

SENATE BILL No. 479

September 11, 2013, Introduced by Senator JANSEN and referred to the Committee on Regulatory Reform.

A bill to amend 1980 PA 299, entitled
"Occupational code,"
by amending sections 411 and 601 (MCL 339.411 and 339.601), section
411 as amended by 2008 PA 309 and section 601 as amended by 2008 PA
319, and by adding section 205b; and to repeal acts and parts of
acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 SEC. 205B. R 339.601 OF THE MICHIGAN ADMINISTRATIVE CODE IS
2 RESCINDED.

3 Sec. 411. (1) Subject to subsection (2), a person ~~who~~ **THAT**
4 fails to renew a license or registration on or before the
5 expiration date shall not practice the occupation, operate, or use
6 the title **OF THAT OCCUPATION** after the expiration date printed on
7 the license or registration. A license or registration shall lapse

1 on the day after the expiration date.

2 (2) A person ~~who~~**THAT** fails to renew a license or registration
3 on or before the expiration date ~~shall be~~**IS** permitted to renew the
4 license or registration by payment of the required license or
5 registration fee and a late renewal fee within 60 days after the
6 expiration date.

7 (3) Except as otherwise provided in this act, a person ~~who~~
8 **THAT** fails to renew a license or registration within the time
9 period set forth in subsection (2) may be relicensed or
10 reregistered without examination and without meeting additional
11 education or training requirements in force at the time of
12 application for relicensure or reregistration if all of the
13 following conditions are met:

14 (a) The person applies within 3 years after the expiration
15 date of the last license or registration.

16 (b) The person pays an application processing fee, the late
17 renewal fee, and the per year license or registration fee for the
18 upcoming licensure or registration period, subject to subsection
19 (8).

20 (c) ~~Penalties and~~**ANY PENALTIES OR** conditions imposed by
21 disciplinary action in this state or any other jurisdiction have
22 been satisfied.

23 (d) The person submits proof of having completed the
24 equivalent of 1 year of continuing education within the 12 months
25 immediately preceding the date of application or as otherwise
26 provided in a specific article or by rule, if continuing education
27 is required of licensees or registrants under a specific article.

1 (4) Except as otherwise provided in this act, a person may be
2 relicensed or reregistered subsequent to 3 or more years after the
3 expiration date of the last license or registration ~~upon showing~~ **IF**
4 **THE PERSON SHOWS** that the person meets the requirements for
5 licensure or registration as established by the department in rules
6 or procedures, which may require a person to pass all or part of a
7 required examination, to complete continuing education
8 requirements, or to meet current education or training
9 requirements.

10 (5) Unless otherwise provided in this act, a person ~~who~~ **THAT**
11 seeks reinstatement of a license or registration shall file an
12 application on a form provided by the department, pay the
13 application processing fee, and file a petition to the department
14 and the appropriate board stating reasons for reinstatement and
15 including evidence that the person can and is likely to serve the
16 public in the regulated activity with competence and in conformance
17 with all other requirements prescribed by law, rule, or an order of
18 the department or board. The procedure ~~to be followed in~~ **FOR**
19 conducting the review of a petition for reinstatement is prescribed
20 in article 5. If approved for reinstatement, the person shall pay
21 the per year license or registration fee for the upcoming license
22 or registration period if appropriate, in addition to completing
23 any requirements imposed ~~in accordance with~~ **UNDER** section 203(2).

24 (6) ~~Beginning July 23, 2004, the~~ **THE** department shall issue an
25 initial or renewal license or registration not later than 90 days
26 after the applicant files a completed application. ~~Receipt of the~~
27 **THE** application is considered **RECEIVED ON** the date the application

1 is received by any agency or department of ~~the~~**THIS** state. ~~of~~
2 ~~Michigan.~~ If the application is considered incomplete by the
3 department, the department shall notify the applicant in writing,
4 or make information electronically available, within 30 days after
5 receipt of the incomplete application, describing the deficiency
6 and requesting the additional information. The 90-day period is
7 tolled ~~upon notification by~~ **FROM THE DATE** the department **NOTIFIES**
8 **THE APPLICANT** of a deficiency until the date the requested
9 information is received by the department. The determination of the
10 completeness of an application does not operate as an approval of
11 the application for the license or registration and does not confer
12 eligibility of an applicant determined otherwise ineligible for
13 issuance of a license or registration.

