

# HOUSE BILL No. 4378

March 6, 2013, Introduced by Reps. LaFontaine, Kelly and Howrylak and referred to the Committee on Regulatory Reform.

A bill to amend 1980 PA 299, entitled "Occupational code," by amending sections 411 and 601 (MCL 339.411 and 339.601), section 411 as amended by 2008 PA 309 and section 601 as amended by 2008 PA 319; and to repeal acts and parts of acts.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1           Sec. 411. (1) Subject to subsection (2), a person ~~who~~**THAT**  
2 fails to renew a license or registration on or before the  
3 expiration date shall not practice the occupation, operate, or use  
4 the title **OF THAT OCCUPATION** after the expiration date printed on  
5 the license or registration. A license or registration shall lapse  
6 on the day after the expiration date.

7           (2) A person ~~who~~**THAT** fails to renew a license or registration  
8 on or before the expiration date ~~shall be~~**IS** permitted to renew the

1 license or registration by payment of the required license or  
2 registration fee and a late renewal fee within 60 days after the  
3 expiration date.

4 (3) Except as otherwise provided in this act, a person ~~who~~  
5 **THAT** fails to renew a license or registration within the time  
6 period set forth in subsection (2) may be relicensed or  
7 reregistered without examination and without meeting additional  
8 education or training requirements in force at the time of  
9 application for relicensure or reregistration if all of the  
10 following conditions are met:

11 (a) The person applies within 3 years after the expiration  
12 date of the last license or registration.

13 (b) The person pays an application processing fee, the late  
14 renewal fee, and the per year license or registration fee for the  
15 upcoming licensure or registration period, subject to subsection  
16 (8).

17 (c) ~~Penalties and~~ **ANY PENALTIES OR** conditions imposed by  
18 disciplinary action in this state or any other jurisdiction have  
19 been satisfied.

20 (d) The person submits proof of having completed the  
21 equivalent of 1 year of continuing education within the 12 months  
22 immediately preceding the date of application or as otherwise  
23 provided in a specific article or by rule, if continuing education  
24 is required of licensees or registrants under a specific article.

25 (4) Except as otherwise provided in this act, a person may be  
26 relicensed or reregistered subsequent to 3 or more years after the  
27 expiration date of the last license or registration ~~upon showing~~ **IF**

1 **THE PERSON SHOWS** that the person meets the requirements for  
2 licensure or registration as established by the department in rules  
3 or procedures, which may require a person to pass all or part of a  
4 required examination, to complete continuing education  
5 requirements, or to meet current education or training  
6 requirements.

7 (5) Unless otherwise provided in this act, a person ~~who~~ **THAT**  
8 seeks reinstatement of a license or registration shall file an  
9 application on a form provided by the department, pay the  
10 application processing fee, and file a petition to the department  
11 and the appropriate board stating reasons for reinstatement and  
12 including evidence that the person can and is likely to serve the  
13 public in the regulated activity with competence and in conformance  
14 with all other requirements prescribed by law, rule, or an order of  
15 the department or board. The procedure ~~to be followed in~~ **FOR**  
16 conducting the review of a petition for reinstatement is prescribed  
17 in article 5. If approved for reinstatement, the person shall pay  
18 the per year license or registration fee for the upcoming license  
19 or registration period if appropriate, in addition to completing  
20 any requirements imposed ~~in accordance with~~ **UNDER** section 203(2).

21 (6) ~~Beginning July 23, 2004, the~~ **THE** department shall issue an  
22 initial or renewal license or registration not later than 90 days  
23 after the applicant files a completed application. ~~Receipt of the~~  
24 **THE** application is considered **RECEIVED ON** the date the application  
25 is received by any agency or department of ~~the~~ **THIS** state. ~~of~~  
26 ~~Michigan.~~ If the application is considered incomplete by the  
27 department, the department shall notify the applicant in writing,

1 or make information electronically available, within 30 days after  
2 receipt of the incomplete application, describing the deficiency  
3 and requesting the additional information. The 90-day period is  
4 tolled ~~upon notification by~~ **FROM THE DATE** the department **NOTIFIES**  
5 **THE APPLICANT** of a deficiency until the date the requested  
6 information is received by the department. The determination of the  
7 completeness of an application does not operate as an approval of  
8 the application for the license or registration and does not confer  
9 eligibility of an applicant determined otherwise ineligible for  
10 issuance of a license or registration.

