

STATE OF MICHIGAN
93RD LEGISLATURE
REGULAR SESSION OF 2006

Introduced by Senators Cassis, Basham, Barcia, Thomas, Bishop, Leland, Cherry, Birkholz, Emerson and Toy

ENROLLED SENATE BILL No. 632

AN ACT to amend 1980 PA 299, entitled "An act to revise, consolidate, and classify the laws of this state regarding the regulation of certain occupations; to create a board for each of those occupations; to establish the powers and duties of certain departments and agencies and the boards of each occupation; to provide for the promulgation of rules; to provide for certain fees; to provide for penalties and civil fines; to establish rights, relationships, and remedies of certain persons under certain circumstances; to repeal certain parts of this act on a specific date; and to repeal certain acts and parts of acts," by amending sections 601, 602, 605, 2402, 2404, 2405, and 2411 (MCL 339.601, 339.602, 339.605, 339.2402, 339.2404, 339.2405, and 339.2411), sections 601 and 602 as amended by 2005 PA 278, section 2404 as amended by 1988 PA 463, and section 2411 as amended by 2001 PA 113, and by adding sections 2404b and 2411a.

The People of the State of Michigan enact:

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

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

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

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

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

(6) Notwithstanding subsections (4) and (5), a person not licensed under article 24 as a residential builder or a residential maintenance and alteration contractor who 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 1 year, or both.

(b) In the case of a second 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 a third or subsequent offense, 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) Any violation of this act shall include a requirement that restitution be made, based upon proofs submitted to and findings made by the trier of fact as provided by law.

(8) 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 entitled to actual costs and attorney fees.

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

(a) Interior design.

(b) Building design.

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

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

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

(10) As used in subsection (8), "affected person" means a person directly affected by the actions of a person suspected of violating subsection (1) or (2) and includes, but is not limited to, a licensee or registrant, a board established pursuant to this act, the department, a person who has utilized the services of the person engaging in or attempting to engage in an occupation regulated under this act or using a title designated by this act without being licensed or registered by the department, or a private association composed primarily of members of the occupation in which the person is engaging in or attempting to engage in or in which the person is using a title designated under this act without being registered or licensed by the department.

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

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

(13) The remedies under this section are independent and cumulative. The use of 1 remedy by a person shall not bar the use of other lawful remedies by that person or the use of a lawful remedy by another person.

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

(15) Upon entering a conviction under subsection (4) or (5), a court entering the conviction shall notify, by mail, facsimile transmission, or email, the bureau of commercial services at the department.

Sec. 602. A person, school, or institution that violates this act or a rule or order promulgated or issued under this act shall be assessed 1 or more of the following penalties:

(a) Placement of a limitation on a license or certificate of registration for an occupation regulated under articles 8 to 25.

(b) Suspension of a license or certificate of registration.

(c) Denial of a license, certificate of registration, or renewal of a license or certificate of registration.

(d) Revocation of a license or certificate of registration.

(e) In the case of a person licensed or registered under this act and except as otherwise provided for by this act, an administrative fine to be paid to the department, not to exceed \$10,000.00.

(f) Censure.

(g) Probation.

(h) A requirement that restitution be made, based upon proofs submitted to and findings made by the hearing examiner after a contested case.

Sec. 605. (1) The department may bring any appropriate action, including mediation or other alternative dispute resolution, in the name of the people of this state to carry out this act and to enforce this act.

(2) If the attorney general considers it necessary, the attorney general shall intervene in and prosecute all cases arising under this act.

(3) This section does not prohibit the department from bringing any civil, criminal, or administrative action for the enforcement of section 601.

(4) The department has standing to bring an administrative action or to directly bring an action in a court of competent jurisdiction regarding unlicensed practice of an occupation.

Sec. 2402. (1) A residential builders' and maintenance and alteration contractors' board is created. Of the 9-member board, 4 members shall be licensed residential builders, and 2 members shall be licensed maintenance and alteration contractors.

(2) Of the members representing the general public, at least 1 member shall be registered under the building officials and inspectors registration act, 1986 PA 54, MCL 338.2301 to 338.2313.