14 (7) Notwithstanding the time periods described in subsection
15 (6), in the case of a real estate broker and associate broker
16 licensed under article 25, the time period for approval by the
17 department of a completed application is 30 days and the time
18 period for notification sent in writing, or made electronically
19 available, by the department to the applicant regarding an
20 incomplete application is 15 days after the receipt of the
21 application by any agency or department of ~~the~~**THIS** state. ~~of~~
22 ~~Michigan.~~

23 (8) If the department fails to issue or deny a license or
24 registration within the time required by this section, the
25 department shall return the license or registration fee, and shall
26 reduce the license or registration fee for the applicant's next
27 renewal application, if any, by 15%. ~~The~~**A** failure to issue or deny

1 a license or registration within the time required under this
 2 section does not allow the department to otherwise delay the
 3 processing of the application, and **THE DEPARTMENT SHALL PLACE** that
 4 application, ~~upon completion, shall be placed~~ **WHEN COMPLETED**, in
 5 sequence with other completed applications received at that same
 6 time. The department shall not discriminate against an applicant in
 7 the processing of an application based ~~upon~~ **ON** the fact that the
 8 license or registration fee was refunded or discounted under this
 9 subsection.

10 (9) ~~Beginning October 1, 2005, the~~ **THE** director shall submit a
 11 report by December 1 of each year to the standing committees and
 12 appropriations subcommittees of the senate and house of
 13 representatives concerned with occupational issues. The director
 14 shall include all of the following information in the report
 15 concerning the preceding fiscal year:

16 (a) The number of initial and renewal applications the
 17 department received and completed within the 90-day time period
 18 described in subsection (6) and the 30-day time period described in
 19 subsection (7).

20 (b) The number of applications denied **BY THE DEPARTMENT**.

21 (c) The number of applicants not issued a license or
 22 registration within the applicable time period and the amount of
 23 money returned to licensees and registrants under subsection (8).

24 (10) Subsection (6) does not apply to licenses ~~or~~
 25 ~~registrations~~ **A LICENSE OR REGISTRATION** for any of the following:

26 ~~—(a) An interior designer listed under article 6.~~

27 **(A)** ~~(b)~~ A certified public accountant and registered

1 accountant under article 7.

2 (B) ~~(e)~~—An agency non-owner manager of a collection agency
3 under article 9.

4 (C) ~~(d)~~—A barber, student barber, student instructor, ~~and OR~~
5 barber instructor under article 11.

6 (D) ~~(e)~~—An employment and consulting agent of a personnel
7 agency under article 10.

8 (E) ~~(f)~~—A cosmetologist, manicurist, natural hair culturist,
9 esthetician, electrologist, instructor, ~~and OR~~ registered student
10 under article 12.

11 (F) ~~(g)~~—A hearing aid salesperson and trainee under article
12 13.

13 (G) ~~(h)~~—A mortuary science licensee, embalmer, ~~and OR~~ resident
14 trainee in mortuary science under article 18.

15 (H) ~~(i)~~—An individual architect, surveyor, ~~and OR~~ engineer
16 under article 20.

17 (I) ~~(j)~~—A forester under article 21.

18 (J) ~~(k)~~—An individual landscape architect under article 22.

19 (K) ~~(l)~~—A community planner under article 23.

20 (L) ~~(m)~~—An individual residential builder and alteration and
21 maintenance contractor ~~and OR~~ a salesperson for a residential
22 builder and alteration and maintenance contractor under article 24.

23 (M) ~~(n)~~—A real estate salesperson under article 25.

24 (N) ~~(o)~~—A real estate appraiser under article 26.

25 (O) ~~(p)~~—An ocularist ~~and OR~~ ocularist apprentice under article
26 27.

27 (11) Notwithstanding any provision in this act to the

1 contrary, an individual or qualifying officer who is a licensee or
2 registrant under this act and who is mobilized for military duty in
3 the armed forces of the United States by the president of the
4 United States is temporarily exempt from ~~the ANY~~ renewal license
5 fee, continuing education requirements, ~~and any OR~~ other related
6 requirements of this act **APPLICABLE TO THAT LICENSE OR**

7 **REGISTRATION.** It is the obligation of the licensee or registrant to
8 inform the department by written or electronic mail of the desire
9 to exercise the temporary exemption under this subsection. If the
10 licensee applying for the temporary exemption is the individual
11 responsible for supervision and oversight of licensed activities,
12 **THE LICENSEE SHALL PROVIDE** notice of arrangements for adequate
13 provision of that supervision and oversight ~~shall be provided to~~
14 the department. The licensee or registrant shall accompany the
15 request with proof, as determined by the department, to verify the
16 mobilized duty status. ~~The department, upon receiving~~ **IF IT**
17 **RECEIVES** a request for a temporary exemption under this subsection,
18 **THE DEPARTMENT** shall make a determination of the requestor's status
19 and grant the temporary exemption after verification of mobilized
20 duty status under this subsection. A temporary exemption is valid
21 until 90 days after the licensee's or registrant's release from the
22 mobilized duty ~~upon~~ **ON** which the exemption was based, but shall not
23 exceed 36 months from the date of expiration of the license or
24 registration.

