



Senate Fiscal Agency
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BILL



ANALYSIS

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Senate Bill 1515 (as reported without amendment) (as enacted)
House Bill 4938 (Substitute S-2 as reported)
Sponsor: Senator Alan Sanborn (S.B. 1515)
Representative Barbara Farrah (H.B. 4938)
Senate Committee: Economic Development and Regulatory Reform
House Committee: Regulatory Reform (H.B. 4938)

Date Completed: 10-21-08

RATIONALE

The Occupational Code prohibits people from practicing or attempting to practice an occupation that is regulated under the Code, or using a restricted professional title, without having a license or registration issued by the Department of Labor and Economic Growth. With a few exceptions, a violation is a misdemeanor punishable by a maximum fine of \$500 and/or up to 90 days' imprisonment. A second or subsequent offense is punishable by a maximum fine of \$1,000 and/or up to one year's imprisonment. (People who operate without a license as a certified public accountant, residential builder, or residential maintenance and alteration contractor are subject to more severe penalties.) Members of architectural, engineering, and surveying professional associations believe that the penalties for practicing without a license are too weak to deter people from falsely representing themselves as licensed professionals in these fields, and that fraudulent actors are a danger to the public. It has been suggested that penalties for operating as an architect, engineer, or surveyor without a license be increased.

engineering, or surveying without a license.

- **Establish a felony penalty for a violation that caused death or serious injury.**
- **Prohibit a licensee under Article 20 (Architects, Professional Engineers, and Land Surveyors) from bringing an action for the collection of compensation for services that require licensure, without proving that he or she was licensed at the time of the services.**
- **Allow a person who used the services of someone engaging or attempting to engage in an occupation regulated under Article 20, without being licensed, to bring an action for a refund of compensation.**
- **Require that repair or corrective work be performed by someone licensed under Article 20 and paid for by a licensee whose license was suspended for failure to make restitution.**
- **Exempt from the Code a person engaging in or practicing *residential* building design.**

CONTENT

Senate Bill 1515 would amend the Occupational Code to do all of the following:

- **Increase the criminal penalty for engaging in or attempting to engage in the practice of architecture,**

House Bill 4938 (S-2) would amend the Code of Criminal Procedure to include in the sentencing guidelines a felony violation proposed in Senate Bill 1515.

House Bill 4938 (S-2) is tie-barred to Senate Bill 1515.

Senate Bill 1515

Criminal Penalties

The Occupational Code prohibits a person from engaging in or attempting to engage in the practice of an occupation regulated under it or using a title designated in the Code unless the person possesses a license or registration issued by the Department of Labor and Economic Growth (DLEG) for the occupation. The Code also prohibits a school, institution, or person from operating or attempting to operate a barber college, school of cosmetology, or real estate school unless the school, institution, or person is licensed or approved by DLEG. A violation of either of those prohibitions is a misdemeanor punishable by a maximum fine of \$500 and/or up to 90 days' imprisonment. A second or subsequent offense is punishable by a maximum fine of \$1,000 and/or up to one year's imprisonment. (A violation involving the practice of a certified public accountant (CPA) without a license, however, is punishable by a maximum fine of \$25,000 and/or up to five years' imprisonment. For a person who practices as a residential builder or maintenance and alteration contractor without a license, the maximum term of imprisonment is one year for a first offense, two years for a second or subsequent offense, or four years for an offense that causes death or serious injury; in each case, the fine is at least \$5,000 but not more than \$25,000.)

Under the bill, a person not licensed under Article 20 who violated the prohibitions described above would be guilty of a crime and subject to penalties as shown in Table 1.

Table 1

Offense	Level	Fine	Maximum Imprisonment
First	Misdemeanor	\$5,000 - \$25,000	93 days
Second or subsequent	Misdemeanor	\$5,000 - \$25,000	1 year
Causing death or serious injury	Felony	\$5,000 - \$25,000	4 years

Civil Actions

The bill would prohibit a person, a qualifying officer, a licensee, or an agent for a licensee under Article 20 from bringing or maintaining an action in a Michigan court for

the collection of compensation for the performance of an act or contract for which licensure is required under Article 20, without alleging and proving that the person, qualifying officer, licensee, or agent was licensed during the performance of the act or contract.

A person who had used the services of a person engaging in, or attempting to engage in, an occupation regulated under Article 20 or using a title designated by Article 20, without being licensed by DLEG, could bring an action in a court of competent jurisdiction, or offer as a counterclaim to an action brought by an unlicensed person, for a refund of compensation after deducting the value of the goods or services retained by the person.

Restitution

Under the bill, if DLEG suspended a license under Article 20 for failure to make restitution, in whole or in part, the restitution in the form of repair or remedial corrective work would have to be performed by a person appropriately licensed under Article 20 and would have to be paid for by the licensee.

