

SENATE BILL No. 452

April 26, 2007, Introduced by Senators CASSIS and BASHAM and referred to the Committee on Economic Development and Regulatory Reform.

A bill to amend 1980 PA 299, entitled
"Occupational code,"
by amending sections 601, 602, 605, 2402, 2404, 2405, and 2411 (MCL
339.601, 339.602, 339.605, 339.2402, 339.2404, 339.2405, and
339.2411), sections 601 and 602 as amended by 2005 PA 278, section
2404 as amended by 1988 PA 463, and section 2411 as amended by 2001
PA 113, and by adding sections 2404b and 2411a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 601. (1) A person shall not engage in or attempt to
2 engage in the practice of an occupation regulated under this act or
3 use a title designated in this act unless the person possesses a
4 license or registration issued by the department for the
5 occupation.

6 (2) A school, institution, or person shall not operate or

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attempt to operate a barber college, school of cosmetology, or real estate school unless the school, institution, or person is licensed or approved by the department.

(3) SUBJECT TO SECTION 411, A PERSON WHOSE LICENSE OR REGISTRATION IS SUSPENDED, REVOKED, OR LAPSED, AS DETERMINED BY THE RECORDS OF THE DEPARTMENT, IS CONSIDERED UNLICENSED OR UNREGISTERED.

(4) ~~(3)~~ A EXCEPT AS OTHERWISE PROVIDED FOR IN SECTION 735, A person, school, or institution that violates subsection (1) or (2) is guilty of a misdemeanor, punishable by a fine of not more than \$500.00, or imprisonment for not more than 90 days, or both.

(5) ~~(4)~~ A EXCEPT AS OTHERWISE PROVIDED FOR IN SECTION 735, A person, school, or institution that violates subsection (1) or (2) a second or any subsequent time is guilty of a misdemeanor, punishable ~~, except as provided in section 735,~~ by a fine of not more than \$1,000.00, or imprisonment for not more than 1 year, or both.

(6) NOTWITHSTANDING SUBSECTIONS (4) AND (5), A PERSON NOT LICENSED UNDER ARTICLE 24 AS A RESIDENTIAL BUILDER OR A RESIDENTIAL MAINTENANCE AND ALTERATION CONTRACTOR WHO VIOLATES SUBSECTION (1) OR (2) IS GUILTY AS FOLLOWS:

(A) IN THE CASE OF A FIRST OFFENSE, A MISDEMEANOR PUNISHABLE BY A FINE OF NOT LESS THAN \$5,000.00 OR MORE THAN \$25,000.00, OR IMPRISONMENT FOR NOT MORE THAN 1 YEAR, OR BOTH.

(B) IN THE CASE OF A SECOND [OR SUBSEQUENT] OFFENSE, A MISDEMEANOR PUNISHABLE BY A FINE OF NOT LESS THAN \$5,000.00 OR MORE THAN \$25,000.00, OR IMPRISONMENT FOR NOT MORE THAN 2 YEARS, OR BOTH.

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1 (C) IN THE CASE OF [AN OFFENSE THAT CAUSES DEATH OR SERIOUS
2 INJURY], A FELONY
3 PUNISHABLE BY A FINE OF NOT LESS THAN \$5,000.00 OR MORE THAN
4 \$25,000.00, OR IMPRISONMENT FOR NOT MORE THAN 4 YEARS, OR BOTH.

5 (7) ANY VIOLATION OF THIS ACT SHALL INCLUDE A REQUIREMENT THAT
6 RESTITUTION BE MADE, BASED UPON PROOFS SUBMITTED TO AND FINDINGS
7 MADE BY THE TRIER OF FACT AS PROVIDED BY LAW.

8 (8) ~~(5)~~—Notwithstanding the existence and pursuit of any other
9 remedy, an affected person may maintain injunctive action to
10 restrain or prevent a person from violating subsection (1) or (2).
11 If successful in obtaining injunctive relief, the affected person
12 shall be entitled to actual costs and attorney fees.

13 (9) ~~(6)~~—This act does not apply to a person engaging in or
14 practicing the following:

15 (a) Interior design.

16 (b) Building design.

17 (c) Any activity for which the person is licensed under the
18 state plumbing act, 2002 PA 733, MCL 338.3511 to 338.3569.

19 (d) Any activity for which the person is licensed under the
20 Forbes mechanical contractors act, 1984 PA 192, MCL 338.971 to
21 338.988.

22 (e) Any activity for which the person is licensed under the
23 electrical administrative act, 1956 PA 217, MCL 338.881 to 338.892.

24 (10) ~~(7)~~—As used in subsection ~~(5)~~—(8), "affected person"
25 means a person directly affected by the actions of a person
26 suspected of violating subsection (1) or (2) and includes, but is
27 not limited to, a licensee or registrant, a board established
pursuant to this act, **THE DEPARTMENT**, a person who has utilized the

1 services of the person engaging in or attempting to engage in an
2 occupation regulated under this act or using a title designated by
3 this act without being licensed or registered by the department, or
4 a private association composed primarily of members of the
5 occupation in which the person is engaging in or attempting to
6 engage in or in which the person is using a title designated under
7 this act without being registered or licensed by the department.