25 (12) As used in this section, "completed application" means an
26 application **THAT IS** complete on its face and submitted with any
27 applicable licensing or registration fees ~~as well as AND~~ any other

1 information, records, approval, security, or similar item required
2 by law or rule from a local unit of government, a federal agency,
3 or a private entity but not from another department or agency of
4 ~~the THIS state. of Michigan.~~

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

10 (2) A school, institution, or person shall not operate or
11 attempt to operate a barber college, school of cosmetology, or real
12 estate school unless the school, institution, or person is licensed
13 or approved by the department.

14 (3) Subject to section 411, a person whose license or
15 registration is suspended, revoked, or lapsed, as determined by the
16 records of the department, is considered unlicensed or
17 unregistered.

18 (4) Except as otherwise provided for in section 735, a person,
19 school, or institution that violates subsection (1) or (2) is
20 guilty of a misdemeanor, punishable by a fine of not more than
21 \$500.00, or imprisonment for not more than 90 days, or both.

22 (5) Except as otherwise provided for in section 735, a person,
23 school, or institution that violates subsection (1) or (2) a second
24 or any subsequent time is guilty of a misdemeanor, punishable by a
25 fine of not more than \$1,000.00, or imprisonment for not more than
26 1 year, or both.

27 (6) Notwithstanding subsections (4) and (5), a person not

1 licensed under article 24 as a residential builder or a residential
2 maintenance and alteration contractor ~~who~~**THAT** violates subsection
3 (1) or (2) is guilty as follows:

4 (a) In the case of a first offense, a misdemeanor punishable
5 by a fine of not less than \$5,000.00 or more than \$25,000.00, or
6 imprisonment for not more than 1 year, or both.

7 (b) In the case of a second or subsequent offense, a
8 misdemeanor punishable by a fine of not less than \$5,000.00 or more
9 than \$25,000.00, or imprisonment for not more than 2 years, or
10 both.

11 (c) In the case of an offense that causes death or serious
12 injury, a felony punishable by a fine of not less than \$5,000.00 or
13 more than \$25,000.00, or imprisonment for not more than 4 years, or
14 both.

15 (7) Notwithstanding subsections (4) and (5), a person **THAT IS**
16 not licensed under article 20 as an architect, professional
17 engineer, or professional land surveyor ~~who~~**AND THAT** violates
18 subsection (1) or (2) is guilty as follows:

19 (a) In the case of a first offense, a misdemeanor punishable
20 by a fine of not less than \$5,000.00 or more than \$25,000.00 or
21 imprisonment for not more than 93 days, or both.

22 (b) In the case of a second or subsequent offense, a
23 misdemeanor punishable by a fine of not less than \$5,000.00 or more
24 than \$25,000.00 or imprisonment for not more than 1 year, or both.

25 (c) In the case of an offense that causes death or serious
26 injury, a felony punishable by a fine of not less than \$5,000.00 or
27 more than \$25,000.00 or imprisonment for not more than 4 years, or

1 both.

2 (8) Any **CONVICTION FOR A** violation of this act shall include a
3 requirement that restitution be made, based ~~upon~~**ON** proofs
4 submitted to and findings made by the trier of fact as provided by
5 law.

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

11 (10) This act does not apply to a person engaging in or
12 practicing the following:

13 (a) Interior design.

14 (b) Residential building design. As used in this subdivision,
15 "residential building design" means the rendering of residential
16 design services for a detached 1- and 2-family residence building
17 by a person exempted from the requirements of section 2012.

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

20 (d) Any activity for which the person is licensed under the
21 Forbes mechanical contractors act, 1984 PA 192, MCL 338.971 to
22 338.988.

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

25 (11) As used in subsection (9), "affected person" means a
26 person directly affected by the actions of a person suspected of
27 violating subsection (1) or (2) and includes, but is not limited

1 to, a licensee or registrant, a board established ~~pursuant to~~ **UNDER**
2 this act, the department, a person ~~who~~ **THAT** has utilized the
3 services of the person engaging in or attempting to engage in an
4 occupation regulated under this act or using a title designated by
5 this act without being licensed or registered by the department, or
6 a private association composed primarily of members of the
7 occupation in which the person is engaging in or attempting to
8 engage in or in which the person is using a title designated under
9 this act without being registered or licensed by the department.

10 (12) An investigation may be conducted under article 5 to
11 enforce this section. A person ~~who~~ **THAT** violates this section ~~shall~~
12 ~~be~~ **IS** subject to this section and sections 506, 602, and 606.

13 (13) The department, the attorney general, or a county
14 prosecutor may utilize forfeiture as a remedy in the manner
15 provided for in section 606.

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

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

26 (15) ~~(16)~~ Upon entering a conviction under subsection (4),
27 (5), or (6), a court entering the conviction shall notify, by mail,

1 facsimile transmission, or electronic mail, the bureau of
2 commercial services at the department.

3 Enacting section 1. Section 601a of the occupational code,
4 1980 PA 299, MCL 339.601a, is repealed.