

SUBSTITUTE FOR
SENATE BILL NO. 968

A bill to amend 1980 PA 299, entitled
"Occupational code,"
by amending sections 104, 601, 2402, and 2403 (MCL 339.104,
339.601, 339.2402, and 339.2403), section 104 as amended by 1996 PA
151, section 601 as amended by 2008 PA 319, section 2402 as amended
by 2007 PA 157, and section 2403 as amended by 1984 PA 191.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 104. (1) "Department" means the department of
2 ~~commerce.~~**LICENSING AND REGULATORY AFFAIRS.**

3 (2) "Director" means the director of the department ~~of~~
4 ~~commerce~~ or an **HIS OR HER** authorized representative. ~~of the~~
5 ~~director of the department of commerce.~~

6 (3) "Disability" means an infirmity that prevents a board
7 member from performing a duty assigned to the board member.

1 (4) "Files" means the records, memoranda, opinions, minutes,
2 and similar written materials that were formerly in the physical
3 dominion of a board abolished by this act and the records,
4 memoranda, opinions, minutes, and similar written materials of a
5 board created under this act.

6 (5) "Formal complaint" means a document that states the
7 charges of each alleged violation and is prepared by the department
8 or the department of attorney general after a complaint ~~has been~~ **IS**
9 received by the department.

10 (6) "General public" means each individual residing in this
11 state who is 18 years of age or older, other than ~~a person~~ **AN**
12 **INDIVIDUAL** or the spouse of ~~a person~~ **AN INDIVIDUAL** who is licensed
13 or registered in the occupation or who has a material financial
14 interest in the occupation ~~being regulated by~~ **UNDER** the specific
15 article in which the term is used.

16 (7) "Good moral character" means good moral character as
17 defined in section 1 of ~~Act No. 381 of the Public Acts of 1974,~~
18 ~~being section 338.41 of the Michigan Compiled Laws.~~ **1974 PA 381, MCL**
19 **338.41.**

20 (8) "Incompetence" means a departure from, or a failure to
21 conform to, minimal standards of acceptable practice for ~~the~~ **AN**
22 occupation.

23 (9) "Knowledge and skill" means the information, education,
24 practical experience, and the facility in applying that
25 information, education, and practical experience.

26 Sec. 601. (1) A person shall not engage in or attempt to
27 engage in the practice of an occupation regulated under this act or

1 use a title designated in this act unless the person possesses a
2 license or registration issued by the department for the
3 occupation.

4 (2) A school, institution, or person shall not operate or
5 attempt to operate a barber college, school of cosmetology, or real
6 estate school unless the school, institution, or person is licensed
7 or approved by the department.

8 (3) Subject to section 411, a person whose license or
9 registration is suspended, revoked, or lapsed, as determined by the
10 records of the department, is considered unlicensed or
11 unregistered.

12 (4) Except as otherwise provided for in section 735, a person,
13 school, or institution that violates subsection (1) or (2) is
14 guilty of a misdemeanor, punishable by a fine of not more than
15 \$500.00, or imprisonment for not more than 90 days, or both.

16 (5) Except as otherwise provided for in section 735, a person,
17 school, or institution that violates subsection (1) or (2) a second
18 or any subsequent time is guilty of a misdemeanor, punishable by a
19 fine of not more than \$1,000.00, or imprisonment for not more than
20 1 year, or both.

21 (6) Notwithstanding subsections (4) and (5), a person **THAT IS**
22 not licensed under article 24 as a residential builder or a
23 residential maintenance and alteration contractor ~~who~~ **AND THAT**
24 violates subsection (1) or (2) is guilty as follows:

25 (a) In the case of a first offense, a misdemeanor punishable
26 by a fine of not less than \$5,000.00 or more than \$25,000.00, or
27 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.

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

(7) Notwithstanding subsections (4) and (5), a person **THAT IS** not licensed under article 20 as an architect, professional engineer, or professional land surveyor ~~who~~ **AND THAT** 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 93 days, 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 1 year, or both.

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

(8) ~~Any violation of~~ **IF A TRIER OF FACT FINDS THAT A PERSON HAS VIOLATED** this act, **THE TRIER OF FACT** shall ~~include a~~ **requirement that REQUIRE THAT PERSON TO MAKE** restitution, ~~be made,~~ **based upon** **BASED ON** proofs submitted to and findings made by the trier of fact as provided by law.

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

(10) This act does not apply to a person **THAT IS** engaging in or practicing **ANY OF** the following:

(a) Interior design.

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

(c) Any activity for which the person is licensed under ~~the state plumbing act, 2002 PA 733, MCL 338.3511 to 338.3569.~~ **ARTICLE 11 OF THE SKILLED TRADES REGULATION ACT, MCL 339.6101 TO 339.6133.**

(d) Any activity for which the person is licensed under ~~the Forbes mechanical contractors act, 1984 PA 192, MCL 338.971 to 338.988.~~ **ARTICLE 8 OF THE SKILLED TRADES REGULATION ACT, MCL 339.5801 TO 339.5819.**

(e) Any activity for which the person is licensed under ~~the electrical administrative act, 1956 PA 217, MCL 338.881 to 338.892.~~ **ARTICLE 7 OF THE SKILLED TRADES REGULATION ACT, MCL 339.5701 TO 339.5739.**

(11) As used in subsection (9), "affected person" means a person **THAT IS** directly affected by the actions of a person suspected of violating subsection (1) or (2) and includes, but is

1 not limited to, a licensee or registrant, a board established
2 ~~pursuant to~~ **UNDER** this act, the department, a person ~~who has~~
3 ~~utilized~~ **THAT UTILIZES** the services of the person **THAT IS** engaging
4 in or attempting to engage in an occupation **THAT IS** regulated under
5 this act or using a title **THAT IS** designated by this act without
6 being licensed or registered by the department, or a private
7 association **THAT IS** composed primarily of members of the occupation
8 in which the person is engaging in or attempting to engage in or in
9 which the person is using a title designated under this act without
10 being registered or licensed by the department.