8 (11) ~~(8)~~—An investigation may be conducted under article 5 to
9 enforce this section. A person who violates this section shall be
10 subject to this section and ~~section~~ **SECTIONS 506, 602, AND 606.**

11 (12) **THE DEPARTMENT, THE ATTORNEY GENERAL, OR A COUNTY**
12 **PROSECUTOR MAY UTILIZE FORFEITURE AS A REMEDY IN THE MANNER**
13 **PROVIDED FOR IN SECTION 606.**

14 (13) ~~(9)~~—The remedies under this section are independent and
15 cumulative. The use of 1 remedy by a person shall not bar the use
16 of other lawful remedies by that person or the use of a lawful
17 remedy by another person.

18 (14) ~~(10)~~—An interior designer may perform services in
19 connection with the design of interior spaces including preparation
20 of documents relative to finishes, systems furniture, furnishings,
21 fixtures, equipment, and interior partitions that do not affect the
22 building mechanical, structural, electrical, or fire safety
23 systems.

24 (15) **UPON ENTERING A CONVICTION UNDER SUBSECTION (4), (5), OR**
25 **(6), A COURT ENTERING THE CONVICTION SHALL NOTIFY, BY MAIL,**
26 **FACSIMILE TRANSMISSION, OR ELECTRONIC MAIL, THE BUREAU OF**
27 **COMMERCIAL SERVICES AT THE DEPARTMENT.**

1 Sec. 602. A person, school, or institution that violates this
2 act or a rule or order promulgated or issued under this act shall
3 be assessed 1 or more of the following penalties:

4 (a) Placement of a limitation on a license or certificate of
5 registration for an occupation regulated under articles 8 to 25.

6 (b) Suspension of a license or certificate of registration.

7 (c) Denial of a license, certificate of registration, or
8 renewal of a license or certificate of registration.

9 (d) Revocation of a license or certificate of registration.

10 (e) ~~An~~ **IN THE CASE OF A PERSON LICENSED OR REGISTERED UNDER**
11 **THIS ACT AND EXCEPT AS OTHERWISE PROVIDED FOR BY THIS ACT, AN**
12 administrative fine to be paid to the department, not to exceed
13 \$10,000.00.

14 (f) Censure.

15 (g) Probation.

16 (h) A requirement that restitution be made, **BASED UPON PROOFS**
17 **SUBMITTED TO AND FINDINGS MADE BY THE HEARING EXAMINER AFTER A**
18 **CONTESTED CASE.**

19 Sec. 605. (1) The department may bring any appropriate action,
20 **INCLUDING MEDIATION OR OTHER ALTERNATIVE DISPUTE RESOLUTION,** in the
21 name of the people of this state to carry out this act and to
22 enforce this act.

23 (2) If the attorney general considers it necessary, the
24 attorney general shall intervene in and prosecute all cases arising
25 under this act.

26 (3) **THIS SECTION DOES NOT PROHIBIT THE DEPARTMENT FROM**
27 **BRINGING ANY CIVIL, CRIMINAL, OR ADMINISTRATIVE ACTION FOR THE**

1 ENFORCEMENT OF SECTION 601.

2 (4) THE DEPARTMENT HAS STANDING TO BRING AN ADMINISTRATIVE
3 ACTION OR TO DIRECTLY BRING AN ACTION IN A COURT OF COMPETENT
4 JURISDICTION REGARDING UNLICENSED PRACTICE OF AN OCCUPATION.

5 Sec. 2402. (1) A residential builders' and maintenance and
6 alteration contractors' board is created. ~~Four~~ **OF THE 9-MEMBER**
7 **BOARD**, 4 members shall be licensed residential builders, and 2
8 members shall be licensed maintenance and alteration contractors.

9 (2) **OF THE MEMBERS REPRESENTING THE GENERAL PUBLIC, AT LEAST 1**
10 **MEMBER SHALL BE REGISTERED UNDER THE BUILDING OFFICIALS AND**
11 **INSPECTORS REGISTRATION ACT, 1986 PA 54, MCL 338.2301 TO 338.2313.**

12 Sec. 2404. (1) The department may require an applicant,
13 licensee, or each partner, trustee, director, officer, member, or
14 shareholder to submit evidence of good moral character, and
15 financial stability. Before the issuance of a license, an applicant
16 shall submit ~~any~~ **THE FOLLOWING:**

17 (A) **ANY** amount required to be paid under the construction lien
18 act, ~~Act No. 497 of the Public Acts of 1980, being sections~~
19 ~~570.1101 to 570.1305 of the Michigan Compiled Laws 1980 PA 497, MCL~~
20 **570.1101 TO 570.1305.**

21 (B) **A COPY OF AN OPERATOR'S LICENSE OR STATE PERSONAL**
22 **IDENTIFICATION CARD, TO BE USED BY THE DEPARTMENT ONLY FOR PROOF OF**
23 **IDENTITY OF THE APPLICANT.**

24 (2) The department shall require an applicant for a license to
25 pass an examination establishing that the applicant has a fair
26 knowledge of the obligations of a residential builder or
27 residential maintenance and alteration contractor to the public and

1 the applicant's principal, and the statutes relating to the
2 applicant's licensure.