Sec. 2404. (1) The department may require an applicant, licensee, or each partner, trustee, director, officer, member, or shareholder to submit evidence of good moral character and financial stability. Before the issuance of a license, an applicant shall submit the following:

(a) Any amount required to be paid under the construction lien act, 1980 PA 497, MCL 570.1101 to 570.1305.

(b) A copy of an operator's license or state personal identification card, to be used by the department only for proof of identity of the applicant.

(c) In the case of license renewal, proof of successful completion of continuing education to the extent required.

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

(3) The department, upon application, may issue a residential maintenance and alteration contractor's license to an applicant who, upon examination, qualifies for a license, which shall authorize the licensee according to the applicant's qualifications, crafts, and trades to engage in the activities of a residential maintenance and alteration contractor. A license shall include the following crafts and trades: carpentry; concrete; swimming pool installation; waterproofing a basement; excavation; insulation work; masonry work; painting and decorating; roofing; siding and gutters; screen or storm sash installation; tile and marble work; and house wrecking. The license shall specify the particular craft or trade for which the licensee has qualified. This subsection shall not prohibit a specialty contractor from taking and executing a contract involving the use of 2 or more crafts or trades if the performance of the work in the craft or trade, other than in which the person is licensed, is incidental and supplemental to the performance of work in the craft for which the specialty contractor is licensed.

(4) A residential builder or residential maintenance and alteration contractor shall maintain a place of business in this state. If a residential builder or residential maintenance and alteration contractor maintains more than 1 place of business within this state, a branch office license shall be issued to the builder or contractor for each place of business so maintained.

(5) Beginning the license cycle after the effective date of the amendatory act that added this subsection, the department shall issue the license of a residential builder and residential maintenance and alteration contractor for a period of 3 years in duration.

Sec. 2404b. (1) Beginning the effective date of the amendatory act that added this section, applicants for initial licensure either as a residential builder or as a residential maintenance and alteration contractor shall successfully complete a prelicensure course of study as prescribed by this subsection. Licensees holding a residential builder or a residential maintenance and alteration contractor license on the effective date of the amendatory act that added this subsection that are renewing a license in the capacity of an individual or qualifying officer, or both, are exempt from the requirement of successfully completing prelicensure courses described in this subsection. The department shall require an applicant not exempted by this subsection to successfully complete 60 hours of approved prelicensure courses consisting of at least 6 hours of courses in each of the following areas of competency:

(a) Business management, estimating, and job costing.

(b) Design and building science.

(c) Contracts, liability, and risk management.

(d) Marketing and sales.

(e) Project management and scheduling.

(f) The current Michigan residential code and construction safety standards promulgated under the Michigan occupational safety and health act, 1974 PA 154, MCL 408.1001 to 408.1094.

(2) Beginning the calendar year after the effective date of the amendatory act that added this section, a person initially licensed under this article as a residential builder or a residential maintenance and alteration contractor shall successfully complete not less than 3 hours of continuing education per calendar year, during the first 6 calendar years of licensure, and 21 hours per 3-year time period since the issuance of his or her license. At least 1 hour of courses in codes, safety, and legal issues shall be successfully completed each calendar year. A licensee who has held a license for

more than 6 years or who has not been determined by the department in a final order to have violated this act or a rule adopted under this act shall successfully complete at least 3 hours of continuing education per license cycle to include 1 hour of codes, 1 hour of safety, and 1 hour of legal issues.

(3) In the case of an initial licensee on or after the effective date of the amendatory act that added this subsection who has not been determined by the department in a final order to have violated this act or a rule adopted under this act during his or her first 6 years of licensure, he or she shall successfully complete at least 3 hours of continuing education per license cycle to include 1 hour of codes, 1 hour of safety, and 1 hour of legal issues. In the case of a licensee who has been determined by the department in a final order to have violated this act or a rule adopted under this act and who has held a license for more than 6 years, he or she shall successfully complete, during the next complete license cycle, up to 18 hours of continuing education during that next license cycle as determined appropriate by the department, at least 3 hours of that continuing education to include 1 hour of codes, 1 hour of safety, and 1 hour of legal issues.

