

HOUSE BILL No. 5587

February 24, 2004, Introduced by Rep. Accavitti and referred to the Committee on Regulatory Reform.

A bill to amend 1980 PA 299, entitled
"Occupational code,"
by amending section 303a (MCL 339.303a), as amended by 1995 PA
183, and by adding article 14.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 303a. The terms provided for in this act shall
2 commence on the following dates:

3	Accountancy	July 1
4	Architects	April 1
5	Athletic board of control	April 1
6	Barbers	October 1
7	Collection agencies	July 1
8	Community planners	July 1
9	Cosmetology	January 1

1 (i) Slab.

2 (ii) Crawl space.

3 (iii) Basement.

4 (iv) Piers.

5 (e) "Heating and air conditioning system" means a separate or
6 combined system used to distribute or radiate heat or cool air
7 throughout all or part of a residence. The radiation or
8 distribution of heat may be accomplished by means of a central
9 heat source or thermostatically controlled heat sources in 1 or
10 more rooms of a residence. Air conditioning does not include a
11 unit mounted in a wall or a window unless the unit utilizes ducts
12 to distribute the air.

13 (f) "Home inspector" means a person engaged in, or offering
14 to engage in, the business of providing home inspection services
15 but does not include any of the following:

16 (i) A person acting on behalf of a local, state, or federal
17 governmental unit or agency conducting an inspection or
18 investigation concerning compliance with either or both of the
19 following:

20 (A) Health or safety laws or regulations.

21 (B) Construction or building laws or regulations.

22 (ii) A person licensed, registered, or certified under 1 or
23 more of the following while conducting an inspection that is
24 reasonably related to a task or prospective task within the scope
25 of licensure, registration, or certification:

26 (A) Article 20.

27 (B) Article 24.

1 (C) Article 25.

2 (D) Article 26.

3 (E) The state plumbing act, 2002 PA 733, MCL 338.3511 to
4 338.3569.

5 (F) The electrical administrative act, 1956 PA 217, MCL
6 338.881 to 338.892.

7 (G) The Forbes mechanical contractors act, 1984 PA 192, MCL
8 338.971 to 338.988.

9 (g) "Home inspection services" means services provided to a
10 client, for consideration, that are designed to identify and
11 disclose the functional condition of the major systems and
12 accessories in a residence at the time of the inspection. Home
13 inspection services do not include an inspection designed only to
14 disclose any of the following:

15 (i) Compliance with local, state, or federal building or
16 construction laws or regulations.

17 (ii) Compliance with local, state, or federal health and
18 safety laws or regulations.

19 (iii) The presence or absence of pests, termites, or other
20 vermin or damage resulting from the presence of pests, termites,
21 or vermin.

22 (h) "Major deficiency" means a defect in 1 or more major
23 systems or accessories that may cause the reasonable likelihood
24 of harm to the safety of the occupants so as to require their
25 evacuation of the residence for more than 3 days or that may
26 result in the reasonable likelihood of a major system or
27 accessory becoming nonoperational.

1 (i) "Major system" means any 1 of the following:

2 (i) Electrical system.

3 (ii) Heating and air conditioning system.

4 (iii) Plumbing system.

5 (iv) Structure and foundation system.

6 (j) "Plumbing system" means that system regulating the inward
7 and outward flow of water and sewage in a residence and includes,
8 but is not limited to, water heaters, fixtures, faucets, valves,
9 and pipes. Plumbing does not include wells, septic systems,
10 water softeners, or sump pumps unless included in writing in the
11 contract for home inspection services.

12 (k) "Residence" means a building used primarily for family
13 living quarters and designed for occupancy of not more than 4
14 families in separate living quarters.

15 (l) "Structure" means the walls, windows, doors, and roof on
16 the exterior of a residence and the walls, ceilings, floors,
17 windows, and doors on the interior of a residence.

18 Sec. 1402. There is created a home inspectors board.

19 Sec. 1403. (1) Beginning the effective date of the rules
20 promulgated by the department under subsection (2), an individual
21 shall not provide, or offer to provide, home inspection services
22 unless licensed under this article or unless the individual or
23 services are exempted from licensure under this article as
24 described in section 1401(f)(i) or (ii). An individual shall not
25 use the term "home inspector" or any other similar title that
26 connotes licensure under this article.

27 (2) Within 180 days after the effective date of this article,

1 the department shall promulgate rules to set minimum standards
2 for education and experience regarding eligibility for licensure
3 under this article. The department, in consultation with the
4 board, may promulgate rules to set standards for examination of
5 applicants who do not meet the education and experience standards
6 described in the rules promulgated under this subsection.

7 (3) The department shall license an individual as a home
8 inspector if the individual is licensed or otherwise regulated in
9 another state that has substantially the same standards for
10 licensure as this state, as determined by the board, and that
11 offers reciprocity to licensees in this state.