3 (3) The department, upon application, may issue a residential
4 maintenance and alteration contractor's license to an applicant
5 who, upon examination, qualifies for a license, which shall
6 authorize the licensee according to the applicant's qualifications,
7 crafts, and trades to engage in the activities of a residential
8 maintenance and alteration contractor. A license shall include the
9 following crafts and trades: carpentry; concrete; swimming pool
10 installation; waterproofing a basement; excavation; insulation
11 work; masonry work; painting and decorating; roofing; siding and
12 gutters; screen or storm sash installation; tile and marble work;
13 and house wrecking. The license shall specify the particular craft
14 or trade for which the licensee has qualified. This subsection
15 shall not prohibit a specialty contractor from taking and executing
16 a contract involving the use of 2 or more crafts or trades if the
17 performance of the work in the craft or trade, other than in which
18 the person is licensed, is incidental and supplemental to the
19 performance of work in the craft for which the specialty contractor
20 is licensed.

21 (4) A residential builder or residential maintenance and
22 alteration contractor shall maintain a place of business in this
23 state. If a residential builder or residential maintenance and
24 alteration contractor maintains more than 1 place of business
25 within this state, a branch office license shall be issued to the
26 builder or contractor for each place of business so maintained.

27 (5) BEGINNING THE LICENSE CYCLE AFTER THE EFFECTIVE DATE OF

1 THE AMENDATORY ACT THAT ADDED THIS SUBSECTION, THE DEPARTMENT SHALL
2 ISSUE THE LICENSE OF A RESIDENTIAL BUILDER AND RESIDENTIAL
3 MAINTENANCE AND ALTERATION CONTRACTOR FOR A PERIOD OF 3 YEARS IN
4 DURATION. BEGINNING THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT
5 ADDED THIS SUBSECTION, AN APPLICANT FOR RENEWAL OF A RESIDENTIAL
6 BUILDER OR MAINTENANCE AND ALTERATION CONTRACTOR LICENSE SHALL
7 STATE THAT HE OR SHE HAS A CURRENT COPY OF THE MICHIGAN RESIDENTIAL
8 CODE AND HAS FULFILLED THE APPROPRIATE REQUIREMENTS REGARDING
9 CONTINUING COMPETENCY.

10 (6) BEGINNING THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT
11 ADDED THIS SUBSECTION, A LICENSEE SHALL MAINTAIN DOCUMENTATION, FOR
12 AT LEAST 5 YEARS, OF ACTIVITIES MEETING THE CONTINUING COMPETENCY
13 REQUIREMENTS AS PRESCRIBED UNDER THIS ARTICLE.

14 SEC. 2404B. (1) BEGINNING THE EFFECTIVE DATE OF THE AMENDATORY
15 ACT THAT ADDED THIS SECTION, APPLICANTS FOR INITIAL LICENSURE
16 EITHER AS A RESIDENTIAL BUILDER OR AS A RESIDENTIAL MAINTENANCE AND
17 ALTERATION CONTRACTOR SHALL SUCCESSFULLY COMPLETE A PRELICENSURE
18 COURSE OF STUDY AS PRESCRIBED BY THIS SUBSECTION. LICENSEES HOLDING
19 A RESIDENTIAL BUILDER OR A RESIDENTIAL MAINTENANCE AND ALTERATION
20 CONTRACTOR LICENSE ON THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT
21 ADDED THIS SECTION THAT ARE RENEWING A LICENSE IN THE CAPACITY OF
22 AN INDIVIDUAL OR QUALIFYING OFFICER, OR BOTH, ARE EXEMPT FROM THE
23 REQUIREMENT OF SUCCESSFULLY COMPLETING PRELICENSURE COURSES
24 DESCRIBED IN THIS SUBSECTION. THE DEPARTMENT SHALL REQUIRE AN
25 APPLICANT NOT EXEMPTED UNDER THIS SUBSECTION TO SUCCESSFULLY
26 COMPLETE 60 HOURS OF APPROVED PRELICENSURE COURSES CONSISTING OF AT
27 LEAST 6 HOURS OF COURSES IN EACH OF THE FOLLOWING AREAS OF

1 COMPETENCY:

2 (A) BUSINESS MANAGEMENT, ESTIMATING, AND JOB COSTING.

3 (B) DESIGN AND BUILDING SCIENCE.

4 (C) CONTRACTS, LIABILITY, AND RISK MANAGEMENT.

5 (D) MARKETING AND SALES.

6 (E) PROJECT MANAGEMENT AND SCHEDULING.

7 (F) THE CURRENT MICHIGAN RESIDENTIAL CODE.

8 (G) CONSTRUCTION SAFETY STANDARDS PROMULGATED UNDER THE
9 MICHIGAN OCCUPATIONAL SAFETY AND HEALTH ACT, 1974 PA 154, MCL
10 408.1001 TO 408.1094.

