

Legislative Analysis



PRACTICING WITHOUT A LICENSE: INCREASE PENALTIES FOR CERTAIN PROFESSIONS

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House Bill 4937

Sponsor: Rep. Michael Sak

House Bill 4938

Sponsor: Barbara Farrah

Committee: Regulatory Reform

Complete to 9-10-07

A SUMMARY OF HOUSE BILLS 4937 AND 4938 AS INTRODUCED 6-19-07

Under provisions of the Occupational Code, a person is prohibited from engaging in or attempting to engage in the practice of a regulated occupation without being licensed or registered in that occupation. Similarly, a school, institution, or person cannot operate or attempt to operate a barber college, school of cosmetology, or real estate school without a license to do so. A violation of the former provision is a misdemeanor punishable by a fine of not more than \$500 and/or imprisonment for not more than 90 days. A violation of the latter provision is also a misdemeanor but the punishment is higher: up to \$1,000 in fines and/or a term of imprisonment not to exceed one year.

House Bill 3947 would create a higher penalty for engaging in the profession of architect, professional engineer, or professional land surveyor without a license and House Bill 4938 would place the new felony provisions within the corresponding section of the sentencing guidelines.

House Bill 4937

The bill would amend the Occupational Code (MCL 339.601 and proposed 339.2006). A person who engaged in the profession of architect, professional engineer, or professional land surveyor without a license for that occupation would be guilty of a crime as follows:

** 1st offense – misdemeanor; fine of not less than \$5,000 or more than \$25,000, imprisonment for not more than one year, or both.

** 2nd offense – felony: fine of not less than \$5,000 or more than \$25,000, imprisonment for up to two years, or both.

** 3rd or subsequent offense – felony; fine of not less than \$5,000 or more than \$25,000, imprisonment for not more than four years, or both.

In addition, unless a person, a qualifying officer, a licensee, or an agent for a licensee was licensed as an architect, professional engineer, or professional surveyor during the

performance of an act or contract, he or she could not sue to collect compensation for that act or contract. However, a person who used the services of an unlicensed architect, professional engineer, or professional surveyor or an unlicensed individual who had used a title reserved for one of those professionals, could bring an action in a court of competent jurisdiction, or offer as a counterclaim to an action brought by an unlicensed individual, for a refund of compensation after deducting the value of the goods or services that the person retained.

Furthermore, if the Department of Labor and Economic Growth suspended a license for failure to make restitution, whether in whole or in part, restitution made in the form of repair or remedial corrective work would have to be performed by a person who was appropriately licensed as an architect, professional engineer, or professional surveyor and would be paid by the licensee under the suspension.

General amendments

The bill would also specify that any violation of the Occupational Code would have to include a requirement that restitution be made, based upon proofs submitted to and findings made by the trier of fact as provided by law. (Currently, the department may impose one or more penalties for a violation of the act; restitution is included in the list of possible punishments.)

The Occupational Code also exempts several occupations from its regulations, such as interior designers, electricians, plumbers, and heating and cooling specialists. Persons who engage in building design are also exempted from regulation under the code. The bill would instead exempt persons who engage in residential building design and would define the term to mean the rendering of residential design services for a detached one- and two- family residence building by a person exempted from the requirements of Section 2012. (Section 2012 provides an exemption from licensure as an architect, professional engineer, and professional surveyor under certain circumstances.)

House Bill 4938

The bill would amend the Code of Criminal Procedure (MCL 777.13p) to specify that the unauthorized practice of an occupation or unauthorized operation of a school teaching an occupation – second offense – by a person who was not licensed as an architect, professional engineer, or professional surveyor would be a Class G felony of the public trust with a maximum term of imprisonment of two years. A third or subsequent offense would be a Class F felony of the public trust with a four-year maximum term of imprisonment.

FISCAL IMPACT:

The bills would provide for new misdemeanor and felony offenses; the fiscal impact on state and local correctional systems would depend on how they affected numbers of convictions and severity of sentences. Generally speaking, felons are a state responsibility (except when serving a sentence in the county jail) and misdemeanants are

a local responsibility; two-year misdemeanors, however, constitute an exception. Unlike other misdemeanors, two-year misdemeanors are subject to sentencing guidelines, and offenders placed on probation for two-year misdemeanors are supervised by MDOC parole and probation agents.

The average appropriated cost of incarceration in a state prison is about \$31,000 per prisoner, a figure that includes allocated portions of various fixed costs. The state's average cost of parole and probation supervision is about \$2,000 per supervised offender per year. Costs of any jail incarceration or simple misdemeanor probation supervision would be borne by local units of government; those costs vary by jurisdiction. Any increase in penal fine revenues could benefit local libraries, which are the constitutionally-designated recipients of those revenues.

Under HB 4938, the felony offense (for a third or subsequent violation) to be created by HB 4937 would be a Class F offense against the public trust. Exclusive of sentences for habitual offenders, sentencing guidelines ranges for the minimum sentence for Class F offenses vary from 0 - 3 months (for which a non-prison sanction would be required) to 17-30 months (for which a prison term would be required). The two-year misdemeanor to be established for a second offense would be a Class G offense against the public trust. Minimum sentence ranges for Class G offenses vary from 0-3 months (requiring a non-prison sanction) to 7-23 months (for which either a non-prison sanction or a prison sentence may be ordered).

House Bill 4937 would have no fiscal impact on the Department of Labor and Economic Growth.

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