



Senate Fiscal Agency
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BILL ANALYSIS

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House Bill 4937 (Substitute H-1 as passed by the House)
House Bill 4938 (Substitute H-1 as passed by the House)
Sponsor: Representative Michael Sak (H.B. 4937)
Representative Barbara Farrah (H.B. 4938)
House Committee: Regulatory Reform
Senate Committee: Economic Development and Regulatory Reform

Date Completed: 3-12-08

CONTENT

House Bill 4937 (H-1) would amend the Occupational Code to do all of the following:

- Increase the criminal penalty for engaging in or attempting to engage in the practice of architecture, engineering, or surveying without a license.
- Establish a felony penalty for a violation that caused death or serious injury.
- Prohibit a licensee under Article 20 (Architects, Professional Engineers, and Land Surveyors) from bringing an action for the collection of compensation for services that required licensure, without proving that he or she was licensed at the time of the services.
- Allow a person who used the services of someone engaged or attempting to engage in an occupation regulated under Article 20, without being licensed, to bring an action for a refund of compensation.
- Require restitution for any violation of the Code.
- Require that restitution be performed by a licensee under Article 20 if the Department of Labor and Economic Growth (DLEG) suspended a license for failure to make restitution.
- Exempt from the Code a person engaging in or practicing *residential* building design.

House Bill 4938 (H-1) would amend the Code of Criminal Procedure to include in the sentencing guidelines a felony violation proposed in House Bill 4937 (H-1).

House Bill 4938 (H-1) is tie-barred to House Bill 4937.

House Bill 4937 (H-1)

Criminal Penalties

The Occupational Code prohibits a person from engaging in or attempting to engage in the practice of an occupation regulated under it or using a title designated in the Code unless the person possesses a license or registration issued by DLEG for the occupation. The Code also prohibits a school, institution, or person from operating or attempting to operate a barber college, school of cosmetology, or real estate school unless the school, institution, or

person is licensed or approved by DLEG. A violation of either of those prohibitions is a misdemeanor punishable by a maximum fine of \$500 and/or up to 90 days' imprisonment. A second or subsequent offense is punishable by a maximum fine of \$1,000 and/or up to one year's imprisonment. (A violation involving the practice of a certified public accountant (CPA) without a license, or the use of a title reserved for a CPA, however, is punishable by a maximum fine of \$25,000 and/or up to five years' imprisonment.)

Under the bill, a person not licensed under Article 20 who violated the prohibitions described above would be guilty of a crime and subject to penalties as shown in Table 1.

Table 1

Offense	Level	Fine	Maximum Imprisonment
First	Misdemeanor	\$5,000 - \$25,000	93 days
Second	Misdemeanor	\$5,000 - \$25,000	1 year
Causing death or serious injury	Felony	\$5,000 - \$25,000	4 years

Exemption

The Code provides that it does not apply to a person engaging in or practicing building design. The bill would refer instead to a person engaging in or practicing *residential* building design, which would 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 of the Code. (Section 2012 lists people who are exempt from the requirements of Article 20, including a person not licensed under Article 20 who is planning, designing, or directing the construction of a detached one- and two-family residence building not exceeding 3,500 square feet in calculated floor area, except for an adult foster care home licensed under the Adult Foster Care Facility Licensing Act.)

Civil Actions

The bill would prohibit a person, a qualifying officer, a licensee, or an agent for a licensee under Article 20 from bringing or maintaining an action in a Michigan court for the collection of compensation for the performance of an act or contract for which licensure is required under Article 20, without alleging and proving that the person, qualifying officer, licensee, or agent was licensed during the performance of the act or contract.

A person who had used the services of a person engaging in, or attempting to engage in, an occupation regulated under Article 20 or using a title designated by Article 20, without being licensed by DLEG, could bring an action in a court of competent jurisdiction, or offer as a counterclaim to an action brought by an unlicensed person, for a refund of compensation after deducting the value of the goods or services retained by the person.

Restitution

The bill specifies that any violation of the 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.

If DLEG suspended a license under Article 20 for failure to make restitution, in whole or in part, the restitution in the form of repair or remedial corrective work would have to be performed by a person appropriately licensed under Article 20 and would have to be paid for by the licensee.

House Bill 4938 (H-1)

Under the bill, the unauthorized practice of an occupation or unauthorized operation of a school teaching an occupation, by a person not licensed under Article 20 of the Occupational Code, causing serious injury or death would be a designated in the sentencing guidelines as a Class F felony against the public trust, with a statutory maximum sentence of four years' imprisonment.

MCL 339.601 et al. (H.B. 4937)
777.13p (H.B. 4938)

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bills would have an indeterminate fiscal impact on State and local government. There are no data to indicate how many offenders would be convicted of practicing or attempting to practice as an architect, engineer, or surveyor without a license, or committing such an offense that caused serious injury or death. An offender convicted of the Class F offense under the bills would receive a sentencing guidelines minimum sentence range of 0-3 months to 17-30 months. To the extent the bill resulted in increased incarceration time, local governments would incur increased costs of incarceration in local facilities, which vary by county. The State would incur the cost of felony probation at an annual average cost of \$2,000, as well as the cost of incarceration in a State facility at an average annual cost of \$33,000. Additional penal fine revenue would benefit public libraries.

Fiscal Analyst: Lindsay Hollander

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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.