

SENATE BILL NO. 1223

November 12, 2020, Introduced by Senators HOLLIER and BIZON and referred to the Committee on Families, Seniors, and Veterans.

A bill to amend 1980 PA 299, entitled
"Occupational code,"
by amending sections 103, 104, 105, 213, and 2404b (MCL 339.103, 339.104, 339.105, 339.213, and 339.2404b), section 103 as amended by 1994 PA 257, section 104 as amended by 2016 PA 412, section 105 as amended by 2016 PA 502, section 213 as amended by 2014 PA 149, and section 2404b as amended by 2014 PA 175, and by adding section

217.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 103. (1) "Armed Forces" means the United States Army, Air
2 Force, Navy, Marine Corps, or Coast Guard or other military force
3 designated by Congress as a part of the Armed Forces of the United
4 States.

5 (2) ~~(1)~~ "Board" means, in each article which deals with a
6 specific occupation, the agency created in that article composed
7 principally of members of the regulated occupation. In all other
8 contexts, board means each agency created under this act.

9 (3) ~~(2)~~ "Censure" means an expression of disapproval of a
10 licensee's or registrant's professional conduct, which conduct is
11 not necessarily a violation of this act or a rule promulgated or an
12 order issued under this act.

13 (4) ~~(3)~~ "Competence" means a degree of expertise which enables
14 a person to engage in an occupation at a level which meets or
15 exceeds minimal standards of acceptable practice for the
16 occupation.

17 (5) ~~(4)~~ "Complaint" means an oral or written grievance.

18 (6) ~~(5)~~ "Controlled substance" means a drug, substance, or
19 immediate precursor as set forth in section 7212, 7214, 7216, 7218,
20 or 7220 of the public health code, ~~Act No. 368 of the Public Acts~~
21 ~~of 1978, being sections 1978 PA 368, MCL 333.7212, 333.7214,~~
22 ~~333.7216, 333.7218, and 333.7220, of the Michigan Compiled Laws,~~
23 not excluded pursuant to section 7227 of ~~Act No. 368 of the Public~~
24 ~~Acts of 1978, being section~~ **the public health code, 1978 PA 368,**
25 **MCL 333.7227.** ~~of the Michigan Compiled Laws.~~

26 Sec. 104. (1) "Department" means the department of licensing
27 and regulatory affairs.

1 (2) "Dependent" means a spouse, surviving spouse, child under
2 26 years of age, or surviving child under 26 years of age.

3 (3) ~~(2)~~—"Director" means the director of the department or his
4 or her authorized representative.

5 (4) ~~(3)~~—"Disability" means an infirmity that prevents a board
6 member from performing a duty assigned to the board member.

7 (5) ~~(4)~~—"Files" means the records, memoranda, opinions,
8 minutes, and similar written materials that were formerly in the
9 physical dominion of a board abolished by this act and the records,
10 memoranda, opinions, minutes, and similar written materials of a
11 board created under this act.

12 (6) ~~(5)~~—"Formal complaint" means a document that states the
13 charges of each alleged violation and is prepared by the department
14 or the department of attorney general after a complaint is received
15 by the department.

16 (7) ~~(6)~~—"General public" means each individual residing in
17 this state who is 18 years of age or older, other than an
18 individual or the spouse of an individual who is licensed or
19 registered in the occupation or who has a material financial
20 interest in the occupation regulated under the specific article in
21 which the term is used.

22 (8) ~~(7)~~—"Good moral character" means ~~good moral character that~~
23 **term** as defined in ~~section 1 of and determined under~~ 1974 PA 381,
24 MCL 338.41 **to 338.47**.

25 (9) ~~(8)~~—"Incompetence" means a departure from, or a failure to
26 conform to, minimal standards of acceptable practice for an
27 occupation.

28 (10) ~~(9)~~—"Knowledge and skill" means the information,
29 education, practical experience, and the facility in applying that

1 information, education, and practical experience.

