

SENATE BILL No. 632

June 22, 2005, Introduced by Senators CASSIS, BASHAM, BARCIA, THOMAS, BISHOP, LELAND, CHERRY, BIRKHOLZ, EMERSON and TOY and referred to the Committee on Economic Development, Small Business and Regulatory Reform.

A bill to amend 1980 PA 299, entitled
"Occupational code,"
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), section 601 as amended by 1998 PA 250, section 602 as amended by 1981 PA 83, section 2404 as amended by 1988 PA 463, and section 2411 as amended by 2001 PA 113, and by adding sections 2404a and 2411a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

1 occupation.

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

6 (3) A person, school, or institution which violates subsection
7 (1) or (2) is guilty of a misdemeanor, punishable by a fine of not
8 more than \$500.00, or imprisonment for not more than 90 days, or
9 both. ~~—(4)—~~ A person, school, or institution which violates
10 subsection (1) or (2) a second or any subsequent time is guilty of
11 a misdemeanor, punishable, except as provided in section 735, by a
12 fine of not more than \$1,000.00, or imprisonment for not more than
13 1 year, or both.

14 (4) **NOTWITHSTANDING SUBSECTION (3), A PERSON NOT LICENSED**
15 **UNDER ARTICLE 24 AS A RESIDENTIAL BUILDER OR A RESIDENTIAL**
16 **MAINTENANCE AND ALTERATION CONTRACTOR WHO VIOLATES SUBSECTION (1)**
17 **OR (2) IS GUILTY OF A MISDEMEANOR PUNISHABLE BY IMPRISONMENT FOR**
18 **NOT LESS THAN 93 DAYS OR MORE THAN 1 YEAR OR A FINE OF NOT LESS**
19 **THAN \$5,000.00 OR MORE THAN \$25,000.00, OR BOTH.**

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

25 (6) ~~Nothing in this~~ **THIS** act ~~shall~~ **DOES NOT** apply to a
26 person engaging in or practicing the following:

27 (a) Interior design.

1 (b) Building design.

2 (c) Any activity for which the person is licensed under ~~1929~~
3 ~~PA 266, MCL 338.901 to 338.917~~ **THE STATE PLUMBING ACT, 2002 PA**
4 **733, MCL 338.3511 TO 338.3569.**

5 (d) Any activity for which the person is licensed under the
6 Forbes mechanical contractors act, 1984 PA 192, MCL 338.971 to
7 338.988.

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

10 (7) As used in subsection (5), "affected person" means a
11 person directly affected by the actions of a person suspected of
12 violating subsection (1) or (2) and includes, but is not limited
13 to, a board established pursuant to this act, a person who has
14 utilized the services of the person engaging in or attempting to
15 engage in an occupation regulated under this act or using a title
16 designated by this act without being licensed or registered by the
17 department, or a private association composed primarily of members
18 of the occupation in which the person is engaging in or attempting
19 to engage in or in which the person is using a title designated
20 under this act without being registered or licensed by the
21 department.

22 (8) An investigation may be conducted under article 6 to
23 enforce this section. A person who violates this section shall be
24 subject to the strictures prescribed in this section and section
25 506.

26 (9) The remedies under this section are independent and
27 cumulative. The use of 1 remedy by a person shall not bar the use

1 of other lawful remedies by that person or the use of a lawful
2 remedy by another person.

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

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

12 (a) Placement of a limitation on a license or ~~certificate of~~
13 registration for an occupation regulated under articles 8 to ~~25~~
14 26.

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

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

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

19 (e) ~~A~~ **IN THE CASE OF A PERSON LICENSED OR REGISTERED UNDER**
20 **THIS ACT, A** civil fine to be paid to the department, not to exceed
21 \$10,000.00. **IN THE CASE OF A PERSON NOT LICENSED OR REGISTERED**
22 **UNDER THIS ACT THAT VIOLATES SECTION 601(1) OR (2), THE PERSON**
23 **SHALL BE ASSESSED A CIVIL FINE TO BE PAID TO THE PERSON BRINGING**
24 **THE ACTION OF NOT LESS THAN \$5,000.00 OR NOT MORE THAN \$25,000.00.**

25 (f) Censure.