11 (2) BEGINNING THE CALENDAR YEAR AFTER THE EFFECTIVE DATE OF
12 THE AMENDATORY ACT THAT ADDED THIS SECTION, A PERSON OBTAINING
13 INITIAL LICENSURE UNDER THIS ARTICLE AS A RESIDENTIAL BUILDER OR A
14 RESIDENTIAL MAINTENANCE AND ALTERATION CONTRACTOR SHALL
15 SUCCESSFULLY COMPLETE NOT LESS THAN 3 HOURS OF ACTIVITIES
16 DEMONSTRATING CONTINUING COMPETENCY PER CALENDAR YEAR, DURING THE
17 FIRST 6 CALENDAR YEARS OF LICENSURE, AND 21 HOURS PER 3-YEAR TIME
18 PERIOD SINCE THE ISSUANCE OF HIS OR HER LICENSE. AT LEAST 3 HOURS
19 SHALL BE DEVOTED TO THOSE ACTIVITIES DESIGNED TO DEVELOP A
20 LICENSEE'S UNDERSTANDING AND ABILITY TO APPLY STATE BUILDING CODES
21 AND LAWS RELATING TO THE LICENSED OCCUPATION, SAFETY, AND CHANGES
22 IN CONSTRUCTION AND BUSINESS MANAGEMENT LAWS. A LICENSEE WHO HAS
23 HELD A LICENSE FOR MORE THAN 6 YEARS OR WHO HAS NOT BEEN DETERMINED
24 BY THE DEPARTMENT IN A FINAL ORDER TO HAVE VIOLATED THIS ACT OR A
25 RULE ADOPTED UNDER THIS ACT SHALL SUCCESSFULLY COMPLETE AT LEAST 3
26 HOURS OF ACTIVITIES DEMONSTRATING CONTINUING COMPETENCY PER LICENSE
27 CYCLE TO INCLUDE 1 HOUR OF CODES, 1 HOUR OF SAFETY, AND 1 HOUR OF

1 LEGAL ISSUES AS DESCRIBED IN THIS SUBSECTION.

2 (3) IN THE CASE OF A LICENSEE WHO HAS BEEN DETERMINED BY THE
3 DEPARTMENT IN A FINAL ORDER TO HAVE VIOLATED THIS ACT OR A RULE
4 ADOPTED UNDER THIS ACT, HE OR SHE SHALL SUCCESSFULLY COMPLETE,
5 DURING THE NEXT COMPLETE LICENSE CYCLE, UP TO 21 HOURS OF
6 ACTIVITIES THAT DEMONSTRATE THE DEVELOPMENT OF CONTINUING
7 COMPETENCY DURING THAT NEXT LICENSE CYCLE AS DETERMINED APPROPRIATE
8 BY ORDER OF THE DEPARTMENT, AT LEAST 3 HOURS OF THAT CONTINUING
9 COMPETENCY TO INCLUDE 1 HOUR OF CODES, 1 HOUR OF SAFETY, AND 1 HOUR
10 OF LEGAL ISSUES AS DESCRIBED IN SUBSECTION (2).

11 (4) AS ACTIVITIES THAT DEMONSTRATE THE DEVELOPMENT OF
12 CONTINUING COMPETENCY, THE EDUCATION COURSES DESCRIBED IN SECTION
13 3, PAGES 3-6 THROUGH 3-58 OF THE JANUARY 2005 EDITION OF THE
14 PUBLICATION "NAHB UNIVERSITY OF HOUSING, BLUEPRINT FOR SUCCESS",
15 PUBLISHED BY THE NATIONAL ASSOCIATION OF HOME BUILDERS, AND TAUGHT
16 BY INSTRUCTORS MEETING THE REQUIREMENTS OF SECTION 4, PAGES 4-5
17 THROUGH 4-9 OF THE JANUARY 2005 EDITION OF "NAHB UNIVERSITY OF
18 HOUSING, BLUEPRINT FOR SUCCESS", ARE CONSIDERED APPROVED, ARE
19 CONSIDERED APPROPRIATE FOR FULFILLING THE PRELICENSURE AND
20 CONTINUING COMPETENCY REQUIREMENTS OF SUBSECTIONS (1), (2), AND
21 (3), AND ARE INCORPORATED BY REFERENCE. A LICENSEE MAY TAKE ANY
22 COURSES EQUIVALENT TO THOSE COURSES INCORPORATED BY REFERENCE BY
23 THIS SUBSECTION. UPDATES TO THE COURSES DESCRIBED IN THIS
24 SUBSECTION OR EQUIVALENT COURSES ARE ACCEPTABLE UNLESS THE
25 DEPARTMENT DETERMINES THAT THE COURSES DO NOT PROVIDE A MEANS OF
26 DEVELOPING AND MAINTAINING CONTINUING COMPETENCY FOR THOSE
27 APPLICANTS OR LICENSEES WHO SUCCESSFULLY FULFILL THE COURSE

1 REQUIREMENTS. ANY CONSTRUCTION CODE UPDATE COURSES APPROVED BY THE
2 BUREAU OF CONSTRUCTION CODES AS WELL AS FIRE SAFETY OR WORKPLACE
3 SAFETY COURSES APPROVED OR SPONSORED BY THE DEPARTMENT ARE ALSO
4 CONSIDERED APPROPRIATE FOR FULFILLING THE CONTINUING COMPETENCY
5 REQUIREMENTS OF THIS SUBSECTION. THE DEPARTMENT MAY, BY RULE,
6 AMEND, SUPPLEMENT, UPDATE, SUBSTITUTE, OR DETERMINE EQUIVALENCY
7 REGARDING ANY COURSES OR ALTERNATE ACTIVITIES FOR DEVELOPING
8 CONTINUING COMPETENCY DESCRIBED IN THIS SUBSECTION.