2 Sec. 105. (1) "License" means the document issued to a person
3 under this act that enables the person to use a designated title
4 and practice an occupation, which practice would otherwise be
5 prohibited by this act. License includes a document issued by the
6 department that permits a school, institution, or person to offer
7 training or education in an occupation or that permits the
8 operation of a facility, establishment, or institution in which an
9 occupation is practiced. License includes a permit or approval.

10 (2) "Licensee" means any of the following, as applicable:

11 (a) In articles 1 to 6, a person that is licensed or required
12 to be licensed under this act.

13 (b) In a specific article of this act, a person that is
14 licensed or required to be licensed under that article.

15 (3) "Limitation" means a condition, stricture, constraint,
16 restriction, or probation attached to a license or registration
17 relative to the scope of practice, including the following:

18 (a) A requirement that the licensee or registrant perform only
19 specified functions of the licensee's or registrant's occupation.

20 (b) A requirement that the licensee or registrant perform the
21 licensee's or registrant's occupation only for a specified period
22 of time.

23 (c) A requirement that the licensee or registrant perform the
24 licensee's or registrant's occupation only within a specified
25 geographical area.

26 (d) A requirement that restitution be made or certain work be
27 performed before a license or registration is issued, renewed, or
28 reinstated.

29 (e) A requirement that a financial statement certified by an

1 individual who is licensed as a certified public accountant be
2 filed with the department at regular intervals.

3 (f) A requirement that reasonably ~~assures~~**ensures** a licensee's
4 or registrant's competence to perform the licensee's or
5 registrant's occupation.

6 (g) A requirement that an attorney review all contracts of a
7 licensee or registrant.

8 (h) A requirement that a licensee or registrant have on file
9 with the department a bond that is issued by a surety insurer
10 approved by the department or cash in an amount determined by the
11 department.

12 (i) A requirement that a licensee or registrant deposit money
13 received in an escrow account ~~which~~**that** can be disbursed only
14 under certain conditions as determined by the licensee or
15 registrant and another party.

16 (j) A requirement that a licensee or registrant file reports
17 with the department at intervals determined by the department.

18 (4) "Occupation" means a field of endeavor regulated under
19 this act.

20 (5) "Person" means any of the following:

21 (a) An individual.

22 (b) A sole proprietorship, partnership, association,
23 corporation, limited liability company, or common law trust.

24 (c) A combination of persons described in subdivision (a) or
25 (b).

26 (d) A department, board, school, institution, establishment,
27 or governmental entity.

28 (6) "Physical dominion" means control and possession.

29 (7) "Physician" means that term as defined in sections 17001

1 and 17501 of the public health code, 1978 PA 368, MCL 333.17001 and
2 333.17501.

3 (8) "Probation" means a sanction that permits a board to
4 evaluate over a period of time a licensee's or registrant's fitness
5 to practice an occupation regulated under this act.

6 (9) "Public access" means the right of a person to view and
7 copy files under the freedom of information act, 1976 PA 442, MCL
8 15.231 to 15.246.

9 (10) "Registrant" means a person that is registered under this
10 act.

11 (11) "Registration" means the document issued to a person
12 under this act that enables the person to use a designated title,
13 which use would be otherwise prohibited by this act.

14 (12) "Rule" means a rule promulgated under this act and under
15 the administrative procedures act of 1969, 1969 PA 306, MCL 24.201
16 to 24.328.

17 (13) "State" means the District of Columbia or a commonwealth,
18 state, or territory of the United States.

19 **(14) "Veteran" means that term as defined in section 1 of 1965**
20 **PA 190, MCL 35.61.**

21 Sec. 213. (1) If a person has not previously been denied a
22 license or a certificate of registration or had a license or a
23 certificate of registration revoked or suspended, the department
24 may grant a nonrenewable temporary license or certificate of
25 registration to an applicant for licensure or registration or
26 transfer of licensure or registration under any of articles 7 to
27 29. If approved by a board, a temporary license or certificate of
28 registration issued under this subsection is valid until 1 or more
29 of the following occurs:

1 (a) The results of the next scheduled examination are
2 available.