26 (g) Probation.

27 (h) A requirement that restitution be made.

1 Sec. 605. (1) The department may bring any appropriate action
2 in the name of the people of this state to carry out this act and
3 to enforce this act.

4 (2) **THIS SECTION DOES NOT PROHIBIT THE DEPARTMENT FROM**
5 **BRINGING ANY CIVIL, CRIMINAL, OR ADMINISTRATIVE ACTION FOR THE**
6 **ENFORCEMENT OF SECTION 601.**

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

10 Sec. 2402. (1) A residential builders' and maintenance and
11 alteration contractors' board is created. ~~Four~~ **OF THE 9-MEMBER**
12 **BOARD, 4** members shall be licensed residential builders, and 2
13 members shall be licensed maintenance and alteration contractors.

14 (2) **OF THE MEMBERS REPRESENTING THE GENERAL PUBLIC, AT LEAST 1**
15 **MEMBER SHALL BE REGISTERED UNDER THE BUILDING OFFICIALS AND**
16 **INSPECTORS REGISTRATION ACT, 1986 PA 54, MCL 338.2301 TO 338.2313.**

17 Sec. 2404. (1) The department may require an applicant,
18 licensee, or each partner, trustee, director, officer, member, or
19 shareholder to submit evidence of good moral character and
20 financial stability. Before the issuance of a license, an applicant
21 shall submit ~~any~~ **THE FOLLOWING:**

22 (A) **ANY** amount required to be paid under the construction lien
23 act, ~~Act No. 497 of the Public Acts of 1980, being sections~~
24 ~~570.1101 to 570.1305 of the Michigan Compiled Laws 1980 PA 497,~~
25 **MCL 570.1101 TO 570.1305.**

26 (B) **A COPY OF AN OPERATOR'S LICENSE OR STATE PERSONAL**
27 **IDENTIFICATION CARD, TO BE USED BY THE DEPARTMENT ONLY FOR PROOF OF**

1 **IDENTITY OF THE APPLICANT.**

2 **(C) IN THE CASE OF LICENSE RENEWAL, PROOF OF SUCCESSFUL**
3 **COMPLETION OF CONTINUING EDUCATION.**

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

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

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

7 (5) BEGINNING THE LICENSE CYCLE AFTER THE EFFECTIVE DATE OF
8 THE AMENDATORY ACT THAT ADDED THIS SUBSECTION, THE DEPARTMENT SHALL
9 ISSUE THE LICENSE OF A RESIDENTIAL BUILDER AND RESIDENTIAL
10 MAINTENANCE AND ALTERATION CONTRACTOR FOR A PERIOD OF 3 YEARS IN
11 DURATION.

12 SEC. 2404A. (1) BEGINNING AFTER THE EFFECTIVE DATE OF THE
13 AMENDATORY ACT THAT ADDED THIS SECTION, APPLICANTS FOR INITIAL
14 LICENSURE EITHER AS A RESIDENTIAL BUILDER OR AS A RESIDENTIAL
15 MAINTENANCE AND ALTERATION CONTRACTOR SHALL SUCCESSFULLY COMPLETE A
16 PRELICENSURE COURSE OF STUDY AS PRESCRIBED BY THIS SUBSECTION.
17 LICENSEES HOLDING A RESIDENTIAL BUILDER OR A RESIDENTIAL
18 MAINTENANCE AND ALTERATION CONTRACTOR LICENSE ON THE EFFECTIVE DATE
19 OF THE AMENDATORY ACT THAT ADDED THIS SUBSECTION THAT ARE RENEWING
20 A LICENSE IN THE CAPACITY OF AN INDIVIDUAL OR QUALIFYING OFFICER,
21 OR BOTH, ARE EXEMPT FROM THE REQUIREMENT OF SUCCESSFULLY COMPLETING
22 PRELICENSURE COURSES DESCRIBED IN THIS SUBSECTION. THE DEPARTMENT
23 SHALL REQUIRE AN APPLICANT NOT EXEMPTED BY THIS SUBSECTION TO
24 SUCCESSFULLY COMPLETE 60 HOURS OF APPROVED PRELICENSURE COURSES
25 CONSISTING OF AT LEAST 6 HOURS OF COURSES IN EACH OF THE FOLLOWING
26 AREAS OF COMPETENCY:

27 (A) BUSINESS MANAGEMENT, ESTIMATING, AND JOB COSTING.

1 (B) DESIGN AND BUILDING SCIENCE.

2 (C) CONTRACTS, LIABILITY, AND RISK MANAGEMENT.

3 (D) MARKETING AND SALES.

4 (E) PROJECT MANAGEMENT AND SCHEDULING.

5 (F) THE CURRENT MICHIGAN RESIDENTIAL CODE AND CONSTRUCTION
6 SAFETY STANDARDS PROMULGATED UNDER THE MICHIGAN OCCUPATIONAL SAFETY
7 AND HEALTH ACT, 1974 PA 154, MCL 408.1001 TO 408.1094.

8 (2) BEGINNING THE CALENDAR YEAR AFTER THE EFFECTIVE DATE OF
9 THE AMENDATORY ACT THAT ADDED THIS SECTION, A PERSON LICENSED UNDER
10 THIS ARTICLE AS A RESIDENTIAL BUILDER OR A RESIDENTIAL MAINTENANCE
11 AND ALTERATION CONTRACTOR SHALL SUCCESSFULLY COMPLETE NOT LESS THAN
12 3 HOURS OF CONTINUING EDUCATION PER CALENDAR YEAR AND 21 HOURS PER
13 LICENSE CYCLE SINCE THE ISSUANCE OF HIS OR HER LICENSE OR SINCE THE
14 PRECEDING LICENSE RENEWAL. THE 21 HOURS SHALL BE PRORATED FOR
15 LICENSEES WHO OBTAIN LICENSURE IN THE SECOND OR THIRD YEAR OF THE
16 LICENSE CYCLE. AT LEAST 1 HOUR OF COURSES IN CODES, SAFETY, AND
17 LEGAL ISSUES SHALL BE SUCCESSFULLY COMPLETED EACH CALENDAR YEAR.

18 (3) THE EDUCATION COURSES DESCRIBED IN SECTION 3, PAGES 3-6
19 THROUGH 3-58 OF THE JANUARY 2005 EDITION OF THE PUBLICATION "NAHB
20 UNIVERSITY OF HOUSING, BLUEPRINT FOR SUCCESS", PUBLISHED BY THE
21 NATIONAL ASSOCIATION OF HOME BUILDERS, ARE CONSIDERED APPROVED, ARE
22 CONSIDERED APPROPRIATE FOR FULFILLING THE PRELICENSURE AND
23 CONTINUING EDUCATION REQUIREMENTS OF SUBSECTIONS (1) AND (2), AND
24 ARE INCORPORATED BY REFERENCE. THE DEPARTMENT MAY APPROVE ANY
25 COURSES IT CONSIDERS TO BE THE EQUIVALENT OF THOSE COURSES
26 INCORPORATED BY REFERENCE BY THIS SUBSECTION. THE DEPARTMENT SHALL
27 APPROVE ANY UPDATES TO THE COURSES DESCRIBED IN THIS SUBSECTION OR

1 EQUIVALENT COURSES UNLESS IT DETERMINES THAT THE COURSES DO NOT
2 MEET THE QUALITY AND STANDARDS OF THE COURSES INCORPORATED BY
3 REFERENCE BY THIS SUBSECTION. ANY CONSTRUCTION CODE UPDATE COURSES
4 APPROVED BY THE BUREAU OF CONSTRUCTION CODES AND FIRE SAFETY AND
5 WORKPLACE SAFETY COURSES APPROVED OR SPONSORED BY THE DEPARTMENT
6 ARE ALSO CONSIDERED APPROPRIATE FOR FULFILLING THE CONTINUING
7 EDUCATION REQUIREMENTS OF THIS SUBSECTION. THE DEPARTMENT MAY, BY
8 RULE, AMEND, SUPPLEMENT, UPDATE, SUBSTITUTE, OR DETERMINE
9 EQUIVALENCY REGARDING ANY COURSES DESCRIBED IN THIS SUBSECTION.

