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BILL



ANALYSIS

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Senate Bill 1273 (Substitute S-1 as passed by the Senate)

(as enrolled)

Sponsor: Senator Alan Sanborn

Committee: Economic Development, Small Business and Regulatory Reform

Date Completed: 11-17-06

RATIONALE

Article 24 of the Occupational Code regulates residential builders and alteration and maintenance contractors. As a rule, a person may not work as a home builder without a license, if the contract price for a project is \$600 or more. Although the Department of Labor and Economic Growth (DLEG) may impose administrative sanctions against licensed home builders who violate the Code, some people believe that additional protections are needed for consumers. Currently, DLEG's website contains a document, "How to Choose a Homebuilder or Remodeler", which includes advice on finding a builder, getting estimates, entering into written agreements, making payments, and resolving disputes. It has been suggested that home builders should be required to give their clients an actual pamphlet containing this information, as well as a written contract or work order.

CONTENT

The bill would amend Article 24 of the Occupational Code to do the following:

- Require a residential builder and a residential maintenance and alteration contractor performing services valued at more than \$600 to furnish a homeowner with a written contract or work order.**
- Require the Department of Labor and Economic Growth to make available a pamphlet entitled, "Home Repair and Remodeling".**
- Require a residential builder or residential maintenance and alteration contractor to give a homeowner a copy of the pamphlet**

and, if the work were valued at \$600 or more, to get a written acknowledgment.

- Prescribe a maximum civil fine of \$250 for failing to supply a homeowner with a contract or work order or a copy of the pamphlet.**

The bill would take effect 90 days after it was enacted.

Under the bill, a residential builder and a residential maintenance and alteration contractor performing services within the scope of their respective licenses involving alteration, repair, or remodeling of a residential structure, the value of which was more than \$600, including materials and labor, would have to furnish the owner or his or her agent with a written contract or written work order. The contract or work order would have to contain, at minimum, the total cost including materials and labor, any charge for a written estimate, and the business name and street address of the licensee. A licensee who did not have a business address would have to supply his or her residential address.

The Department would have to provide a pamphlet, or make one available on its website in a printable form. The pamphlet would have to list all regulated trades, the telephone numbers of DLEG and the Construction Lien Fund, and the website addresses of the Department and the Fund. The pamphlet, entitled "Home Repair and Remodeling", would have to be in at least 12-point type or font and contain substantially the information specified in the bill. Among other things, this information

would describe how to find reputable builders and remodelers and inform the homeowner that:

- The homeowner should make sure builders and remodelers are licensed.
- Contractors offering to do work that totals \$600 or more in labor and materials must be licensed by the State.
- The trades for which a maintenance and alteration licensee is qualified to practice are listed on the license.
- A license must be displayed at a builder's place of business, and the homeowner should ask to see a contractor's pocket card.
- The homeowner should get references from the contractors he or she is considering, and check their credit reputation.
- The homeowner should be sure the contractor has a permanent business location and telephone number.
- The homeowner should get estimates from several different contractors, and be wary of special prices or discounts.
- The homeowner should get a written agreement and change orders.
- Michigan law requires a written, signed agreement between builders/remodelers and customers and requires the homeowner to get a copy.
- The agreement should include detailed job specifications; a list of all costs; start and completion dates; the terms of payment; a right to cancel clause; and a statement that the contractor will obtain all required building permits and variances before the work is done.
- If everything in the agreement is satisfactory, the contractor must sign and date the contract and ensure that the homeowner signs as well.
- The homeowner should verify that the contractor carries liability insurance and has worker's compensation coverage.

The pamphlet also would have to provide guidance regarding paying the contractor, and describe options for resolving problems between the homeowner and contractor.

The Residential Builders' Maintenance and Alteration and Contractors' Board could change the content of the pamphlet through rules promulgated by the DLEG Director.

If the alteration, repair, or remodeling of a residential structure were of a value of \$600

or more, the licensee would have to provide a copy of the pamphlet to the owner before the execution of any contract and the owner would have to sign and date an acknowledgment form. If the alteration, repair, or remodeling were of a value of less than \$600, the licensee would have to give the owner a copy of the pamphlet but would not be required to provide an acknowledgment form.

The acknowledgment form would have to contain a statement that the homeowner had received a copy of the pamphlet. The licensee or his or her agent would have to sign and date the acknowledgment form, which would have to include the licensee's name and address. The form would have to be in duplicate and incorporated into the pamphlet. The licensee would have to retain the original acknowledgment form and the owner would have to retain the duplicate copy within the pamphlet.

A licensee's failure to supply an owner with a contract or work order or provide a pamphlet and, as applicable, a signed acknowledgment would be considered a violation of Article 24 and would be punishable only by an administrative fine of up to \$250. The fine would apply only if DLEG found the licensee to be in violation of the Code regarding an offense punishable under Section 602. The penalties of that section would not apply to a violation of the bill.

(Section 602 prescribes administrative penalties for a person who violates the Occupational Code or a rule or order promulgated or issued under it. The penalties include placement of a limitation on a license; denial, suspension, or revocation of a license; an administrative fine of up to \$10,000 payable to DLEG; censure; probation; and a requirement that restitution be made.)

Proposed MCL 339.2408

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

For many individuals, building or remodeling a home is among the largest investments

they ever will make. In addition, it is likely that the typical homeowner has little experience in these matters. While most home builders and remodelers undoubtedly are reputable, many are not. According to DLEG, of all the complaints filed against members of the 25 or so occupations it regulates, the majority involve home builders. Consumers can benefit greatly if they have information about how to find a reliable builder and what they should do when entering into a contract for home construction or remodeling. While this information already is available on DLEG's website, the bill would make home builders responsible for giving their clients an actual pamphlet, in addition to a written contract or work order. The information to be contained in the pamphlet is virtually the same as that on DLEG's website, and the Department would have flexibility to change the content of the pamphlet through rules.

In addition, DLEG could impose an administrative fine of up to \$250 on a home builder who failed to give a client a copy of the pamphlet, a written contract or work order, or, if applicable, an acknowledgment form. The fine could be imposed, however, only if the builder committed a separate violation that was subject to sanctions.

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

The bill would prescribe a \$250 maximum administrative fine that could be imposed on a licensee found in violation of the bill. The amount of revenue that would be generated depends on the number of fines assessed and paid.

Fiscal Analyst: Elizabeth Pratt
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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.