

Act No. 151
Public Acts of 2010
Approved by the Governor
August 23, 2010
Filed with the Secretary of State
August 23, 2010
EFFECTIVE DATE: August 23, 2010

**STATE OF MICHIGAN
95TH LEGISLATURE
REGULAR SESSION OF 2010**

Introduced by Rep. Durhal

ENROLLED HOUSE BILL No. 5834

AN ACT to amend 1980 PA 299, entitled "An act to revise, consolidate, and classify the laws of this state regarding the regulation of certain occupations and to regulate certain persons and activities relative to those occupations; to create a board for each of those occupations; to establish the powers and duties of certain departments and agencies and the boards of each occupation; to provide for the promulgation of rules; to provide for certain fees; to provide for penalties and civil fines; to establish rights, relationships, and remedies of certain persons under certain circumstances; to provide immunity from certain civil liability for certain entities and certain related occupations under certain circumstances; to repeal certain parts of this act on a specific date; and to repeal certain acts and parts of acts," by amending sections 2404, 2409, and 2411 (MCL 339.2404, 339.2409, and 339.2411), sections 2404 and 2411 as amended by 2007 PA 157 and section 2409 as amended by 1988 PA 463.

The People of the State of Michigan enact:

Sec. 2404. (1) The department may require an applicant, licensee, or each partner, trustee, director, officer, member, or shareholder to submit evidence of good moral character, and financial stability. Before the issuance of a license, an applicant shall submit a copy of an operator's license or state personal identification card, to be used by the department only for proof of identity of the applicant.

(2) The department shall require an applicant for a license to pass an examination establishing that the applicant has a fair knowledge of the obligations of a residential builder or residential maintenance and alteration contractor to the public and the applicant's principal, and the statutes relating to the applicant's licensure.

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

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

(5) Beginning the license cycle after December 21, 2007, the department shall issue the license of a residential builder and residential maintenance and alteration contractor for a period of 3 years in duration. Beginning December 21, 2007, an applicant for renewal of a residential builder or maintenance and alteration contractor license shall state that he or she has a current copy of the Michigan residential code and has fulfilled the appropriate requirements regarding continuing competency.

(6) Beginning December 21, 2007, a licensee shall maintain documentation, for at least 5 years, of activities meeting the continuing competency requirements as prescribed under this article.

Sec. 2409. A licensee shall report to the department a change of name or address or a change of members or addresses of the partnership, association, or corporation holding a license under this article within 30 days after the change occurs.

Sec. 2411. (1) A complaint filed under this section or article 5, or both, shall be made within 18 months after the latest of the following regarding a residential structure or a combination of residential and commercial structure as follows:

(a) In the case of a maintenance and alteration contract:

(i) Completion.

(ii) Occupancy.

(iii) Purchase.

(b) In the case of a project requiring an occupancy permit:

(i) Issuance of the certificate of occupancy or temporary certificate of occupancy.

(ii) Closing.

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

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

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

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

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

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

(f) In a residential maintenance and alteration contract, failure to furnish to a lender the purchaser's signed completion certificate executed upon completion of the work to be performed under the contract.

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

(h) Failure to deliver to the purchaser the entire agreement of the parties including any finance or other charge arising out of or incidental to the agreement if the agreement involves repair, alteration, or addition to, subtraction from, improvement of, wrecking of, or demolition of a residential structure or combination of residential and commercial structure, building of a garage, laying of concrete on residential property, or manufacture, assembly, construction, sale, or distribution of a residential or combination residential and commercial structure that is prefabricated, preassembled, precut, packaged, or shell housing.

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

(j) Aiding or abetting an unlicensed person to evade this article, or knowingly combining or conspiring with, or acting as agent, partner, or associate for an unlicensed person, allowing one's license to be used by an unlicensed person, or acting as or being an ostensible licensed residential builder or licensed residential maintenance and alteration contractor for an undisclosed person who does or shall control or direct, or who may have the right to control or direct, directly or indirectly, the operations of a licensee.

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

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

(m) Workmanship not meeting the standards of the Michigan residential code as promulgated under the Stille-DeRossett-Hale single state construction code act, 1972 PA 230, MCL 125.1501 to 125.1531.

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

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

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

(b) The department shall presume the innocence of the licensee throughout the proceeding until the administrative law hearing examiner finds otherwise in a determination of findings of fact and conclusions of law under article 5. The licensee has the burden of refuting evidence submitted by a person during the administrative hearing. The licensee also has the burden of proof regarding the reason deficiencies were not corrected.

(c) Upon receipt of a building inspection report issued to the department by a state or local building enforcement official authorized to do so under the Stille-DeRossett-Hale single state construction code act, 1972 PA 230, MCL 125.1501 to 125.1531, which report verifies or confirms the substance of the complaint, the department shall send by certified mail a copy of the verified complaint to the licensee. If the department does not send a copy of the verified complaint within 30 days after receipt of the building inspection report, the department shall not assess a fine against the licensee under article 6, but the department may pursue restitution, license suspension, or other remedies provided under this act.

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

(e) The department shall not initiate a proceeding against a licensee under this subsection if the licensee has contractually provided for an alternative dispute resolution procedure that has not been utilized and completed unless it is determined that the licensee has not complied with a decision or order issued as a result of that alternative dispute resolution procedure, that alternative dispute resolution procedure was not fully completed within 90 days after the filing of the complaint with the department, or an alternative dispute resolution procedure meeting the requirements of subdivision (d) is not available to the complainant.

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

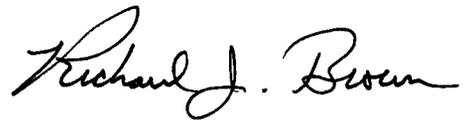
(g) If the owner and licensee have agreed contractually on mutually acceptable performance guidelines relating to workmanship, the department shall consider those guidelines in its evaluation of a complaint. The guidelines shall be consistent with the Stille-DeRossett-Hale single state construction code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

(5) If the licensee or respondent fails to appear or participate in or defend any action, the board shall issue an order granting by default the relief requested, based upon proofs submitted to and findings made by the hearing examiner after a contested case.

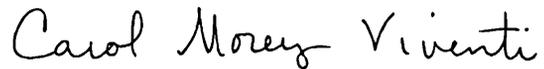
(6) As used in this section, "verified complaint" means a complaint in which all or a portion of the allegations have been confirmed by an affidavit of the state or local building official.

Enacting section 1. This amendatory act does not take effect unless House Bill No. 5830 of the 95th Legislature is enacted into law.

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved

Governor

Compiler's note: House Bill No. 5830, referred to in enacting section 1, was filed with the Secretary of State August 23, 2010, and became 2010 PA 147, Imd. Eff. Aug. 23, 2010.