11 (7) Notwithstanding the time periods described in subsection  
12 (6), in the case of a real estate broker and associate broker  
13 licensed under article 25, the time period for approval by the  
14 department of a completed application is 30 days and the time  
15 period for notification sent in writing, or made electronically  
16 available, by the department to the applicant regarding an  
17 incomplete application is 15 days after the receipt of the  
18 application by any agency or department of ~~the~~ **THIS** state. ~~of~~  
19 ~~Michigan.~~

20 (8) If the department fails to issue or deny a license or  
21 registration within the time required by this section, the  
22 department shall return the license or registration fee, and shall  
23 reduce the license or registration fee for the applicant's next  
24 renewal application, if any, by 15%. ~~The~~ **A** failure to issue or deny  
25 a license or registration within the time required under this  
26 section does not allow the department to otherwise delay the  
27 processing of the application, and **THE DEPARTMENT SHALL PLACE** that

1 application, ~~upon completion, shall be placed~~ **WHEN COMPLETED**, in  
 2 sequence with other completed applications received at that same  
 3 time. The department shall not discriminate against an applicant in  
 4 the processing of an application based ~~upon~~ **ON** the fact that the  
 5 license or registration fee was refunded or discounted under this  
 6 subsection.

7 (9) ~~Beginning October 1, 2005, the~~ **THE** director shall submit a  
 8 report by December 1 of each year to the standing committees and  
 9 appropriations subcommittees of the senate and house of  
 10 representatives concerned with occupational issues. The director  
 11 shall include all of the following information in the report  
 12 concerning the preceding fiscal year:

13 (a) The number of initial and renewal applications the  
 14 department received and completed within the 90-day time period  
 15 described in subsection (6) and the 30-day time period described in  
 16 subsection (7).

17 (b) The number of applications denied **BY THE DEPARTMENT**.

18 (c) The number of applicants not issued a license or  
 19 registration within the applicable time period and the amount of  
 20 money returned to licensees and registrants under subsection (8).

21 (10) Subsection (6) does not apply to ~~licenses or~~  
 22 ~~registrations~~ **A LICENSE OR REGISTRATION** for any of the following:

23 ~~—(a) An interior designer listed under article 6.~~

24 **(A)** ~~(b)~~ A certified public accountant and registered  
 25 accountant under article 7.

26 **(B)** ~~(c)~~ An agency non-owner manager of a collection agency  
 27 under article 9.

1           (C) ~~(d)~~—A barber, student barber, student instructor, ~~and OR~~  
2 barber instructor under article 11.

3           (D) ~~(e)~~—An employment and consulting agent of a personnel  
4 agency under article 10.

5           (E) ~~(f)~~—A cosmetologist, manicurist, natural hair culturist,  
6 esthetician, electrologist, instructor, ~~and OR~~ registered student  
7 under article 12.

8           (F) ~~(g)~~—A hearing aid salesperson and trainee under article  
9 13.

10          (G) ~~(h)~~—A mortuary science licensee, embalmer, ~~and OR~~ resident  
11 trainee in mortuary science under article 18.

12          (H) ~~(i)~~—An individual architect, surveyor, ~~and OR~~ engineer  
13 under article 20.

14          (I) ~~(j)~~—A forester under article 21.

15          (J) ~~(k)~~—An individual landscape architect under article 22.

16          (K) ~~(l)~~—A community planner under article 23.

17          (L) ~~(m)~~—An individual residential builder and alteration and  
18 maintenance contractor ~~and OR~~ a salesperson for a residential  
19 builder and alteration and maintenance contractor under article 24.

20          (M) ~~(n)~~—A real estate salesperson under article 25.

21          (N) ~~(o)~~—A real estate appraiser under article 26.

22          (O) ~~(p)~~—An ocularist ~~and OR~~ ocularist apprentice under article  
23 27.

24          (11) Notwithstanding any provision in this act to the  
25 contrary, an individual or qualifying officer who is a licensee or  
26 registrant under this act and who is mobilized for military duty in  
27 the armed forces of the United States by the president of the

1 United States is temporarily exempt from ~~the~~ **ANY** renewal license  
2 fee, continuing education requirements, ~~and any~~ **OR** other related  
3 requirements of this act **APPLICABLE TO THAT LICENSE OR**  
4 **REGISTRATION**. It is the obligation of the licensee or registrant to  
5 inform the department by written or electronic mail of the desire  
6 to exercise the temporary exemption under this subsection. If the  
7 licensee applying for the temporary exemption is the individual  
8 responsible for supervision and oversight of licensed activities,  
9 **THE LICENSEE SHALL PROVIDE** notice of arrangements for adequate  
10 provision of that supervision and oversight ~~shall be provided to~~  
11 the department. The licensee or registrant shall accompany the  
12 request with proof, as determined by the department, to verify the  
13 mobilized duty status. ~~The department, upon receiving~~ **IF IT**  
14 **RECEIVES** a request for a temporary exemption under this subsection,  
15 **THE DEPARTMENT** shall make a determination of the requestor's status  
16 and grant the temporary exemption after verification of mobilized  
17 duty status under this subsection. A temporary exemption is valid  
18 until 90 days after the licensee's or registrant's release from the  
19 mobilized duty ~~upon~~ **ON** which the exemption was based, but shall not  
20 exceed 36 months from the date of expiration of the license or  
21 registration.