Exemption

The Code provides that it does not apply to a person engaging in or practicing building design. The bill would refer instead to a person engaging in or practicing *residential* building design, which would mean the rendering of residential design services for a detached one- and two-family residence building by a person exempted from the requirements of Section 2012 of the Code. (Section 2012 lists people who are exempt from the requirements of Article 20, including a person not licensed under Article 20 who is planning, designing, or directing the construction of a detached one- and two-family residence building not exceeding 3,500 square feet in calculated floor area, except for an adult foster care home licensed under the Adult Foster Care Facility Licensing Act.)

House Bill 4938 (S-2)

Under the bill, the unauthorized practice of an occupation or unauthorized operation of a school teaching an occupation, by a person not licensed under Article 20 of the

Occupational Code, causing serious injury or death would be a designated in the sentencing guidelines as a Class F felony against the public trust, with a statutory maximum sentence of four years' imprisonment.

MCL 339.601 et al. (S.B. 1515)
777.13p (H.B. 4938)

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

Engineers, architects, and surveyors must meet stringent educational and experience requirements to be licensed under the Occupational Code. Since the structural integrity of public and private buildings and infrastructure depends upon the work of these professionals, a person must meet high standards of achievement and competence to be authorized to practice in Michigan. The Code's penalties for unlicensed practice, however, are too weak to serve as a deterrent to operating as an engineer, architect, or surveyor without a license. A fraudulent actor passing himself or herself off as an architect, engineer, or surveyor can earn a substantial sum of money, and the small potential fine may be viewed as an affordable cost of doing business. Someone operating in one of those professional capacities without the proper training, expertise, and credentials can pose a great danger to the clients and the general public because a building, road, or water system may not be designed and constructed properly. The bill would ensure that those who offered engineering, architectural, or surveying services without being licensed, or who falsified a license, would be subject to a penalty that was adequate to deter the fraudulent activity and punish perpetrators. This, in turn, would protect unsuspecting clients and the public by making it more difficult and risky to operate in those fields without the necessary education, experience, and license.

Supporting Argument

While the current statutory penalties apply to engaging in many regulated occupations without proper licensure, some professions deserve a more severe penalty. Indeed, the Occupational Code already recognizes this

by applying stiffer penalties for operating as a CPA, a residential builder, or a residential maintenance and alteration contractor without a license. Because of the potential danger due to faulty construction of a building or infrastructure system, those who perform engineering, architectural, or surveying services without the proper credentials also should be subject to more severe punishment, compared with the penalties for engaging in other regulated occupations without a license.

Supporting Argument

Architectural and engineering professional organizations essentially have operated as self-regulating enforcers of licensing rules for several years. Reportedly, they have filed dozens of civil suits to restrain unlicensed individuals from engaging in their professions, but prosecutors have not followed through with criminal prosecutions. Harsher criminal penalties could make prosecutors more likely to pursue criminal charges against those who fraudulently act as engineers or architects without being licensed by the State.

Opposing Argument

The current parameters outlined in Article 20 for the performance of interior design services are inadequate to describe what those professionals do. Article 20 allows interior designers to perform services in connection with the design of interior spaces, including preparation of documents relative to finishes, systems furniture, furnishings, fixtures, equipment, and interior partitions that do not affect mechanical, structural, electrical, or fire safety systems. Representatives of the interior design profession testified before the Senate Economic Development and Regulatory Reform Committee that their services, by nature, do affect those systems. They are concerned that increasing the penalties for unlicensed operation as an engineer, architect, or surveyor could subject interior designers to harsh criminal penalties simply for doing their jobs. Interior designers suggest that the penalties not be increased until the language in Article 20 describing their occupational activities is revised and/or legislation providing for the licensure of interior designers is enacted.

Response: The language identified by interior designers is current law and would not be changed by Senate Bill 1515.

Interior designers would not be subject to prosecution or criminal penalty under the bill any more than they are at the present time. Licensure of interior designers and their scope of practice are completely separate issues from the increased penalties proposed by the bill, which should not be delayed for legislation on a different matter.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bills would have an indeterminate fiscal impact on State and local government. There are no data to indicate how many offenders would be convicted of practicing or attempting to practice as an architect, engineer, or surveyor without a license, or committing such an offense that caused serious injury or death. An offender convicted of the Class F offense under the bills would receive a sentencing guidelines minimum sentence range of 0-3 months to 17-30 months. To the extent the bills resulted in increased incarceration time, local governments would incur increased costs of incarceration in local facilities, which vary by county. The State would incur the cost of felony probation at an annual average cost of \$2,000, as well as the cost of incarceration in a State facility at an average annual cost of \$33,000. Additional penal fine revenue would benefit public libraries.

Fiscal Analyst: Lindsay Hollander

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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.