3 (b) The results of the next required evaluation procedure are
4 available.

5 (c) A license or certificate of registration is issued.

6 (d) The next examination date of an examination for licensure
7 or registration in the applicable occupation, if the applicant does
8 not take the examination.

9 (e) The applicant fails to meet the requirements for a license
10 or certificate of registration.

11 (f) A change in employment is made.

12 (2) In addition to a temporary license or certificate of
13 registration under subsection (1), beginning ~~90 days after the~~
14 ~~effective date of the amendatory act that added this subsection,~~
15 **September 9, 2014**, the department shall grant a temporary license
16 or certificate of registration for an occupation under this act to
17 an applicant who meets all of the following:

18 (a) He or she provides proof acceptable to the department that
19 he or she is ~~married to a dependent of either~~ a member of the armed
20 ~~forces~~ **Armed Forces** who is on active duty **or a veteran**. ~~As used in~~
21 ~~this subdivision, "armed forces" means that term as defined in~~
22 ~~section 2 of the veteran right to employment services act, 1994 PA~~
23 ~~39, MCL 35.1092.~~

24 (b) He or she provides proof acceptable to the department that
25 he or she holds a current license in good standing, or a current
26 registration in good standing, in that occupation, issued by an
27 equivalent licensing department, board, or authority, as determined
28 by the department, **in consultation with the board**, in another state
29 of the United States ~~, the District of Columbia, Puerto Rico, the~~

~~United States Virgin Islands, another territory or protectorate of the United States, or a foreign country.~~

~~(c) He or she provides proof acceptable to the department that his or her spouse is assigned to a duty station in this state and that he or she is also assigned to a duty station in this state under his or her spouse's permanent change of station orders.~~

(3) A temporary license or registration issued under subsection (2) is valid for 6 months and may be renewed for 1 additional 6-month term if the department determines the temporary licensee or registrant continues to meet the requirements of subsection (2) and needs additional time to fulfill the requirements for initial licensure or registration in this state. The department may place a limitation on a temporary license or certificate of registration granted under this section.

Sec. 217. (1) Subject to subsection (2), the department shall issue a license or a certificate of registration for an occupation under this act without examination to an individual who demonstrates to the satisfaction of the department that he or she meets all of the following at the time of application:

(a) Provides proof that the individual is one of the following:

(i) A member in the Armed Forces on active duty.

(ii) A veteran.

(iii) A dependent of either a member in the Armed Forces on active duty or a veteran.

(b) Holds a valid license or registration in that occupation from an equivalent licensing department, board, or authority, as determined by the department, in at least 1 other state of the United States. For each license or registration described in this

1 subdivision that he or she holds, all of the following must be met:

2 (i) The license or registration is in good standing and he or
3 she has held that license or registration for at least 1 year.

4 (ii) There were minimum education requirements and, if
5 applicable, work experience requirements in effect for licensure or
6 registration in the other state, and the other state verifies that
7 he or she met those requirements for licensure or registration in
8 that state.

9 (iii) If the other state required an examination for licensure
10 or registration, he or she passed the examination.

11 (c) Has not had a license or registration revoked, and has not
12 voluntarily surrendered a license or registration, in any other
13 state of the United States or a foreign country while under
14 investigation for unprofessional conduct.

15 (d) Has not had discipline imposed by any equivalent licensing
16 department, board, or authority in another state of the United
17 States. If another state of the United States has taken
18 disciplinary action against the applicant, the department shall
19 determine if the cause for the action was corrected and the matter
20 resolved. If the matter has not been resolved by that other state,
21 the department shall not issue or deny a license or registration
22 until the matter is resolved.

23 (e) Does not have a complaint, allegation, or investigation
24 pending before an equivalent licensing department, board, or
25 authority in another state of the United States or a foreign
26 country that relates to unprofessional conduct. If the applicant
27 has any complaints, allegations, or investigations pending, the
28 department shall suspend the application process and shall not
29 issue or deny a license or registration to the applicant until the

1 complaint, allegation, or investigation is resolved.

