

# HOUSE BILL No. 5124

October 2, 2001, Introduced by Reps. Switalski, Richardville, O'Neil, Sheltroun, Rison, Woodward, Gielegem, Minore, Rivet, McConico, Callahan, Rich Brown, Kowall, Faunce and Thomas and referred to the Committee on Regulatory Reform.

A bill to amend 1980 PA 299, entitled "Occupational code," by amending sections 2401, 2402, 2404, 2407, 2411, and 2412 (MCL 339.2401, 339.2402, 339.2404, 339.2407, 339.2411, and 339.2412), section 2401 as amended by 1991 PA 166, sections 2404 and 2407 as amended by 1988 PA 463, and sections 2411 and 2412 as amended by 2001 PA 113.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

- 1       Sec. 2401. As used in this article:
- 2       (A) "CARPENTER CONTRACTOR" MEANS A PERSON ENGAGED IN CARPEN-
- 3 TRY FOR A FIXED SUM, PRICE, FEE, PERCENTAGE, OR OTHER VALUABLE
- 4 CONSIDERATION, OTHER THAN WAGES FOR PERSONAL LABOR ONLY.
- 5       (B) "CARPENTRY" MEANS THE ERECTING, INSTALLING, ALTERING,
- 6 REPAIRING, SERVICING, OR MAINTAINING OF WOODEN STRUCTURES OR
- 7 THEIR STRUCTURAL PARTS AND INCLUDES, BUT IS NOT LIMITED TO, ALL

1 FRAMING, DECKS, WALLS, CEILINGS, ROOFS, AND ANY COMPONENTS THAT  
2 GO TO MAKE THE FRAMING OF A STRUCTURE COMPLETE IN WOOD CONSTRUC-  
3 TION, INCLUDING THE PREFABRICATION OF ANY WOOD STRUCTURE OR  
4 COMPONENT.

5 (C) ~~(a)~~ "Residential builder" means a person engaged in  
6 the construction of a residential structure or a combination res-  
7 idential and commercial structure who, for a fixed sum, price,  
8 fee, percentage, valuable consideration, or other compensation,  
9 other than wages for personal labor only, undertakes with another  
10 or offers to undertake or purports to have the capacity to under-  
11 take with another for the erection, construction, replacement,  
12 repair, alteration, or an addition to, subtraction from, improve-  
13 ment, wrecking of, or demolition of, a residential structure or  
14 combination residential and commercial structure; a person who  
15 manufactures, assembles, constructs, deals in, or distributes a  
16 residential or combination residential and commercial structure  
17 which is prefabricated, preassembled, precut, packaged, or shell  
18 housing; or a person who erects a residential structure or combi-  
19 nation residential and commercial structure except for the  
20 person's own use and occupancy on the person's property.

21 (D) ~~(b)~~ "Residential maintenance and alteration  
22 contractor" means a person who, for a fixed sum, price, fee, per-  
23 centage, valuable consideration, or other compensation, other  
24 than wages for personal labor only, undertakes with another for  
25 the repair, alteration, or an addition to, subtraction from,  
26 improvement of, wrecking of, or demolition of a residential  
27 structure or combination residential and commercial structure, or

1 building of a garage, or laying of concrete on residential  
2 property, or who engages in the purchase, substantial rehabilita-  
3 tion or improvement, and resale of a residential structure,  
4 engaging in that activity on the same structure more than twice  
5 in 1 calendar year, except in the following instances:

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

7 (ii) If the rehabilitation or improvement work of residen-  
8 tial type property or a structure is contracted for, with, or  
9 hired entirely to be done and performed for the owner by a person  
10 licensed under this article.

11 (iii) If work is performed by a person employed by the owner  
12 to perform work for which the person is licensed by the state.

13 (E) ~~(c)~~ "Residential structure" means a premises used or  
14 intended to be used for a residence purpose and related facili-  
15 ties appurtenant to the premises, used or intended to be used, as  
16 an adjunct of residential occupancy.

