

HOUSE SUBSTITUTE FOR
SENATE BILL NO. 351

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~~ UNDER
2 THIS SECTION OR article 5, OR BOTH, shall be made within 18
3 months after completion, occupancy, or purchase, whichever occurs
4 later, of a residential structure or a combination of residential
5 and commercial structure.

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

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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 or licensed residen-
25 tial maintenance and alteration contractor, failure to notify the
26 department within 10 days of a change in the control or direction
27 of the business of the licensee resulting from a change in the

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

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

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

20 (j) Aiding or abetting an unlicensed person to evade this
21 article, or knowingly combining or conspiring with, or acting as
22 agent, partner, or associate for an unlicensed person, or allow-
23 ing one's license to be used by an unlicensed person, or acting
24 as or being an ostensible licensed residential builder or
25 licensed residential maintenance and alteration contractor for an
26 undisclosed person who does or shall control or direct, or who

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1 may have the right to control or direct, directly or indirectly,
2 the operations of a licensee.

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

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

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

15 (3) The department shall suspend or revoke the license of a
16 person licensed under this article whose failure to pay a lien
17 claimant results in a payment being made from the homeowner con-
18 struction lien recovery fund pursuant to the construction lien
19 act, ~~Act No. 497 of the Public Acts of 1980, being sections~~
20 ~~570.1101 to 570.1305 of the Michigan Compiled Laws~~ 1980 PA 497,
21 MCL 570.1101 TO 570.1305, regardless of whether the person was
22 performing services as a licensee under this article; under the
23 electrical administrative act, ~~Act No. 217 of the Public Acts of~~
24 ~~1956, as amended, being sections 338.881 to 338.892 of the~~
25 ~~Michigan Compiled Laws~~ 1956 PA 217, MCL 338.881 TO 338.892; or
26 under ~~Act No. 266 of the Public Acts of 1929, as amended, being~~
27 ~~sections 338.901 to 338.917 of the Michigan Compiled Laws~~ 1929

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1 PA 266, MCL 338.901 TO 338.917. The ~~license~~ DEPARTMENT shall
2 not ~~be renewed nor shall~~ RENEW A LICENSE OR ISSUE a new license
3 ~~be issued~~ until the licensee has repaid in full to the fund the
4 amount paid out plus the costs of litigation and interest at the
5 rate set by section 6013 of the revised judicature act of 1961,
6 ~~Act No. 236 of the Public Acts of 1961, as amended, being sec-~~
7 ~~tion 600.6013 of the Michigan Compiled Laws~~ 1961 PA 236,
8 MCL 600.6013.

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

21 (5) NOTWITHSTANDING ARTICLE 5, THE FOLLOWING APPLY TO ADMIN-
22 ISTRATIVE PROCEEDINGS REGARDING WORKMANSHIP UNDER SUBSECTION
23 (2)(M):

24 (A) A COMPLAINT SUBMITTED BY AN OWNER SHALL DESCRIBE IN
25 WRITING TO [] THE DEPARTMENT THE FACTUAL BASIS
26 FOR THE ALLEGATION. THE HOMEOWNER SHALL SEND A COPY OF THE

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1 INITIAL COMPLAINT TO THE LICENSEE CONCURRENT WITH THE SUBMISSION
2 OF THE COMPLAINT TO THE DEPARTMENT.

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

10 (C) UPON RECEIPT OF A BUILDING INSPECTION REPORT ISSUED TO
11 THE DEPARTMENT BY A STATE OR LOCAL BUILDING ENFORCEMENT OFFICIAL
12 AUTHORIZED TO DO SO UNDER THE STILLE-DEROSSETT-HALE SINGLE STATE
13 CONSTRUCTION CODE ACT, 1972 PA 230, MCL 125.1501 TO 125.1531,
14 WHICH REPORT VERIFIES OR CONFIRMS THE SUBSTANCE OF THE COMPLAINT,
15 THE DEPARTMENT SHALL SEND BY CERTIFIED MAIL A COPY OF THE VERI-
16 FIED COMPLAINT TO BOTH THE COMPLAINANT AND THE LICENSEE. FAILURE
17 OF THE DEPARTMENT TO SEND A COPY OF THE VERIFIED COMPLAINT WITHIN
18 30 DAYS OF RECEIPT OF THE BUILDING INSPECTION REPORT PREVENTS THE
19 DEPARTMENT FROM ASSESSING A FINE AGAINST THE LICENSEE UNDER
20 ARTICLE 6 BUT DOES NOT PREVENT THE DEPARTMENT FROM PURSUING RES-
21 TITUTION, LICENSE SUSPENSION, OR OTHER REMEDIES PROVIDED UNDER
22 THIS ACT.