(4) The education courses described in section 3, pages 3-6 through 3-58 of the January 2005 edition of the publication "NAHB University of Housing, Blueprint for Success", published by the national association of home builders, are considered approved, are considered appropriate for fulfilling the precicensure and continuing education requirements of subsections (1), (2), and (3), and are incorporated by reference. The department may approve any courses it considers to be the equivalent of those courses incorporated by reference by this subsection. The department shall approve any updates to the courses described in this subsection or equivalent courses unless it determines that the courses do not meet the quality and standards of the courses incorporated by reference by this subsection. Any construction code update courses approved by the bureau of construction codes and fire safety and workplace safety courses approved or sponsored by the department are also considered appropriate for fulfilling the continuing education requirements of this subsection. The department may, by rule, amend, supplement, update, substitute, or determine equivalency regarding any courses described in this subsection.

(5) The precicensure and continuing education courses described in subsection (4) shall be taught and presented by instructors approved by the department. Except as otherwise provided by this section or rule of the department, instructors of precicensure and continuing education shall meet the standards of section 4, pages 4-5 through 4-9 of the January 2005 edition of the publication "NAHB University of Housing, Blueprint for Success", published by the national association of home builders, and incorporated by reference. The department may waive the requirement of membership in a local, state, or national trade association contained in the standards incorporated by reference in this subsection. By rule, the department may amend, supplement, update, substitute, or determine equivalency regarding the standards in this subsection and shall establish instructor qualifications for courses not incorporated by reference in subsection (4).

(6) The subject matter of the precicensure and continuing education courses may be offered by a high school, intermediate school district, community college, university, trade association, or other entity approved by the department as meeting the subject matter qualifications described in subsection (4) and the instructional qualifications described in subsection (5). The department shall accept hours or equivalent credits for any courses offered by a high school, intermediate school district, community college, university, trade association, or other entity offering the precicensure and continuing education courses that are approved by the department.

(7) The department shall promulgate rules to provide for the following:

(a) Prepresentation approval of continuing education courses offered by a high school, intermediate school district, community college, university, trade association, or other entity that meet or exceed the course content of the continuing education courses described in subsection (4).

(b) Postpresentation approval for courses offered at seminars and conventions by trade associations, research institutes, risk management entities, manufacturers, suppliers, governmental agencies, consulting agencies, or other entities. This subdivision does not prohibit applications for the prepresentation approval of courses described in this subdivision.

(c) Approval of distance learning.

(8) Each licensee may select approved courses in his or her subject matter area or specialty. Service as a lecturer or discussion leader in an approved course shall be counted toward the continuing education requirements of this section.

(9) A licensee as a residential builder or residential alteration and maintenance contractor may apply for inactive status by completing an application, made available by the department, in which he or she declares that he or she is no longer actively engaged in the practice authorized by his or her license and temporarily intends to suspend activity authorized by his or her license. Upon submission of a completed application, the department shall designate the licensee as inactive and note that status on records available to the public. A licensee designated as inactive is exempt from the continuing education requirements imposed under this section but must still pay the per-year license fee. An inactive licensee may activate his or her license by submitting an application to the department requesting activation of the license. Upon activation of a license, the licensee must complete at least 1 credit hour of continuing education for that calendar year.

Sec. 2405. (1) If a license is applied for by a corporation, partnership, association, limited liability company, or other entity, the applicant shall designate 1 of its officers, partners, members, or managing agent as a qualifying officer who, upon taking and passing the examination, and upon meeting all other requirements of this article, is entitled to a license to act for the corporation, partnership, association, limited liability company, or other entity. The qualifying officer shall also obtain and maintain a license under this article as an individual. The qualifying officer shall be responsible for exercising the supervision or control of the building or construction operations necessary to secure full compliance with this article and the rules promulgated under this article. A license shall not be issued to a corporation, partnership, association, limited liability company, or other entity unless each partner, trustee, director, officer, member, and a person exercising control is at least 18 years of age, and meets the requirements for a license under this article other than those relating to knowledge and experience. If an individual licensee is also a qualifying officer, the individual's name and license number shall be listed on any license issued to the individual as a qualifying officer. In the case of a license issued under this subsection, each officer, partner, member, or managing agent, whether or not he or she is the qualifying officer, shall provide a copy of his or her operator's license or state personal identification card to the department for use by the department only for identification purposes.