17 (F) ~~(d)~~ "Salesperson" means an employee or agent, other  
18 than a qualifying officer, of a licensed residential builder,  
19 CARPENTER CONTRACTOR, or residential maintenance and alteration  
20 contractor, who for a salary, wage, fee, percentage, commission,  
21 or other consideration, sells or attempts to sell, negotiates or  
22 attempts to negotiate, solicits for or attempts to solicit for,  
23 obtains or attempts to obtain a contract or commitment for, or  
24 furnishes or attempts or agrees to furnish, the goods and serv-  
25 ices of a residential builder, CARPENTER CONTRACTOR, or residen-  
26 tial maintenance and alteration contractor, except a person  
27 working for a licensed residential builder, CARPENTER CONTRACTOR,

1 or residential maintenance and alteration contractor who makes  
2 sales which are occasional and incidental to the person's princi-  
3 pal employment.

4 (G) ~~(e)~~ "Wages" means money paid or to be paid on an  
5 hourly or daily basis by an owner, lessor, or occupant of a resi-  
6 dential structure or combination residential and commercial  
7 structure as consideration for the performance of personal labor  
8 on the structure by a person who does not perform or promise to  
9 perform the labor for any other fixed sum, price, fee, percen-  
10 tage, valuable consideration, or other compensation and who does  
11 not furnish or agree to furnish the material or supplies required  
12 to be used in the performance of the labor or an act defined in  
13 subdivision (a), ~~or~~ (b), (C), OR (D).

14 Sec. 2402. A residential builders', CARPENTER CONTRACTORS',  
15 and maintenance and alteration contractors' board is created.  
16 ~~Four~~ TWO members shall be licensed residential builders, 2 MEM-  
17 BERS SHALL BE LICENSED CARPENTER CONTRACTORS, and 2 members shall  
18 be licensed maintenance and alteration contractors.

19 Sec. 2404. (1) The department may require an applicant,  
20 licensee, or each partner, trustee, director, officer, member, or  
21 shareholder to submit evidence of good moral character and finan-  
22 cial stability. Before the issuance of a license, an applicant  
23 shall submit any amount required to be paid under the construc-  
24 tion lien act, ~~Act No. 497 of the Public Acts of 1980, being~~  
25 ~~sections 570.1101 to 570.1305 of the Michigan Compiled Laws~~ 1980  
26 PA 497, MCL 570.1101 TO 570.1305.

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

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

25           (4) BEGINNING THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT  
26 ADDED THIS SUBSECTION AND FOR A PERIOD OF 12 MONTHS AFTERWARDS,  
27 THE DEPARTMENT SHALL ISSUE A CARPENTER CONTRACTOR LICENSE TO A

1 PERSON WHO APPLIES TO THE DEPARTMENT, PAYS THE APPLICABLE LICENSE  
2 AND APPLICATION FEES, AND DEMONSTRATES IN A MANNER ACCEPTABLE TO  
3 THE DEPARTMENT THAT HE OR SHE HAS BEEN ENGAGED AS A CARPENTER  
4 CONTRACTOR FOR AT LEAST 12 OF THE PRECEDING 24 MONTHS.

5 (5) NOT LATER THAN 180 DAYS AFTER THE EFFECTIVE DATE OF THE  
6 AMENDATORY ACT THAT ADDED THIS SUBSECTION, THE DIRECTOR SHALL  
7 PROMULGATE RULES ESTABLISHING MASTER, JOURNEY, AND APPRENTICE  
8 CLASSES OF CARPENTERS. THE DIRECTOR MAY ADOPT BY REFERENCE  
9 EXISTING INDUSTRY STANDARDS DEFINING AND SETTING FORTH SKILL  
10 LEVELS REGARDING THE CLASSES WITH THE ADVICE OF THE BOARD.

11 (6) ~~(4)~~ A residential builder, CARPENTER CONTRACTOR, or  
12 residential maintenance and alteration contractor shall maintain  
13 a place of business in this state. If a residential builder,  
14 CARPENTER CONTRACTOR, or residential maintenance and alteration  
15 contractor maintains more than 1 place of business within this  
16 state, a branch office license shall be issued to the builder or  
17 contractor for each place of business so maintained.