22 (12) As used in this section, "completed application" means an  
23 application **THAT IS** complete on its face and submitted with any  
24 applicable licensing or registration fees ~~as well as~~ **AND** any other  
25 information, records, approval, security, or similar item required  
26 by law or rule from a local unit of government, a federal agency,  
27 or a private entity but not from another department or agency of

1 ~~the~~ **THIS** state. ~~of Michigan.~~

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

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

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

15           (4) Except as otherwise provided for in section 735, a person,  
16 school, or institution that violates subsection (1) or (2) is  
17 guilty of a misdemeanor, punishable by a fine of not more than  
18 \$500.00, or imprisonment for not more than 90 days, or both.

19           (5) Except as otherwise provided for in section 735, a person,  
20 school, or institution that violates subsection (1) or (2) a second  
21 or any subsequent time is guilty of a misdemeanor, punishable by a  
22 fine of not more than \$1,000.00, or imprisonment for not more than  
23 1 year, or both.

24           (6) Notwithstanding subsections (4) and (5), a person not  
25 licensed under article 24 as a residential builder or a residential  
26 maintenance and alteration contractor ~~who~~ **THAT** violates subsection  
27 (1) or (2) is guilty as follows:

1 (a) In the case of a first offense, a misdemeanor punishable  
2 by a fine of not less than \$5,000.00 or more than \$25,000.00, or  
3 imprisonment for not more than 1 year, or both.

4 (b) In the case of a second or subsequent offense, a  
5 misdemeanor punishable by a fine of not less than \$5,000.00 or more  
6 than \$25,000.00, or imprisonment for not more than 2 years, or  
7 both.

8 (c) In the case of an offense that causes death or serious  
9 injury, a felony punishable by a fine of not less than \$5,000.00 or  
10 more than \$25,000.00, or imprisonment for not more than 4 years, or  
11 both.

12 (7) Notwithstanding subsections (4) and (5), a person **THAT IS**  
13 not licensed under article 20 as an architect, professional  
14 engineer, or professional land surveyor ~~who~~ **AND THAT** violates  
15 subsection (1) or (2) is guilty as follows:

16 (a) In the case of a first offense, a misdemeanor punishable  
17 by a fine of not less than \$5,000.00 or more than \$25,000.00 or  
18 imprisonment for not more than 93 days, or both.

19 (b) In the case of a second or subsequent offense, a  
20 misdemeanor punishable by a fine of not less than \$5,000.00 or more  
21 than \$25,000.00 or imprisonment for not more than 1 year, or both.

22 (c) In the case of an offense that causes death or serious  
23 injury, a felony punishable by a fine of not less than \$5,000.00 or  
24 more than \$25,000.00 or imprisonment for not more than 4 years, or  
25 both.

26 (8) Any **CONVICTION FOR A** violation of this act shall include a  
27 requirement that restitution be made, based ~~upon~~ **ON** proofs

1 submitted to and findings made by the trier of fact as provided by  
2 law.

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

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

10 (a) Interior design.

11 (b) Residential building design. As used in this subdivision,  
12 "residential building design" means the rendering of residential  
13 design services for a detached 1- and 2-family residence building  
14 by a person exempted from the requirements of section 2012.

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

17 (d) Any activity for which the person is licensed under the  
18 Forbes mechanical contractors act, 1984 PA 192, MCL 338.971 to  
19 338.988.

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

22 (11) As used in subsection (9), "affected person" means a  
23 person directly affected by the actions of a person suspected of  
24 violating subsection (1) or (2) and includes, but is not limited  
25 to, a licensee or registrant, a board established ~~pursuant to~~ **UNDER**  
26 this act, the department, a person ~~who~~ **THAT** has utilized the  
27 services of the person engaging in or attempting to engage in an

1 occupation regulated under this act or using a title designated by  
2 this act without being licensed or registered by the department, or  
3 a private association composed primarily of members of the  
4 occupation in which the person is engaging in or attempting to  
5 engage in or in which the person is using a title designated under  
6 this act without being registered or licensed by the department.

7 (12) An investigation may be conducted under article 5 to  
8 enforce this section. A person ~~who~~ **THAT** violates this section ~~shall~~  
9 ~~be~~ **IS** subject to this section and sections 506, 602, and 606.

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

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

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

23 (15) ~~(16)~~ Upon entering a conviction under subsection (4),  
24 (5), or (6), a court entering the conviction shall notify, by mail,  
25 facsimile transmission, or electronic mail, the bureau of  
26 commercial services at the department.

27 Enacting section 1. Section 601a of the occupational code,

1 1980 PA 299, MCL 339.601a, is repealed.