2 (f) Pays all applicable fees.

3 (g) Is of good moral character.

4 (h) Meets the age requirement of that occupation under this
5 act, if applicable.

6 (2) If the department determines that the issuance of a
7 license or a certificate of registration under subsection (1) for
8 an occupation under this act may result in a violation of a federal
9 oversight or licensing guideline for that occupation, the
10 department shall not issue a license or a certificate of
11 registration.

12 (3) This section does not prevent the department from issuing
13 a temporary license under section 213, a courtesy license under
14 section 1806a, or issuing a license under section 726, 1108(2),
15 1211, 1806(8), 2013, 2209, or 2623.

16 Sec. 2404b. (1) Beginning June 1, 2008, an applicant for
17 initial licensure either as a residential builder or as a
18 residential maintenance and alteration contractor must successfully
19 complete the prelicensure course of study requirements under this
20 subsection to obtain a license unless he or she is exempt from
21 those requirements under this section. All of the following apply
22 for purposes of this subsection:

23 (a) If an individual who holds a residential builder or a
24 residential maintenance and alteration contractor license, or an
25 individual who held a license as a qualifying officer of a licensed
26 residential builder or residential maintenance and alteration
27 contractor, on June 1, 2008 is renewing a license, he or she is
28 exempt from the requirement of successfully completing prelicensure
29 courses described in this subsection.

1 (b) If an individual is applying for a license or relicensure
2 as a residential builder or residential maintenance and alteration
3 contractor, he or she is exempt from the requirement of
4 successfully completing prelicensure courses described in this
5 subsection if all of the following are met:

6 (i) His or her application is submitted before the expiration
7 of the 18-month period beginning on ~~the effective date of the~~
8 ~~amendatory act that added this subdivision.~~ **September 16, 2014.**

9 This subdivision does not apply to applications that are submitted
10 after that 18-month period.

11 (ii) He or she held an individual license as a residential
12 builder or residential maintenance and alteration contractor, or
13 held a license as a qualifying officer of a licensed residential
14 builder or residential maintenance and alteration contractor, at
15 any time within the 9-year period preceding his or her application.

16 (c) Unless he or she is exempt under subdivision (a) or (b),
17 an applicant shall not receive an initial license under this act
18 unless he or she successfully completed 60 hours of approved
19 prelicensure courses that include at least 6 hours of courses in
20 each of the following areas of competency:

21 (i) Business management, estimating, and job costing.

22 (ii) Design and building science.

23 (iii) Contracts, liability, and risk management.

24 (iv) Marketing and sales.

25 (v) Project management and scheduling.

26 (vi) The current Michigan ~~residential code.~~ **Residential Code.**

27 (vii) Construction safety standards promulgated under the
28 Michigan occupational safety and health act, 1974 PA 154, MCL

1 408.1001 to 408.1094.

2 (2) All of the following apply to an individual license under
3 this article, as applicable:

4 (a) Subject to subdivision (b), if the individual licensee
5 obtained his or her initial license as a residential builder or a
6 residential maintenance and alteration contractor on or after
7 January 1, 2009, he or she must successfully complete at least 21
8 hours of activities that demonstrate continuing competence in each
9 3-year license cycle, including both of the following:

10 (i) At least 3 hours of activities that demonstrate continuing
11 competency in each calendar year, during the first 6 calendar years
12 of licensure.

13 (ii) At least 3 hours of activities designed to develop a
14 licensee's understanding and ability to apply state building codes
15 and laws relating to the licensed occupation, safety, and changes
16 in construction and business management laws.

17 (b) If an individual licensee described in subdivision (a) was
18 exempt from the prelicensure course requirements of subsection (1)
19 under subsection (1)(b) when he or she obtained his or her initial
20 license as a residential builder or residential maintenance and
21 alteration contractor, the hours of activities that he or she must
22 complete in the first year of his or her first 3-year license cycle
23 under subdivision (a) must include successful completion of at
24 least 1 hour of codes, 1 hour of safety, and 1 hour of legal issues
25 described in this subsection.