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

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

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

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

27 (16) ~~Upon entering~~ **AT THE TIME A COURT ENTERS** a conviction

under subsection (4), (5), or (6), ~~a court entering the conviction~~
THE COURT shall notify, by mail, facsimile transmission, or
 electronic mail, ~~the bureau of commercial services at the~~
~~department.~~ **THE DEPARTMENT OF THE CONVICTION.**

Sec. 2402. ~~(1) A residential builders' and maintenance and~~
~~alteration contractors' board is created. Of the 9 member board, 4~~
~~members shall be~~ **THE BOARD SHALL CONSIST OF 9 INDIVIDUALS, AS**
FOLLOWS:

(A) FOUR INDIVIDUALS WHO ARE licensed residential builders. ~~7~~
~~and 2 members shall be~~

(B) TWO INDIVIDUALS WHO ARE licensed maintenance and
 alteration contractors.

(C) ~~(2) Of the members~~ THREE INDIVIDUALS representing the
 general public, at least 1 ~~member shall be~~ **OF WHOM IS** registered
 under ~~the building officials and inspectors registration act, 1986~~
~~PA 54, MCL 338.2301 to 338.2313.~~ **ARTICLE 10 OF THE SKILLED TRADES**
REGULATION ACT, MCL 339.6001 TO 339.6023.

Sec. 2403. Notwithstanding article 6, a person may engage in
 the business of or act in the capacity of a residential builder or
 a residential maintenance and alteration contractor or salesperson
 in this state without ~~having a license~~ **UNDER THIS ARTICLE**, if the
 person is 1 of the following:

(a) An authorized representative of the United States
 government, this state, or a county, township, city, village, or
 other political subdivision of this state.

(b) An owner of property, with reference to a structure on the
 property for the owner's own use and occupancy.

1 (c) An owner of rental property, with reference to the
2 maintenance and alteration of that rental property.

3 (d) An officer of a court **WHO IS** acting within the ~~terms of~~
4 ~~the officer's~~ **SCOPE OF THAT** office.

5 (e) A person other than the salesperson ~~who~~ **THAT** engages
6 solely in the business of performing work and services under
7 contract with a residential builder or a residential maintenance
8 and alteration contractor **THAT IS** licensed under this article.

9 (f) A person **THAT IS** working on 1 undertaking or project by 1
10 or more contracts, **IF** the aggregate contract price for ~~which~~ **THE**
11 labor, material, and any other ~~item~~ **ITEMS FOR THE UNDERTAKING OR**
12 **PROJECT** is less than \$600.00. ~~This~~ **THE** exemption **DESCRIBED IN THIS**
13 **SUBDIVISION** does not apply if the work of a construction is only a
14 part of a larger or major operation, whether undertaken by the same
15 or a different residential builder or residential maintenance and
16 alteration contractor, or in which a division of the operation is
17 made in contracts of amounts less than \$600.00, to evade this act.

18 (g) An electrical contractor ~~who is licensed under Act No. 217~~
19 ~~of the Public Acts of 1956, as amended, being sections 338.881 to~~
20 ~~338.892 of the Michigan Compiled Laws. This exemption~~ **THAT IS**
21 **LICENSED UNDER ARTICLE 7 OF THE SKILLED TRADES REGULATION ACT, MCL**
22 **339.5701 TO 339.5739. THE EXEMPTION DESCRIBED IN THIS SUBDIVISION**
23 applies only to the electrical installation, electrical
24 maintenance, or electrical repair work **THAT IS** performed by the
25 electrical contractor.

26 (h) A plumbing contractor ~~licensed under Act No. 266 of the~~
27 ~~Public Acts of 1929, as amended, being sections 338.901 to 338.917~~

1 ~~of the Michigan Compiled Laws. This exemption~~ **THAT IS LICENSED**
2 **UNDER ARTICLE 11 OF THE SKILLED TRADES REGULATION ACT, MCL 339.6101**
3 **TO 339.6133. THE EXEMPTION DESCRIBED IN THIS SUBDIVISION** applies
4 only to plumbing installation, plumbing maintenance, or plumbing
5 repair work **THAT IS** performed by the plumbing contractor.

6 (i) A mechanical contractor ~~who is licensed under the~~
7 ~~mechanical contractors act. This exemption~~ **THAT IS LICENSED UNDER**
8 **ARTICLE 8 OF THE SKILLED TRADES REGULATION ACT, MCL 339.5801 TO**
9 **339.5819. THE EXEMPTION DESCRIBED IN THIS SUBDIVISION** applies only
10 to mechanical installation, mechanical maintenance, or mechanical
11 repair work **THAT IS** performed by the mechanical contractor.

12 Enacting section 1. This amendatory act takes effect 90 days
13 after the date it is enacted into law.

14 Enacting section 2. This amendatory act does not take effect
15 unless Senate Bill No. 963 of the 98th Legislature is enacted into
16 law.