in a settlement of a complaint, THE DEPARTMENT SHALL
12 HOLD a hearing pursuant to ~~section 92 of Act No. 306 of the~~
13 ~~Public Acts of 1969, as amended, shall be held~~ THE ADMINISTRA-
14 TIVE PROCEDURES ACT OF 1969, 1969 PA 306, MCL 24.201 TO 24.328.
15 A hearing HELD under this section may be attended by a member of
16 a board.

17 (2) THE ADMINISTRATIVE LAW HEARING EXAMINER SHALL MAKE A
18 DETERMINATION OF FAULT REGARDING A RESPONDENT AND AMONG 1 OR MORE
19 RESPONDENTS. IF MORE THAN 1 RESPONDENT IS DETERMINED TO BE AT
20 FAULT, THE ADMINISTRATIVE LAW HEARING EXAMINER SHALL MAKE A
21 DETERMINATION OF THE PERCENTAGE OF THE TOTAL FAULT ATTRIBUTABLE
22 TO EACH RESPONDENT. FAULT IS CONSIDERED SEVERAL AND NOT JOINT.

23 Sec. 513. (1) Except as provided in subsection ~~(3)~~ (4),
24 at the conclusion of a hearing conducted under section 511, the
25 administrative law hearings examiner shall submit a determination
26 of findings of fact and conclusions of law to the department and
27 the department of the attorney general and the appropriate board

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1 in a hearing report. IN THE CASE OF FINDINGS INVOLVING A
2 LICENSEE UNDER MORE THAN 1 ARTICLE, THE HEARING REPORT SHALL BE
3 SUBMITTED TO THE BOARD GOVERNING THE ORIGINAL RESPONDENT. The
4 submitted hearing report may recommend the penalties to be
5 assessed as prescribed in article 6.

6 (2) A copy of a hearing report shall be submitted to the
7 person who made the complaint, ~~and~~ to the person against whom
8 the complaint was lodged, AND TO ANY PERSON WHO HAS BEEN JOINED
9 AS A RESPONDENT UNDER SECTION 508.

10 (3) IN THE CASE OF A DETERMINATION OF FINDINGS OF FACT AND
11 CONCLUSIONS OF LAW THAT INVOLVE RESPONDENTS LICENSED OR REGIS-
12 TERED IN OCCUPATIONS UNDER DIFFERENT ARTICLES, THE BOARD GOVERN-
13 ING THE ORIGINAL RESPONDENT SHALL MAKE THE DETERMINATIONS OF PEN-
14 ALTIES, REMEDIES, AND SANCTIONS.

15 (4) ~~-(3)-~~ For a complaint involving professional standards
16 of practice under article 7, a majority of the members of the
17 board who have not participated in an investigation of the com-
18 plaint or who have not attended an informal conference, shall sit
19 to make findings of fact in relation to the complaint.

20 Sec. 514. (1) Within 60 days after receipt of an adminis-
21 trative law hearings examiner's hearing report, the board receiv-
22 ing the hearing report shall meet and make a determination of the
23 penalties to be assessed under article 6. The board's determina-
24 tion shall be made on the basis of the administrative law hear-
25 ings examiner's report. A transcript of a hearing or a portion
26 of the transcript shall be made available to a board upon
27 request. If a transcript or a portion of the transcript is

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1 requested, the board's determination of the penalty or penalties
2 to be assessed under article 6 shall be made at a meeting within
3 60 days after receipt of a transcript or portion of the
4 transcript.

5 (2) If a board does not determine the appropriate penalty or
6 penalties to be assessed within the time limits prescribed by
7 subsection (1), the director may determine the appropriate pen-
8 alty and issue a final order for occupations regulated under
9 articles 8 to 25.

10 (3) THE BOARD SHALL FOLLOW THE ALLOCATION OF THE PERCENTAGE
11 OF FAULT ONLY UNDER CIRCUMSTANCES WHERE RESTITUTION IS ORDERED
12 UNDER SECTION 602. THE BOARD IS SPECIFICALLY PROHIBITED FROM
13 AWARING PROPERTY OR PERSONAL INJURY DAMAGES UNDER THIS ACT.

14 (4) ~~—(3)—~~ A member of a board who has participated in an
15 investigation on a complaint filed with the department or who has
16 attended an informal conference shall not participate in making a
17 final determination in a proceeding on that complaint.