9 (5) THE DEPARTMENT MAY WAIVE THE REQUIREMENT OF MEMBERSHIP IN
10 A LOCAL, STATE, OR NATIONAL TRADE ASSOCIATION CONTAINED IN THE
11 INSTRUCTOR STANDARDS OF SECTION 4, PAGES 4-5 THROUGH 4-9 OF THE
12 JANUARY 2005 EDITION OF THE PUBLICATION "NAHB UNIVERSITY OF
13 HOUSING, BLUEPRINT FOR SUCCESS", PUBLISHED BY THE NATIONAL
14 ASSOCIATION OF HOME BUILDERS, AND INCORPORATED BY REFERENCE. BY
15 RULE, THE DEPARTMENT MAY AMEND, SUPPLEMENT, UPDATE, SUBSTITUTE, OR
16 DETERMINE EQUIVALENCY REGARDING THE STANDARDS IN THIS SUBSECTION
17 AND SHALL ESTABLISH INSTRUCTOR QUALIFICATIONS FOR COURSES NOT
18 INCORPORATED BY REFERENCE IN SUBSECTION (4).

19 (6) THE SUBJECT MATTER OF THE PRELICENSURE AND CONTINUING
20 COMPETENCY ACTIVITIES MAY BE OFFERED BY A HIGH SCHOOL, INTERMEDIATE
21 SCHOOL DISTRICT, COMMUNITY COLLEGE, UNIVERSITY, BUREAU OF
22 CONSTRUCTION CODES, MICHIGAN OCCUPATIONAL SAFETY AND HEALTH
23 ADMINISTRATION, TRADE ASSOCIATION, OR A PROPRIETARY SCHOOL LICENSED
24 BY THE DEPARTMENT AS MEETING THE SUBJECT MATTER QUALIFICATIONS
25 DESCRIBED IN SUBSECTION (4) AND THE INSTRUCTIONAL QUALIFICATIONS
26 DESCRIBED IN SUBSECTION (5).

27 (7) THE DEPARTMENT SHALL PROMULGATE RULES TO PROVIDE FOR THE

1 FOLLOWING:

2 (A) REQUIREMENTS OTHER THAN THOSE LISTED IN SUBSECTION (4) FOR
3 DETERMINING THAT A COURSE MEETS THE MINIMUM CRITERIA FOR DEVELOPING
4 AND MAINTAINING CONTINUING COMPETENCY.

5 (B) REQUIREMENTS FOR ACCEPTABLE COURSES OFFERED AT SEMINARS
6 AND CONVENTIONS BY TRADE ASSOCIATIONS, RESEARCH INSTITUTES, RISK
7 MANAGEMENT ENTITIES, MANUFACTURERS, SUPPLIERS, GOVERNMENTAL
8 AGENCIES OTHER THAN THOSE NAMED IN SUBSECTION (4), CONSULTING
9 AGENCIES, OR OTHER ENTITIES.

10 (C) ACCEPTABLE DISTANCE LEARNING.

11 (D) ALTERNATE FORMS OF CONTINUING COMPETENCY, INCLUDING
12 COMPREHENSIVE TESTING, PARTICIPATION IN MENTORING PROGRAMS,
13 RESEARCH, PARTICIPATION IN CODE HEARINGS CONDUCTED BY THE
14 INTERNATIONAL CODE COUNCIL, AND PUBLICATION OF ARTICLES IN A TRADE
15 JOURNAL OR REGIONAL MAGAZINE AS AN EXPERT IN THE FIELD. THE
16 ALTERNATE FORMS SHALL BE DESIGNED TO MAINTAIN AND IMPROVE THE
17 LICENSEE'S ABILITY TO PERFORM THE OCCUPATION WITH COMPETENCE AND
18 SHALL PRESCRIBE PROOFS THAT ARE NECESSARY TO DEMONSTRATE THAT THE
19 LICENSEE HAS FULFILLED THE REQUIREMENTS OF CONTINUING COMPETENCY.

20 (8) EACH LICENSEE MAY SELECT APPROVED COURSES IN HIS OR HER
21 SUBJECT MATTER AREA OR SPECIALTY. SERVICE AS A LECTURER OR
22 DISCUSSION LEADER IN AN APPROVED COURSE SHALL BE COUNTED TOWARD THE
23 CONTINUING COMPETENCY REQUIREMENTS OF THIS SECTION. ALTERNATE FORMS
24 OF CONTINUING COMPETENCY MAY BE EARNED AND DOCUMENTED AS
25 PROMULGATED IN RULES BY THE DEPARTMENT.

26 (9) THE DEPARTMENT MAY AUDIT A PREDETERMINED PERCENTAGE OF
27 LICENSEES WHO RENEW IN A YEAR FOR COMPLIANCE WITH THE REQUIREMENTS

1 OF THIS SECTION. FAILURE TO COMPLY WITH THE AUDIT OR THE
2 REQUIREMENTS SHALL RESULT IN THE INVESTIGATION OF A COMPLAINT
3 INITIATED BY THE DEPARTMENT, AND THE LICENSEE IS SUBJECT TO THE
4 PENALTIES PRESCRIBED IN THIS ACT.