10 (4) THE PRELICENSURE AND CONTINUING EDUCATION COURSES
11 DESCRIBED IN SUBSECTION (3) SHALL BE TAUGHT AND PRESENTED BY
12 INSTRUCTORS APPROVED BY THE DEPARTMENT. EXCEPT AS OTHERWISE
13 PROVIDED BY THIS SECTION OR RULE OF THE DEPARTMENT, INSTRUCTORS OF
14 PRELICENSURE AND CONTINUING EDUCATION SHALL MEET THE STANDARDS OF
15 SECTION 4, PAGES 4-5 THROUGH 4-9 OF THE JANUARY 2005 EDITION OF THE
16 PUBLICATION "NAHB UNIVERSITY OF HOUSING, BLUEPRINT FOR SUCCESS",
17 PUBLISHED BY THE NATIONAL ASSOCIATION OF HOME BUILDERS, AND
18 INCORPORATED BY REFERENCE. THE DEPARTMENT MAY WAIVE THE REQUIREMENT
19 OF MEMBERSHIP IN A LOCAL, STATE, OR NATIONAL TRADE ASSOCIATION
20 CONTAINED IN THE STANDARDS INCORPORATED BY REFERENCE IN THIS
21 SUBSECTION. BY RULE, THE DEPARTMENT MAY AMEND, SUPPLEMENT, UPDATE,
22 SUBSTITUTE, OR DETERMINE EQUIVALENCY REGARDING THE STANDARDS IN
23 THIS SUBSECTION AND SHALL ESTABLISH INSTRUCTOR QUALIFICATIONS FOR
24 COURSES NOT INCORPORATED BY REFERENCE IN SUBSECTION (3).

25 (5) THE SUBJECT MATTER OF THE PRELICENSURE AND CONTINUING
26 EDUCATION COURSES MAY BE OFFERED BY A HIGH SCHOOL, INTERMEDIATE
27 SCHOOL DISTRICT, COMMUNITY COLLEGE, UNIVERSITY, TRADE ASSOCIATION,

1 OR OTHER ENTITY APPROVED BY THE DEPARTMENT AS MEETING THE SUBJECT
2 MATTER QUALIFICATIONS DESCRIBED IN SUBSECTION (3) AND THE
3 INSTRUCTIONAL QUALIFICATIONS DESCRIBED IN SUBSECTION (4). THE
4 DEPARTMENT SHALL ACCEPT HOURS OR EQUIVALENT CREDITS FOR ANY COURSES
5 OFFERED BY A HIGH SCHOOL, INTERMEDIATE SCHOOL DISTRICT, COMMUNITY
6 COLLEGE, UNIVERSITY, TRADE ASSOCIATION, OR OTHER ENTITY OFFERING
7 THE PRELICENSURE AND CONTINUING EDUCATION COURSES THAT ARE APPROVED
8 BY THE DEPARTMENT.

9 (6) THE DEPARTMENT SHALL PROMULGATE RULES TO PROVIDE FOR THE
10 FOLLOWING:

11 (A) PREPRESENTATION APPROVAL OF CONTINUING EDUCATION COURSES
12 OFFERED BY A HIGH SCHOOL, INTERMEDIATE SCHOOL DISTRICT, COMMUNITY
13 COLLEGE, UNIVERSITY, TRADE ASSOCIATION, OR OTHER ENTITY THAT MEET
14 OR EXCEED THE COURSE CONTENT OF THE CONTINUING EDUCATION COURSES
15 DESCRIBED IN SUBSECTION (3).