18 Sec. 2407. (1) A salesperson shall be licensed in the  
19 employ of only 1 residential builder, CARPENTER CONTRACTOR, or  
20 RESIDENTIAL maintenance and alteration contractor. If a sales-  
21 person desires to change employment from 1 residential builder,  
22 CARPENTER CONTRACTOR, or RESIDENTIAL maintenance and alteration  
23 contractor to another, the license shall be forwarded to the  
24 department and application made for a transfer and the issuance  
25 of a new license under the salesperson's new employer.

26 (2) An application for a salesperson's license shall be  
27 submitted by the employing residential builder, CARPENTER

1 CONTRACTOR, or residential maintenance and alteration  
2 contractor.

3       Sec. 2411. (1) A complaint filed under this section or  
4 article 5, or both, shall be made within 18 months after comple-  
5 tion, occupancy, or purchase, whichever occurs later, of a resi-  
6 dential structure or a combination of residential and commercial  
7 structure.

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

11       (a) Abandonment without legal excuse of a contract, con-  
12 struction project, or operation engaged in or undertaken by the  
13 licensee.

14       (b) Diversion of funds or property received for prosecution  
15 or completion of a specific construction project or operation, or  
16 for a specified purpose in the prosecution or completion of a  
17 construction project or operation, and the funds or property  
18 application or use for any other construction project or opera-  
19 tion, obligation, or purposes.

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

22       (d) A willful departure from or disregard of plans or speci-  
23 fications in a material respect and prejudicial to another, with-  
24 out consent of the owner or an authorized representative and  
25 without the consent of the person entitled to have the particular  
26 construction project or operation completed in accordance with  
27 the plans and specifications.

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

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

7 (g) If a licensed residential builder, CARPENTER CONTRACTOR,  
8 or licensed residential maintenance and alteration contractor,  
9 failure to notify the department within 10 days of a change in  
10 the control or direction of the business of the licensee result-  
11 ing from a change in the licensee's partners, directors, offi-  
12 cers, or trustees, or a change in the control or direction of the  
13 business of the licensee resulting from any other occurrence or  
14 event.

15 (h) Failure to deliver to the purchaser the entire agreement  
16 of the parties including finance and any other charge arising out  
17 of or incidental to the agreement when the agreement involves  
18 repair, alteration, or addition to, subtraction from, improvement  
19 of, wrecking of, or demolition of a residential structure or com-  
20 bination of residential and commercial structure, or building of  
21 a garage, or laying of concrete on residential property, or manu-  
22 facture, assembly, construction, sale, or distribution of a resi-  
23 dential or combination residential and commercial structure which  
24 is prefabricated, preassembled, precut, packaged, or shell  
25 housing.

26 (i) If a salesperson, failure to pay over immediately upon  
27 receipt money received by the salesperson, in connection with a

1 transaction governed by this article to the residential builder,  
2 CARPENTER CONTRACTOR, or residential maintenance and alteration  
3 contractor under whom the salesperson is licensed.

4 (j) Aiding or abetting an unlicensed person to evade this  
5 article, or knowingly combining or conspiring with, or acting as  
6 agent, partner, or associate for an unlicensed person, or allow-  
7 ing one's license to be used by an unlicensed person, or acting  
8 as or being an ostensible licensed residential builder, OR  
9 LICENSED CARPENTER CONTRACTOR, or licensed residential mainte-  
10 nance and alteration contractor for an undisclosed person who  
11 does or shall control or direct, or who may have the right to  
12 control or direct, directly or indirectly, the operations of a  
13 licensee.

14 (k) Acceptance of a commission, bonus, or other valuable  
15 consideration by a salesperson for the sale of goods or the per-  
16 formance of service specified in the article from a person other  
17 than the residential builder, CARPENTER CONTRACTOR, or residen-  
18 tial maintenance and alteration contractor under whom the person  
19 is licensed.

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

24 (m) Poor workmanship or workmanship not meeting the stan-  
25 dards of the custom or trade verified by a building code enforce-  
26 ment official.