(2) The license of a corporation, partnership, association, limited liability company, or other entity shall be suspended when a license or license application of a qualifying officer, partner, trustee, director, officer, member, or a person exercising control of the corporation, partnership, association, limited liability company, or other entity is suspended, revoked, or denied. The suspension shall remain in force until the board determines that the disability created by the suspension, revocation, or denial has been removed.

(3) A suspension, revocation, or denial of a license of an individual shall suspend, revoke, or deny any other license held or applied for by that individual issued under this article. A suspension, revocation, or denial of a license by the department shall suspend, revoke, or deny any other license held or applied for under this article by the qualifying officer of a corporation, partnership, association, limited liability company, or other entity whose license is suspended, revoked, or denied.

(4) If the qualifying officer of a licensee ceases to be its qualifying officer, the license is suspended. However, upon request, the department may permit the license to remain in force for a reasonable time to permit the qualification of a new qualifying officer.

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 shall be 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, obligation, or purposes.

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

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

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

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

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

(h) Failure to deliver to the purchaser the entire agreement of the parties including finance and any other charge arising out of or incidental to the agreement when the agreement involves repair, alteration, or addition to, subtraction

from, improvement of, wrecking of, or demolition of a residential structure or combination of residential and commercial structure, or building of a garage, or laying of concrete on residential property, or manufacture, assembly, construction, sale, or distribution of a residential or combination residential and commercial structure which is prefabricated, preassembled, precut, packaged, or shell housing.

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

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

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

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

(m) Workmanship not meeting the standards of the Michigan residential code as promulgated under the Stille-DeRossett-Hale single state construction code act, 1972 PA 230, MCL 125.1501 to 125.1531.

(3) The department shall suspend or revoke the license of a person licensed under this article whose failure to pay a lien claimant results in a payment being made from the homeowner construction lien recovery fund pursuant to the construction lien act, 1980 PA 497, MCL 570.1101 to 570.1305, regardless of whether the person was performing services as a licensee under this article; under the electrical administrative act, 1956 PA 217, MCL 338.881 to 338.892; or under the state plumbing act, 2002 PA 733, MCL 338.3511 to 338.3569. The department shall not renew a license or issue a new license until the licensee has repaid in full to the fund the amount paid out plus the costs of litigation and interest at the rate set by section 6013 of the revised judicature act of 1961, 1961 PA 236, MCL 600.6013.

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

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

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

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

(c) Upon receipt of a building inspection report issued to the department by a state or local building enforcement official authorized to do so under the Stille-DeRossett-Hale single state construction code act, 1972 PA 230, MCL 125.1501 to 125.1531, which report verifies or confirms the substance of the complaint, the department shall send by certified mail a copy of the verified complaint to the licensee. Failure of the department to send a copy of the verified complaint within 30 days of receipt of the building inspection report prevents the department from assessing a fine against the licensee under article 6 but does not prevent the department from pursuing restitution, license suspension, or other remedies provided under this act.

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

(e) The department shall not initiate a proceeding against a licensee under this subsection in the case of a licensee who contractually provides for an alternative dispute resolution procedure that has not been utilized and completed unless it is determined that the licensee has not complied with a decision or order issued as a result of that alternative dispute resolution procedure, that alternative dispute resolution procedure was not fully completed within 90 days after the filing of the complaint with the department, or an alternative dispute resolution procedure meeting the requirements of subdivision (D) is not available to the complainant.

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

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

(6) In any case where the licensee or respondent fails to appear, participate, or defend any action, the board shall issue an order granting by default the relief requested, based upon proofs submitted to and findings made, by the hearing examiner after a contested case.

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

Sec. 2411a. (1) The department shall post on its website any final order of the board and the date it was issued. The posting shall occur within 30 days after the final order is issued.

(2) The department shall annually post on its website the number of final orders of the board.

Enacting section 1. This amendatory act does not take effect unless all of the following bills of the 93rd Legislature are enacted into law:

- (a) Senate Bill No. 631.
- (b) Senate Bill No. 826.
- (c) Senate Bill No. 827.

This act is ordered to take immediate effect.

Carol Morey Viventi

Secretary of the Senate

Ray E. Randall

Clerk of the House of Representatives

Approved _____

Governor