5 (10) A LICENSEE AS A RESIDENTIAL BUILDER OR RESIDENTIAL
6 ALTERATION AND MAINTENANCE CONTRACTOR MAY APPLY FOR INACTIVE STATUS
7 BY COMPLETING AN APPLICATION, MADE AVAILABLE BY THE DEPARTMENT, IN
8 WHICH HE OR SHE DECLARES THAT HE OR SHE IS NO LONGER ACTIVELY
9 ENGAGED IN THE PRACTICE AUTHORIZED BY HIS OR HER LICENSE AND
10 TEMPORARILY INTENDS TO SUSPEND ACTIVITY AUTHORIZED BY HIS OR HER
11 LICENSE. UPON SUBMISSION OF A COMPLETED APPLICATION, THE DEPARTMENT
12 SHALL DESIGNATE THE LICENSEE AS INACTIVE AND NOTE THAT STATUS ON
13 RECORDS AVAILABLE TO THE PUBLIC. A LICENSEE DESIGNATED AS INACTIVE
14 MUST HAVE A CURRENT COPY OF THE MICHIGAN RESIDENTIAL CODE AND IS
15 EXEMPT FROM THE CONTINUING COMPETENCY REQUIREMENTS IMPOSED UNDER
16 THIS SECTION, BUT MUST STILL PAY THE PER-YEAR LICENSE FEE. AN
17 INACTIVE LICENSEE MAY ACTIVATE HIS OR HER LICENSE BY SUBMITTING AN
18 APPLICATION TO THE DEPARTMENT REQUESTING ACTIVATION OF THE LICENSE.
19 UPON ACTIVATION OF A LICENSE, THE LICENSEE MUST COMPLETE AT LEAST 1
20 CREDIT HOUR OF CONTINUING COMPETENCY FOR THAT CALENDAR YEAR.

21 Sec. 2405. (1) If a license is applied for by a corporation,
22 partnership, ~~or~~ association, **LIMITED LIABILITY COMPANY, OR OTHER**
23 **ENTITY**, the applicant shall designate 1 of its officers, partners,
24 members, or managing agent as a qualifying officer who, upon taking
25 and passing the examination, and upon meeting all other
26 requirements of this article, ~~shall be~~ **IS** entitled to a license to
27 act for the corporation, partnership, ~~or~~ association, **LIMITED**

1 LIABILITY COMPANY, OR OTHER ENTITY. THE QUALIFYING OFFICER SHALL
2 ALSO OBTAIN AND MAINTAIN A LICENSE UNDER THIS ARTICLE AS AN
3 INDIVIDUAL. The qualifying officer shall be responsible for
4 exercising the supervision or control of the building or
5 construction operations necessary to secure full compliance with
6 this article and the rules promulgated under this article. A
7 license shall not be issued to a corporation, partnership, ~~or~~
8 association, LIMITED LIABILITY COMPANY, OR OTHER ENTITY unless each
9 partner, trustee, director, officer, member, and a person
10 exercising control is at least 18 years of age, and meets the
11 requirements for a license under this article other than those
12 relating to knowledge and experience. IF AN INDIVIDUAL LICENSEE IS
13 ALSO A QUALIFYING OFFICER, THE INDIVIDUAL'S NAME AND LICENSE NUMBER
14 SHALL BE LISTED ON ANY LICENSE ISSUED TO THE INDIVIDUAL AS A
15 QUALIFYING OFFICER. IN THE CASE OF A LICENSE ISSUED UNDER THIS
16 SUBSECTION, EACH OFFICER, PARTNER, MEMBER, OR MANAGING AGENT,
17 WHETHER OR NOT HE OR SHE IS THE QUALIFYING OFFICER, SHALL PROVIDE A
18 COPY OF HIS OR HER OPERATOR'S LICENSE OR STATE PERSONAL
19 IDENTIFICATION CARD TO THE DEPARTMENT FOR USE BY THE DEPARTMENT
20 ONLY FOR IDENTIFICATION PURPOSES. A LICENSEE GRANTED INACTIVE
21 STATUS UNDER SECTION 2404B IS NOT ELIGIBLE TO SERVE AS A QUALIFYING
22 OFFICER.

23 (2) The license of a corporation, partnership, ASSOCIATION,
24 LIMITED LIABILITY COMPANY, or other ~~association~~-ENTITY shall be
25 suspended when a license or license application of a qualifying
26 officer, partner, trustee, director, officer, member, or a person
27 exercising control of the corporation, partnership, ASSOCIATION,

1 **LIMITED LIABILITY COMPANY**, or other ~~association~~-**ENTITY** is
 2 suspended, revoked, or denied. The suspension shall remain in force
 3 until the board determines that the disability created by the
 4 suspension, revocation, or denial has been removed.

5 (3) A suspension, revocation, or denial of a license of an
 6 individual shall suspend, revoke, or deny any other license held or
 7 applied for by that individual issued under this article. A
 8 suspension, revocation, or denial of a license by the department
 9 ~~may~~-**SHALL** suspend, revoke, or deny any other license held or
 10 applied for under this article by the qualifying officer of a
 11 corporation, partnership, **ASSOCIATION, LIMITED LIABILITY COMPANY**,
 12 or other ~~association~~-**ENTITY** whose license is suspended, revoked, or
 13 denied.

14 (4) If the qualifying officer of a licensee ceases to be its
 15 qualifying officer, the license is suspended. However, upon
 16 request, the department may permit the license to remain in force
 17 for a reasonable time to permit the qualification of a new
 18 qualifying officer.

