

SUBSTITUTE FOR
SENATE BILL NO. 986

A bill to amend 1980 PA 299, entitled
"Occupational code,"
by amending sections 2401 and 2411 (MCL 339.2401 and 339.2411),
section 2401 as amended by 1991 PA 166 and section 2411 as amended
by 2010 PA 151.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

- 1 Sec. 2401. As used in this article:
- 2 (a) "Residential builder" means ~~a~~**any of the following:**
- 3 **(i) A** person engaged in the construction of a residential
- 4 structure ~~or a combination residential and commercial structure~~
- 5 ~~who,~~**that**, for a fixed sum, price, fee, percentage, valuable
- 6 consideration, or other compensation, other than wages for personal
- 7 labor only, undertakes with another or offers to undertake, or



purports to have the capacity to undertake with another, for the erection, construction, replacement, repair, alteration, or ~~an~~ addition to, subtraction from, improvement, wrecking of, or demolition of, a residential structure. ~~or combination residential and commercial structure; a~~

(ii) A person ~~who~~**that** manufactures, assembles, constructs, deals in, or distributes a residential ~~or combination residential and commercial structure which~~**that** is prefabricated, preassembled, precut, packaged, or shell ~~housing; or a~~**housing**.

(iii) A person ~~who~~**that** erects a residential structure ~~or combination residential and commercial structure~~ except for the person's own use and occupancy on the person's property.

(b) "Residential maintenance and alteration contractor" means a person ~~who~~**that**, for a fixed sum, price, fee, percentage, valuable consideration, or other compensation, other than wages for personal labor only, ~~undertakes~~**does any of the following:**

(i) **Undertakes** with another for the repair, alteration, or ~~an~~ addition to, subtraction from, improvement of, wrecking of, or demolition of a residential structure, ~~or combination residential and commercial structure,~~ or building of a garage, or laying of concrete on residential property. ~~, or who engages~~

(ii) **Engages** in the purchase, substantial rehabilitation or improvement, and resale of a residential ~~structure, engaging~~**structure or property and engages** in that activity on the same structure more than twice in 1 calendar year, except in the following instances:

(A) ~~(i)~~ If the work is for the person's own use and occupancy.

(B) ~~(ii)~~ If the rehabilitation or improvement work ~~of~~**on the** residential ~~type~~ property or a structure is contracted for, with,



1 or hired entirely to be done and performed for the owner by a
 2 person licensed under this article.

3 (C) ~~(iii)~~ If work is performed by a person employed by the owner
 4 to perform work for which the person is licensed by the state.

5 (c) "Residential structure" means ~~a premises used or intended~~
 6 ~~to be used for a residence purpose~~ **1 or both of the following:**

7 (i) **A detached 1- or 2-family dwelling and all related**
 8 **facilities appurtenant to that dwelling, used or intended to be**
 9 **used as an adjunct of residential occupancy.**

10 (ii) **A townhouse of not more than 3 stories above the grade**
 11 **plane in height with a separate means of egress and all related**
 12 **facilities appurtenant to the premises, that townhouse,** used or
 13 intended to be used ~~, as an adjunct of residential occupancy.~~

14 (d) "Salesperson" means an employee or agent, other than a
 15 qualifying officer, of a licensed residential builder or
 16 residential maintenance and alteration contractor, who for a
 17 salary, wage, fee, percentage, commission, or other consideration,
 18 sells or attempts to sell, negotiates or attempts to negotiate,
 19 solicits for or attempts to solicit for, obtains or attempts to
 20 obtain a contract or commitment for, or furnishes or attempts or
 21 agrees to furnish, the goods and services of a residential builder
 22 or residential maintenance and alteration contractor, except ~~a~~
 23 ~~person~~ **an individual** working for a licensed residential builder or
 24 residential maintenance and alteration contractor who makes sales
 25 ~~which that~~ are occasional and incidental to the ~~person's~~
 26 **individual's** principal employment.

27 (e) "Wages" means money paid or to be paid on an hourly or
 28 daily basis by an owner, lessor, or occupant of a residential
 29 structure ~~or combination residential and commercial structure as~~



consideration for the performance of personal labor on the structure by ~~a person~~ **an individual** who does not perform or promise to perform the labor for any other fixed sum, price, fee, percentage, valuable consideration, or other compensation and who does not furnish or agree to furnish the material or supplies required to be used in the performance of the labor or an act ~~defined~~ **described** in subdivision (a) or (b).

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,



1 obligation, or purposes.

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

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

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

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

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

23 (h) Failure to deliver to the purchaser the entire agreement
24 of the parties including any finance or other charge arising out of
25 or incidental to the agreement if the agreement involves repair,
26 alteration, or addition to, subtraction from, improvement of,
27 wrecking of, or demolition of a residential structure, ~~or~~
28 ~~combination of residential and commercial structure,~~ building of a
29 garage, laying of concrete on residential property, or manufacture,



1 assembly, construction, sale, or distribution of a residential ~~or~~
2 ~~combination residential and commercial~~ structure that is
3 prefabricated, preassembled, precut, packaged, or shell housing.

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

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

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

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

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



1 125.1531.

2 (3) The department shall conduct a review upon notice that the
3 licensee has violated the asbestos abatement contractors licensing
4 act, 1986 PA 135, MCL 338.3101 to 338.3319. The department may
5 suspend or revoke that person's license for a knowing violation of
6 the asbestos abatement contractors licensing act, 1986 PA 135, MCL
7 338.3101 to 338.3319.

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

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

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

23 (c) Upon receipt of a building inspection report issued to the
24 department by a state or local building enforcement official
25 authorized to do so under the Stille-DeRossett-Hale single state
26 construction code act, 1972 PA 230, MCL 125.1501 to 125.1531, which
27 report verifies or confirms the substance of the complaint, the
28 department shall send by certified mail a copy of the verified
29 complaint to the licensee. If the department does not send a copy



1 of the verified complaint within 30 days after receipt of the
2 building inspection report, the department shall not assess a fine
3 against the licensee under article 6, but the department may pursue
4 restitution, license suspension, or other remedies provided under
5 this act.

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

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

26 (f) The complainant shall demonstrate that notice has been
27 provided to the licensee describing reasonable times and dates that
28 the residential structure was accessible for any needed repairs and
29 proof acceptable to the department that the repairs were not made



1 within 60 days after the sending of the notice. This subdivision
2 does not apply if the department determines a necessity to
3 safeguard the structure or to protect the occupant's health and
4 safety and, in such case, the department may utilize any remedy
5 available under section 504(3).

6 (g) If the owner and licensee have agreed contractually on
7 mutually acceptable performance guidelines relating to workmanship,
8 the department shall consider those guidelines in its evaluation of
9 a complaint. The guidelines shall be consistent with the Stille-
10 DeRossett-Hale single state construction code act, 1972 PA 230, MCL
11 125.1501 to 125.1531.

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

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

20 Enacting section 1. It is the intent of the legislature that
21 section 2401 of the occupational code, 1980 PA 299, MCL 339.2401,
22 as amended in this amendatory act, applies retroactively for a
23 period of 6 years immediately preceding the effective date of this
24 amendatory act.