16 (B) POSTPRESENTATION APPROVAL FOR COURSES OFFERED AT SEMINARS
17 AND CONVENTIONS BY TRADE ASSOCIATIONS, RESEARCH INSTITUTES, RISK
18 MANAGEMENT ENTITIES, MANUFACTURERS, SUPPLIERS, GOVERNMENTAL
19 AGENCIES, CONSULTING AGENCIES, OR OTHER ENTITIES. THIS SUBDIVISION
20 DOES NOT PROHIBIT APPLICATIONS FOR THE PREPRESENTATION APPROVAL OF
21 COURSES DESCRIBED IN THIS SUBDIVISION.

22 (C) APPROVAL OF DISTANCE LEARNING.

23 (7) EACH LICENSEE MAY SELECT APPROVED COURSES IN HIS HER
24 SUBJECT MATTER AREA OR SPECIALTY. SERVICE AS A LECTURER OR
25 DISCUSSION LEADER IN AN APPROVED COURSE SHALL BE COUNTED TOWARD THE
26 CONTINUING EDUCATION REQUIREMENTS OF SUBSECTION (2).

27 Sec. 2405. (1) If a license is applied for by a corporation,

1 partnership, or association, the applicant shall designate 1 of its
2 officers, partners, members, or managing agent as a qualifying
3 officer who, upon taking and passing the examination, and upon
4 meeting all other requirements of this article, shall be entitled
5 to a license to act for the corporation, partnership, or
6 association. **IN THE CASE OF A LICENSE ISSUED UNDER THIS SUBSECTION,**
7 **EACH OFFICER, PARTNER, MEMBER, OR MANAGING AGENT, WHETHER OR NOT HE**
8 **OR SHE IS THE QUALIFYING OFFICER, SHALL PROVIDE A COPY OF HIS OR**
9 **HER OPERATOR'S LICENSE OR STATE PERSONAL IDENTIFICATION CARD TO THE**
10 **DEPARTMENT FOR USE BY THE DEPARTMENT ONLY FOR IDENTIFICATION**
11 **PURPOSES.** The qualifying officer shall be responsible for
12 exercising the supervision or control of the building or
13 construction operations necessary to secure full compliance with
14 this article and the rules promulgated under this article. A
15 license shall not be issued to a corporation, partnership, or
16 association unless each partner, trustee, director, officer,
17 member, and a person exercising control is at least 18 years of age
18 and meets the requirements for a license under this article other
19 than those relating to knowledge and experience.

20 (2) The license of a corporation, partnership, or other
21 association shall be suspended when a license or license
22 application of a qualifying officer, partner, trustee, director,
23 officer, member, or a person exercising control of the corporation,
24 partnership, or other association is suspended, revoked, or denied.
25 The suspension shall remain in force until the board determines
26 that the disability created by the suspension, revocation, or
27 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 may suspend, revoke, or deny any other license held or applied for under this article by the qualifying officer of a corporation, partnership, or other association 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 ~~completion,~~ ~~occupancy, or purchase, whichever occurs later, of~~ **THE LATEST OF THE FOLLOWING REGARDING** a residential structure or a combination of residential and commercial structure: —

(A) ITS COMPLETION.

(B) ITS OCCUPANCY.

(C) ITS PURCHASE.

(D) THE LAST PROGRESS PAYMENT OR DRAW RECEIVED FROM THE OWNER OR A LENDER.

(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

1 licensee.

2 (b) Diversion of funds or property received for prosecution or
3 completion of a specific construction project or operation, or for
4 a specified purpose in the prosecution or completion of a
5 construction project or operation, and the funds or property
6 application or use for any other construction project or operation,
7 obligation, or purposes.

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

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

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

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

22 (g) If a licensed residential builder or licensed residential
23 maintenance and alteration contractor, failure to notify the
24 department within 10 days of a change in the control or direction
25 of the business of the licensee resulting from a change in the
26 licensee's partners, directors, officers, or trustees, or a change
27 in the control or direction of the business of the licensee

1 resulting from any other occurrence or event.