19 Sec. 2411. (1) A complaint filed under this section or article
 20 5, or both, shall be made within 18 months after ~~completion,~~
 21 ~~occupancy, or purchase, whichever occurs later, of~~ **THE LATEST OF**
 22 **THE FOLLOWING REGARDING** a residential structure or a combination of
 23 residential and commercial structure ~~—~~**AS FOLLOWS:**

24 (A) **IN THE CASE OF A MAINTENANCE AND ALTERATION CONTRACT:**

25 (i) **COMPLETION.**

26 (ii) **OCCUPANCY.**

27 (iii) **PURCHASE.**

1 (B) IN THE CASE OF A PROJECT REQUIRING AN OCCUPANCY PERMIT:

2 (i) ISSUANCE OF THE CERTIFICATE OF OCCUPANCY OR TEMPORARY
3 CERTIFICATE OF OCCUPANCY.

4 (ii) CLOSING.

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

7 (a) Abandonment without legal excuse of a contract,
8 construction project, or operation engaged in or undertaken by the
9 licensee.

10 (b) Diversion of funds or property received for prosecution or
11 completion of a specific construction project or operation, or for
12 a specified purpose in the prosecution or completion of a
13 construction project or operation, and the funds or property
14 application or use for any other construction project or operation,
15 obligation, or purposes.

16 (c) Failure to account for or remit money coming into the
17 person's possession which belongs to others.

18 (d) A willful departure from or disregard of plans or
19 specifications in a material respect and prejudicial to another,
20 without consent of the owner or an authorized representative and
21 without the consent of the person entitled to have the particular
22 construction project or operation completed in accordance with the
23 plans and specifications.

24 (e) A willful violation of the building laws of the state or
25 of a political subdivision of the state.

26 (f) In a **RESIDENTIAL** maintenance and alteration contract,
27 failure to furnish to a lender the purchaser's signed completion

1 certificate executed upon completion of the work to be performed
2 under the contract.

3 (g) If a licensed residential builder or licensed residential
4 maintenance and alteration contractor, failure to notify the
5 department within 10 days of a change in the control or direction
6 of the business of the licensee resulting from a change in the
7 licensee's partners, directors, officers, or trustees, or a change
8 in the control or direction of the business of the licensee
9 resulting from any other occurrence or event.

10 (h) Failure to deliver to the purchaser the entire agreement
11 of the parties including finance and any other charge arising out
12 of or incidental to the agreement when the agreement involves
13 repair, alteration, or addition to, subtraction from, improvement
14 of, wrecking of, or demolition of a residential structure or
15 combination of residential and commercial structure, or building of
16 a garage, or laying of concrete on residential property, or
17 manufacture, assembly, construction, sale, or distribution of a
18 residential or combination residential and commercial structure
19 which is prefabricated, preassembled, precut, packaged, or shell
20 housing.

21 (i) If a salesperson, failure to pay over immediately upon
22 receipt money received by the salesperson, in connection with a
23 transaction governed by this article to the residential builder or
24 residential maintenance and alteration contractor under whom the
25 salesperson is licensed.

26 (j) Aiding or abetting an unlicensed person to evade this
27 article, or knowingly combining or conspiring with, or acting as

1 agent, partner, or associate for an unlicensed person, or allowing
 2 one's license to be used by an unlicensed person, or acting as or
 3 being an ostensible licensed residential builder or licensed
 4 residential maintenance and alteration contractor for an
 5 undisclosed person who does or shall control or direct, or who may
 6 have the right to control or direct, directly or indirectly, the
 7 operations of a licensee.

8 (k) Acceptance of a commission, bonus, or other valuable
 9 consideration by a salesperson for the sale of goods or the
 10 performance of service specified in the article from a person other
 11 than the residential builder or residential maintenance and
 12 alteration contractor under whom the person is licensed.

13 (l) Becoming insolvent, filing a bankruptcy action, becoming
 14 subject to a receivership, assigning for the benefit of creditors,
 15 failing to satisfy judgments or liens, or failing to pay an
 16 obligation as it becomes due in the ordinary course of business.

17 (m) ~~Peer workmanship or workmanship~~ **WORKMANSHIP** not meeting
 18 the standards of the ~~custom or trade verified by a building code~~
 19 ~~enforcement official~~ **MICHIGAN RESIDENTIAL CODE AS PROMULGATED UNDER**
 20 **THE STILLE-DEROSSETT-HALE SINGLE STATE CONSTRUCTION CODE ACT, 1972**
 21 **PA 230, MCL 125.1501 TO 125.1531.**

22 (3) The department shall suspend or revoke the license of a
 23 person licensed under this article whose failure to pay a lien
 24 claimant results in a payment being made from the homeowner
 25 construction lien recovery fund pursuant to the construction lien
 26 act, 1980 PA 497, MCL 570.1101 to 570.1305, regardless of whether
 27 the person was performing services as a licensee under this

1 article; under the electrical administrative act, 1956 PA 217, MCL
2 338.881 to 338.892; or under ~~1929 PA 266, MCL 338.901 to 338.917~~
3 **THE STATE PLUMBING ACT, 2002 PA 733, MCL 338.3511 TO 338.3569.** The
4 department shall not renew a license or issue a new license until
5 the licensee has repaid in full to the fund the amount paid out
6 plus the costs of litigation and interest at the rate set by
7 section 6013 of the revised judicature act of 1961, 1961 PA 236,
8 MCL 600.6013.