26 (c) If the licensee was initially licensed as a licensed
27 residential builder or residential maintenance and alteration
28 contractor, or held a license as a qualifying officer of a licensed
29 residential builder or residential maintenance and alteration

1 contractor, before January 1, 2009, he or she has held a license
2 for not more than two 3-year license cycles, and the department has
3 not taken disciplinary action against him or her for a violation of
4 this act or a rule promulgated under this act, he or she must
5 successfully complete at least 3 hours of activities that
6 demonstrate continuing competency in each 3-year license cycle that
7 includes at least 1 hour of codes, 1 hour of safety, and 1 hour of
8 legal issues described in this subsection.

9 (d) If the licensee has held a license for more than two 3-
10 year license cycles, and the department has not taken disciplinary
11 action against him or her for a violation of this act or a rule
12 promulgated under this act, he or she must successfully complete at
13 least 3 hours of activities demonstrating continuing competency in
14 each license cycle that includes 1 hour of codes, 1 hour of safety,
15 and 1 hour of legal issues as described in this subsection.

16 (3) In addition to the requirements of subsection (2), if the
17 department has taken disciplinary action against a licensee for a
18 violation of this act or a rule promulgated under this act, the
19 licensee must successfully complete, during the next complete
20 license cycle, at least 3 and not more than 21 hours of activities
21 that demonstrate the development of continuing competency during
22 that next license cycle as determined appropriate by order of the
23 department. At least 3 hours of the continuing competency must
24 include 1 hour of codes, 1 hour of safety, and 1 hour of legal
25 issues as described in subsection (2).

26 (4) Any construction code update courses approved by the
27 bureau of construction codes and any fire safety or workplace
28 safety courses approved or sponsored by the department are also
29 considered appropriate for fulfilling the continuing competency

1 requirements of this section. The department may, by rule, amend,
2 supplement, update, substitute, or determine equivalency regarding
3 any courses or alternate activities for developing continuing
4 competency described in this section.

5 (5) The subject matter of the prelicensure and continuing
6 competency activities required under this section may be offered by
7 a high school, an intermediate school district, a community
8 college, a university, the bureau of construction codes, the
9 Michigan occupational safety and health administration, a trade
10 association, or any other proprietary school that is licensed by
11 the department.

12 (6) The department shall promulgate rules to provide for the
13 following:

14 (a) Requirements other than those listed in subsection (4) for
15 determining that a course meets the minimum criteria for developing
16 and maintaining continuing competency.

17 (b) Requirements for acceptable courses offered at seminars
18 and conventions by trade associations, research institutes, risk
19 management entities, manufacturers, suppliers, governmental
20 agencies other than those named in subsection (4), consulting
21 agencies, or other entities.

22 (c) Acceptable distance learning.

23 (d) Alternate forms of continuing competency, including
24 comprehensive testing, participation in mentoring programs,
25 research, participation in code hearings conducted by the
26 ~~international code council~~, **International Code Council**, and
27 publication of articles in trade journals or regional magazines as
28 an expert in the field. The alternate forms ~~shall~~**must** be designed
29 to maintain and improve the licensee's ability to perform the

1 occupation with competence and shall prescribe proofs that are
2 necessary to demonstrate that the licensee has fulfilled the
3 requirements of continuing competency.

4 (7) Each licensee may select approved courses in his or her
5 subject matter area or specialty. A licensee's service as a
6 lecturer or discussion leader in an approved course shall count
7 toward his or her continuing competency requirements under this
8 section. Alternate forms of continuing competency may be earned and
9 documented as promulgated in rules by the department.

10 (8) The department may audit a predetermined percentage of
11 licensees who renew in a year for compliance with the requirements
12 of this section. Failure to comply with the audit or the
13 requirements shall result in the investigation of a complaint
14 initiated by the department, and the licensee is subject to the
15 penalties prescribed in this act.