2 (h) Failure to deliver to the purchaser the entire agreement
3 of the parties including finance and any other charge arising out
4 of or incidental to the agreement when the agreement involves
5 repair, alteration, or addition to, subtraction from, improvement
6 of, wrecking of, or demolition of a residential structure or
7 combination of residential and commercial structure, or building of
8 a garage, or laying of concrete on residential property, or
9 manufacture, assembly, construction, sale, or distribution of a
10 residential or combination residential and commercial structure
11 which is prefabricated, preassembled, precut, packaged, or shell
12 housing.

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

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

27 (k) Acceptance of a commission, bonus, or other valuable

1 consideration by a salesperson for the sale of goods or the
2 performance of service specified in the article from a person other
3 than the residential builder or residential maintenance and
4 alteration contractor under whom the person is licensed.

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

9 (m) ~~Poor workmanship or workmanship~~ **WORKMANSHIP** not meeting
10 the standards of the ~~custom or trade verified by a building code~~
11 ~~enforcement official~~ **MICHIGAN RESIDENTIAL CODE AS PROMULGATED**
12 **UNDER THE STILLE-DEROSSETT-HALE SINGLE STATE CONSTRUCTION CODE ACT,**
13 **1972 PA 230, MCL 125.1501 TO 125.1531.**

14 (3) The department shall suspend or revoke the license of a
15 person licensed under this article whose failure to pay a lien
16 claimant results in a payment being made from the homeowner
17 construction lien recovery fund pursuant to the construction lien
18 act, 1980 PA 497, MCL 570.1101 to 570.1305, regardless of whether
19 the person was performing services as a licensee under this
20 article; under the electrical administrative act, 1956 PA 217, MCL
21 338.881 to 338.892; or under ~~1929 PA 266, MCL 338.901 to 338.917~~
22 **THE STATE PLUMBING ACT, 2002 PA 733, MCL 338.3511 TO 338.3569.** The
23 department shall not renew a license or issue a new license until
24 the licensee has repaid in full to the fund the amount paid out
25 plus the costs of litigation and interest at the rate set by
26 section 6013 of the revised judicature act of 1961, 1961 PA 236,
27 MCL 600.6013.

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

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

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

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

22 (c) Upon receipt of a building inspection report issued to the
23 department by a state or local building enforcement official
24 authorized to do so under the Stille-DeRossett-Hale single state
25 construction code act, 1972 PA 230, MCL 125.1501 to 125.1531, which
26 report verifies or confirms the substance of the complaint, the
27 department shall send by certified mail a copy of the verified

1 complaint to both the complainant and the licensee. Failure of the
2 department to send a copy of the verified complaint within 30 days
3 of receipt of the building inspection report prevents the
4 department from assessing a fine against the licensee under article
5 6 but does not prevent the department from pursuing restitution,
6 license suspension, or other remedies provided under this act.

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

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

27 (f) The complainant shall demonstrate that notice has been

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

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

15 (6) As used in this section, "verified complaint" means a
16 complaint in which all or a portion of the allegations have been
17 confirmed by ~~the building inspection report~~ **AN AFFIDAVIT OF THE**
18 **STATE OR LOCAL BUILDING OFFICIAL.**

19 **SEC. 2411A. (1) THE DEPARTMENT SHALL POST ON ITS WEBSITE ANY**
20 **FINAL ORDER OF THE BOARD AND THE DATE IT WAS ISSUED. THE POSTING**
21 **SHALL OCCUR WITHIN 30 DAYS AFTER THE FINAL ORDER IS ISSUED.**

22 **(2) THE DEPARTMENT SHALL ANNUALLY POST ON ITS WEBSITE THE**
23 **NUMBER OF FINAL ORDERS OF THE BOARD.**

24 Enacting section 1. This amendatory act does not take effect
25 unless Senate Bill No. 631

26 of the 93rd Legislature is enacted into law.