1 (3) The department shall suspend or revoke the license of a  
2 person licensed under this article whose failure to pay a lien  
3 claimant results in a payment being made from the homeowner con-  
4 struction lien recovery fund pursuant to the construction lien  
5 act, 1980 PA 497, MCL 570.1101 to 570.1305, regardless of whether  
6 the person was performing services as a licensee under this arti-  
7 cle; under the electrical administrative act, 1956 PA 217,  
8 MCL 338.881 to 338.892; or under 1929 PA 266, MCL 338.901 to  
9 338.917. The department shall not renew a license or issue a new  
10 license until the licensee has repaid in full to the fund the  
11 amount paid out plus the costs of litigation and interest at the  
12 rate set by section 6013 of the revised judicature act of 1961,  
13 1961 PA 236, MCL 600.6013.

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

20 (5) Notwithstanding article 5, the following apply to admin-  
21 istrative proceedings regarding workmanship under subsection  
22 (2)(m):

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

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

8 (c) Upon receipt of a building inspection report issued to  
9 the department by a state or local building enforcement official  
10 authorized to do so under the Stille-DeRossett-Hale single state  
11 construction code act, 1972 PA 230, MCL 125.1501 to 125.1531,  
12 which report verifies or confirms the substance of the complaint,  
13 the department shall send by certified mail a copy of the veri-  
14 fied complaint to both the complainant and the licensee. Failure  
15 of the department to send a copy of the verified complaint within  
16 30 days of receipt of the building inspection report prevents the  
17 department from assessing a fine against the licensee under  
18 article 6 but does not prevent the department from pursuing res-  
19 titution, license suspension, or other remedies provided under  
20 this act.

21 (d) A licensee may contractually provide for an alternative  
22 dispute resolution procedure to resolve complaints filed with the  
23 department. The procedure shall be conducted by a neutral third  
24 party for determining the rights and responsibilities of the par-  
25 ties and shall be initiated by the licensee, who shall provide  
26 notice of the initiation of the procedure to the complainant by  
27 certified mail not less than 30 days before the commencement of

1 that procedure. The procedure shall be conducted at a location  
2 mutually agreed to by the parties.

3 (e) The department shall not initiate a proceeding against a  
4 licensee under this subsection in the case of a licensee who con-  
5 tractually provides for an alternative dispute resolution proce-  
6 dure that has not been utilized and completed unless it is deter-  
7 mined that the licensee has not complied with a decision or order  
8 issued as a result of that alternative dispute resolution proce-  
9 dure, that alternative dispute resolution procedure was not fully  
10 completed within 90 days after the filing of the complaint with  
11 the department, or an alternative dispute resolution procedure  
12 meeting the requirements of subdivision ~~(D)~~ (d) is not avail-  
13 able to the complainant.

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

23 (g) In the case where the owner and licensee have agreed  
24 contractually on mutually acceptable performance guidelines  
25 relating to workmanship, the department shall consider those  
26 guidelines in its evaluation of a complaint. The guidelines

1 shall be consistent with the Stille-DeRossett-Hale single state  
2 construction code act, 1972 PA 230, MCL 125.1501 to 125.1531.

3 (6) As used in this section, "verified complaint" means a  
4 complaint in which all or a portion of the allegations have been  
5 confirmed by the building inspection report.

6 Sec. 2412. (1) A person or qualifying officer for a corpo-  
7 ration or member of a residential builder, CARPENTER CONTRACTOR,  
8 or residential maintenance and alteration contractor shall not  
9 bring or maintain an action in a court of this state for the col-  
10 lection of compensation for the performance of an act or contract  
11 for which a license is required by this article without alleging  
12 and proving that the person was licensed under this article  
13 during the performance of the act or contract.

14 (2) Failure of the person bringing a complaint against a  
15 licensee to utilize a contractually provided alternative dispute  
16 resolution procedure shall be an affirmative defense to an action  
17 brought in a court of this state against a licensee under this  
18 article.

19 Enacting section 1. This amendatory act does not take  
20 effect unless Senate Bill No. \_\_\_\_\_ or House Bill No. 5121  
21 (request no. 04141'01) of the 91st Legislature is enacted into  
22 law.