16 (9) Before ~~the effective date of the amendatory act that added~~
17 ~~subsection (10),~~ **September 16, 2014**, a licensed residential builder
18 or residential alteration and maintenance contractor may apply for
19 inactive status by completing an application, made available by the
20 department, in which he or she declares that he or she is no longer
21 actively engaged in the practice authorized by his or her license
22 and temporarily intends to suspend activity authorized by his or
23 her license. If a completed application is submitted, the
24 department shall designate the licensee as inactive and note that
25 status on records available to the public. A licensee who is
26 designated as inactive must have a current copy of the Michigan
27 ~~residential code~~ **Residential Code** and is exempt from the continuing
28 competency requirements imposed under this section, but must still
29 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. If the department activates an inactive license, the licensee must complete at least 1 credit hour of activities that demonstrate continuing competency for that calendar year.

(10) An individual licensee who applied for and was designated inactive under subsection (9) before ~~the effective date of this subsection~~ **September 16, 2014** may remain in inactive status after that ~~effective date~~ by complying with the requirements of subsection (9). A licensee who remains in inactive status after ~~the effective date of this subsection~~ **September 16, 2014** is exempt from the continuing competency requirements of this section while he or she remains in inactive status. A licensee may activate his or her license by submitting an application to the department requesting activation of the license. If his or her license is activated, the licensee must complete at least 1 credit hour of activities that demonstrate continuing competency for that calendar year.

(11) Subject to subsection (13), an applicant for initial licensure as a residential builder or residential maintenance and alteration contractor is exempt from the requirements of subsection (1) if he or she meets all of the following:

(a) Served in the ~~armed forces~~ **Armed Forces**.

(b) While serving in the ~~armed forces~~ **Armed Forces**, was engaged in the erection, construction, replacement, repair, alteration, or demolition of buildings or other structures.

(c) Was separated from service in the ~~armed forces~~ **Armed Forces**, and provides to the department a form DD214, form DD215, or any other form that is satisfactory to the department that demonstrates that he or she was separated from that service, with

1 an honorable character of service or under honorable conditions
2 (general) character of service.

3 (d) Has, and provides with his or her application an affidavit
4 signed by a commanding officer, supervisor, or military superior
5 with direct knowledge of the applicant's service that he or she
6 has, entry-level experience in or basic knowledge of each of the
7 areas of competency described in subsection ~~(1) (a) to (g)~~. **(1) (c)**.

8 (12) If an applicant who otherwise meets the requirements of
9 subsection (11) does not have entry-level experience in or basic
10 knowledge of each of the areas of competency described in
11 subsection ~~(1) (a) to (g)~~, **(1) (c)**, he or she may provide with his or
12 her application an affidavit signed by a commanding officer,
13 supervisor, or military superior with direct knowledge of the
14 applicant's service that states in which of those areas of
15 competency the applicant has entry-level experience or basic
16 knowledge, and the department may in its discretion grant the
17 applicant credit toward the 60-hour prelicensure education
18 requirement of subsection (1) based on that experience or
19 knowledge.

20 (13) If an applicant for initial licensure as a residential
21 builder or residential maintenance and alteration contractor
22 described in subsection (11) does not pass the examination for that
23 license the first time he or she takes the examination, that
24 applicant may not retake the examination until he or she
25 successfully completes a prelicensure course of study described in
26 subsection (1).

27 ~~(14) As used in the section, "armed forces" means that term as~~
28 ~~defined in section 2 of the veteran right to employment services~~
29 ~~act, 1994 PA 39, MCL 35.1092.~~

1 Enacting section 1. This amendatory act takes effect 90 days
2 after the date it is enacted into law.

3 Enacting section 2. This amendatory act does not take effect
4 unless Senate Bill No.____ or House Bill No.____ (request no.
5 06491'20) of the 100th Legislature is enacted into law.