23 (D) A LICENSEE MAY CONTRACTUALLY PROVIDE FOR AN ALTERNATIVE
24 DISPUTE RESOLUTION PROCEDURE TO RESOLVE COMPLAINTS FILED WITH THE
25 DEPARTMENT. THE PROCEDURE SHALL BE CONDUCTED BY A NEUTRAL THIRD
26 PARTY FOR DETERMINING THE RIGHTS AND RESPONSIBILITIES OF THE
27 PARTIES AND SHALL BE INITIATED BY THE LICENSEE, WHO SHALL PROVIDE

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1 NOTICE OF THE INITIATION OF THE PROCEDURE TO THE COMPLAINANT BY
2 CERTIFIED MAIL NOT LESS THAN 30 DAYS BEFORE THE COMMENCEMENT OF
3 THAT PROCEDURE. THE PROCEDURE SHALL BE CONDUCTED AT A LOCATION
4 MUTUALLY AGREED TO BY THE PARTIES.

5 (E) THE DEPARTMENT SHALL NOT INITIATE A PROCEEDING AGAINST A
6 LICENSEE UNDER THIS SUBSECTION IN THE CASE OF A LICENSEE WHO CON-
7 TRACTUALLY PROVIDES FOR AN ALTERNATIVE DISPUTE RESOLUTION PROCE-
8 DURE THAT HAS NOT BEEN UTILIZED AND COMPLETED UNLESS IT IS DETER-
9 MINED THAT THE LICENSEE HAS NOT COMPLIED WITH A DECISION OR ORDER
10 ISSUED AS A RESULT OF THAT ALTERNATIVE DISPUTE RESOLUTION PROCE-
11 DURE, THAT ALTERNATIVE DISPUTE RESOLUTION PROCEDURE WAS NOT FULLY
12 COMPLETED WITHIN 90 DAYS AFTER THE FILING OF THE COMPLAINT WITH
13 THE DEPARTMENT, OR AN ALTERNATIVE DISPUTE RESOLUTION PROCEDURE
14 MEETING THE REQUIREMENTS OF SUBDIVISION (D) IS NOT AVAILABLE TO
15 THE COMPLAINANT.

16 (F) THE COMPLAINANT SHALL DEMONSTRATE [
17] THAT NOTICE HAS BEEN PROVIDED TO THE LICENSEE
18 DESCRIBING REASONABLE TIMES AND DATES THAT THE RESIDENTIAL STRUC-
19 TURE WAS ACCESSIBLE FOR ANY NEEDED REPAIRS AND PROOF ACCEPTABLE
20 TO THE DEPARTMENT THAT THE REPAIRS WERE NOT MADE WITHIN 60 DAYS
21 AFTER THE SENDING OF THE NOTICE. THIS SUBDIVISION DOES NOT APPLY
22 WHERE THE DEPARTMENT DETERMINES A NECESSITY TO SAFEGUARD THE
23 STRUCTURE OR TO PROTECT THE OCCUPANT'S HEALTH AND SAFETY AND, IN
24 SUCH CASE, THE DEPARTMENT MAY UTILIZE ANY REMEDY AVAILABLE UNDER
25 SECTION 504(3)(A) THROUGH (D).

26 (G) IN THE CASE WHERE THE OWNER AND LICENSEE HAVE AGREED
27 CONTRACTUALLY ON MUTUALLY ACCEPTABLE PERFORMANCE GUIDELINES

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1 RELATING TO WORKMANSHIP, THE DEPARTMENT SHALL CONSIDER THOSE
2 GUIDELINES IN ITS EVALUATION OF A COMPLAINT. THE GUIDELINES
3 SHALL BE CONSISTENT WITH THE STILLE-DEROSSETT-HALE SINGLE STATE
4 CONSTRUCTION CODE ACT, 1972 PA 230, MCL 125.1501 TO 125.1531.

5 (6) AS USED IN THIS SECTION, "VERIFIED COMPLAINT" MEANS A
6 COMPLAINT IN WHICH ALL OR A PORTION OF THE ALLEGATIONS HAVE BEEN
7 CONFIRMED BY THE BUILDING INSPECTION REPORT.

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

16 (2) FAILURE OF THE PERSON BRINGING A COMPLAINT AGAINST A
17 LICENSEE TO UTILIZE A CONTRACTUALLY PROVIDED ALTERNATIVE DISPUTE
18 RESOLUTION PROCEDURE SHALL BE AN AFFIRMATIVE DEFENSE TO AN ACTION
19 BROUGHT IN A COURT OF THIS STATE AGAINST A LICENSEE UNDER THIS
20 ARTICLE.