12 Sec. 1404. (1) Beginning the effective date of this
13 article, an individual providing or offering to provide home
14 inspection services shall comply with the requirements of this
15 section and section 1405.

16 (2) A home inspector who enters into a contract for home
17 inspection services that is not in conformance with this article
18 is subject to an action for damages brought by the client or
19 suspension or revocation of his or her license, or both.

20 (3) A home inspector shall inspect those major systems of a
21 residence that are the subject of a contract for home inspection
22 services only to the extent that those major systems and
23 accessories are readily accessible and visible to the home
24 inspector. A home inspector shall indicate in writing any
25 accessory or major system, or any part of an accessory or major
26 system, that was not able to be inspected and the reasons for the
27 inability to inspect.

1 (4) A home inspector who inspects a residence shall not
2 repair or offer to repair a residence that was the subject of
3 home inspection services provided by that home inspector unless
4 the repair is pursuant to a home warranty provided by the home
5 inspector.

6 (5) The home inspector shall disclose whether he or she, an
7 employee or agent, or an immediate family member has an ownership
8 interest in the residence being inspected.

9 (6) A home inspector shall disclose whether he or she, an
10 employee or agent, or an immediate family member is a member of a
11 board of directors of, or an officer of, an entity which has an
12 ownership interest in the residence being inspected.

13 (7) A home inspector shall furnish to the client a document
14 entitled "disclosure statement", which shall be presented at the
15 time the written home inspection report is conveyed to the client
16 and shall contain, at a minimum, both of the following:

17 (a) The scope of the home inspection services with a detailed
18 description of the major systems and accessories to be inspected,
19 the type of major deficiencies the home inspection is designed to
20 reveal, and items that are excluded from coverage under the
21 contract of home inspection services.

22 (b) A statement that a home inspector inspecting a particular
23 residence shall not repair or offer to repair a residence which
24 was the subject of home inspection services provided by that home
25 inspector unless the repair is pursuant to a home warranty
26 provided by the home inspector.

27 Sec. 1405. (1) A contract for home inspection services

1 shall be in writing, executed by the home inspector and either
2 the client or the client's agent, and in conformance with
3 subsection (4). A copy of the executed contract for home
4 inspection services shall be provided to the client at the time
5 of its execution.

6 (2) All terms of the contract for home inspection services
7 shall be contained in the written contract except that conditions
8 of the residence affecting the home inspector's ability to
9 conduct a home inspection shall be noted in a separate document
10 attached to the contract. Any changes or modifications of the
11 terms of the contract for home inspection services shall be
12 reduced to writing.

13 (3) Unless otherwise indicated in writing, the purchaser of a
14 residence being inspected is considered the client in the case of
15 a home inspection conducted as part of a sale of the residence.

16 (4) The following shall be contained in a contract for home
17 inspection services:

18 (a) A description of the home inspection services to be
19 provided.

20 (b) Any disclaimers including, but not limited to, the
21 absence of any warranties as to the adequacy of future
22 performance of a major system or accessory and the fact that the
23 home inspection is considered a valid assessment of the condition
24 of the residence only as of the date the home inspection was
25 conducted.

26 (c) Any exclusion of defects not reasonably apparent by
27 visual inspection.

1 (d) Any exclusion of any major system or accessory not
2 operable at the time of the conduct of the home inspection.

3 (5) After performing home inspection services, a home
4 inspector shall provide to the client a written home inspection
5 report containing the results of the home inspection. The home
6 inspection report shall include a list of the major systems or
7 accessories inspected and any major systems or accessories not
8 inspected. The home inspector shall list in the report any
9 conditions affecting or limiting the ability of the home
10 inspector to provide home inspection services pursuant to the
11 contract.

12 (6) The home inspection report shall include the following
13 statements:

14 (a) That defects not reasonably apparent by visual inspection
15 are excluded.

16 (b) That a major system or accessory not operable at the time
17 of the conduct of the home inspection is excluded.

18 (7) The home inspector shall indicate in the written home
19 inspection report the fact that the home inspection is considered
20 a valid assessment of the condition of the residence only as of
21 the date the home inspection was conducted.

22 (8) A home inspector shall retain a copy of the contract for
23 home inspection services and the written home inspection report
24 for at least 3 years after the date of the report.

25 Sec. 1406. (1) A client suffering damages due to a
26 violation of this article may bring an action for damages in a
27 court of competent jurisdiction.

1 (2) The remedies under this article are cumulative and the
2 use of 1 remedy does not bar the use of any other remedy provided
3 by law.

4 Enacting section 1. This amendatory act does not take
5 effect unless Senate Bill No. _____ or House Bill No. 5588
6 (request no. 05239'03 a) of the 92nd Legislature is enacted into
7 law.

8 Enacting section 2. This amendatory act takes effect June
9 1, 2004.