9 (4) The department shall conduct a review upon notice that the
10 licensee has violated the asbestos abatement contractors licensing
11 act, 1986 PA 135, MCL 338.3101 to 338.3319. The department may
12 suspend or revoke that person's license for a knowing violation of
13 the asbestos abatement contractors licensing act, 1986 PA 135, MCL
14 338.3101 to 338.3319.

15 (5) Notwithstanding article 5, the following apply to
16 administrative proceedings regarding workmanship under subsection
17 (2) (m) :

18 (a) A complaint submitted by an owner shall describe in
19 writing to the department the factual basis for the allegation. The
20 homeowner shall send a copy of the initial complaint to the
21 licensee concurrent with the submission of the complaint to the
22 department.

23 (b) The department shall presume the innocence of the licensee
24 throughout the proceeding until the administrative law hearing
25 examiner finds otherwise in a determination of findings of fact and
26 conclusions of law under article 5. The licensee has the burden of
27 refuting evidence submitted by a person during the administrative

1 hearing. The licensee also has the burden of proof regarding the
2 reason deficiencies were not corrected.

3 (c) Upon receipt of a building inspection report issued to the
4 department by a state or local building enforcement official
5 authorized to do so under the Stille-DeRossett-Hale single state
6 construction code act, 1972 PA 230, MCL 125.1501 to 125.1531, which
7 report verifies or confirms the substance of the complaint, the
8 department shall send by certified mail a copy of the verified
9 complaint to ~~both the complainant and the licensee~~. Failure of the
10 department to send a copy of the verified complaint within 30 days
11 of receipt of the building inspection report prevents the
12 department from assessing a fine against the licensee under article
13 6 but does not prevent the department from pursuing restitution,
14 license suspension, or other remedies provided under this act.

15 (d) A licensee may contractually provide for an alternative
16 dispute resolution procedure to resolve complaints filed with the
17 department. The procedure shall be conducted by a neutral third
18 party for determining the rights and responsibilities of the
19 parties and shall be initiated by the licensee, who shall provide
20 notice of the initiation of the procedure to the complainant by
21 certified mail not less than 30 days before the commencement of
22 that procedure. The procedure shall be conducted at a location
23 mutually agreed to by the parties.

24 (e) The department shall not initiate a proceeding against a
25 licensee under this subsection in the case of a licensee who
26 contractually provides for an alternative dispute resolution
27 procedure that has not been utilized and completed unless it is

1 determined that the licensee has not complied with a decision or
2 order issued as a result of that alternative dispute resolution
3 procedure, that alternative dispute resolution procedure was not
4 fully completed within 90 days after the filing of the complaint
5 with the department, or an alternative dispute resolution procedure
6 meeting the requirements of subdivision ~~(D)~~—(D) is not available to
7 the complainant.

8 (f) The complainant shall demonstrate that notice has been
9 provided to the licensee describing reasonable times and dates that
10 the residential structure was accessible for any needed repairs and
11 proof acceptable to the department that the repairs were not made
12 within 60 days after the sending of the notice. This subdivision
13 does not apply where the department determines a necessity to
14 safeguard the structure or to protect the occupant's health and
15 safety and, in such case, the department may utilize any remedy
16 available under section 504(3)(a) through (d).

17 (g) In the case where the owner and licensee have agreed
18 contractually on mutually acceptable performance guidelines
19 relating to workmanship, the department shall consider those
20 guidelines in its evaluation of a complaint. The guidelines shall
21 be consistent with the Stille-DeRossett-Hale single state
22 construction code act, 1972 PA 230, MCL 125.1501 to 125.1531.

23 **(6) IN ANY CASE WHERE THE LICENSEE OR RESPONDENT FAILS TO**
24 **APPEAR, PARTICIPATE, OR DEFEND ANY ACTION, THE BOARD SHALL ISSUE AN**
25 **ORDER GRANTING BY DEFAULT THE RELIEF REQUESTED, BASED UPON PROOFS**
26 **SUBMITTED TO AND FINDINGS MADE, BY THE HEARING EXAMINER AFTER A**
27 **CONTESTED CASE.**

Senate Bill No. 452 as amended July 17, 2007
 as amended December 11, 2007

(7) ~~(6)~~—As used in this section, "verified complaint" means a complaint in which all or a portion of the allegations have been confirmed by ~~the building inspection report~~ **AN AFFIDAVIT OF THE STATE OR LOCAL BUILDING OFFICIAL.**

SEC. 2411A. (1) THE DEPARTMENT SHALL POST ON ITS WEBSITE ANY FINAL ORDER OF THE BOARD AND THE DATE IT WAS ISSUED. THE POSTING SHALL OCCUR WITHIN 30 DAYS AFTER THE FINAL ORDER IS ISSUED.

(2) THE DEPARTMENT SHALL ANNUALLY POST ON ITS WEBSITE THE NUMBER OF FINAL ORDERS OF THE BOARD.

Enacting section 1. This amendatory act does not take effect unless all of the following bills of the 94th Legislature are enacted into law:

(a) Senate Bill No. 453.

(b) Senate Bill No. 450.

(c) Senate Bill No. 451.

[Enacting section 2. Sections 2402, 2404, 2405, and 2411 of the occupational code, 1980 PA 299, MCL 339.2402, 339.2404, 339.2405, and 339.2411, as amended by this amendatory act, and sections 2404b and 2411a of the occupational code, 1980 PA 299, as added by this amendatory act, take effect June 1, 2008.]