

# HOUSE BILL No. 4937

June 19, 2007, Introduced by Reps. Sak, Marleau, Miller and Ward and referred to the Committee on Regulatory Reform.

A bill to amend 1980 PA 299, entitled "Occupational code," by amending section 601 (MCL 339.601), as amended by 2005 PA 278, and by adding section 2006.

**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  
5 occupation.

6           (2) A school, institution, or person shall not operate or  
7 attempt to operate a barber college, school of cosmetology, or real  
8 estate school unless the school, institution, or person is licensed

1 or approved by the department.

2 (3) A person, school, or institution that violates subsection  
3 (1) or (2) is guilty of a misdemeanor ~~—~~punishable by a fine of not  
4 more than \$500.00 ~~—~~or imprisonment for not more than 90 days, or  
5 both.

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

11 (5) NOTWITHSTANDING SUBSECTIONS (3) AND (4), A PERSON NOT  
12 LICENSED UNDER ARTICLE 20 AS AN ARCHITECT, PROFESSIONAL ENGINEER,  
13 OR PROFESSIONAL LAND SURVEYOR WHO VIOLATES SUBSECTION (1) OR (2) IS  
14 GUILTY AS FOLLOWS:

15 (A) IN THE CASE OF A FIRST OFFENSE, A MISDEMEANOR PUNISHABLE  
16 BY A FINE OF NOT LESS THAN \$5,000.00 OR MORE THAN \$25,000.00 OR  
17 IMPRISONMENT FOR NOT MORE THAN 1 YEAR, OR BOTH.

18 (B) IN THE CASE OF A SECOND OFFENSE, A MISDEMEANOR PUNISHABLE  
19 BY A FINE OF NOT LESS THAN \$5,000.00 OR MORE THAN \$25,000.00 OR  
20 IMPRISONMENT FOR NOT MORE THAN 2 YEARS, OR BOTH.

21 (C) IN THE CASE OF A THIRD OR SUBSEQUENT OFFENSE, A FELONY  
22 PUNISHABLE BY A FINE OF NOT LESS THAN \$5,000.00 OR MORE THAN  
23 \$25,000.00 OR IMPRISONMENT FOR NOT MORE THAN 4 YEARS, OR BOTH.

24 (6) ANY VIOLATION OF THIS ACT SHALL INCLUDE A REQUIREMENT THAT  
25 RESTITUTION BE MADE, BASED UPON PROOFS SUBMITTED TO AND FINDINGS  
26 MADE BY THE TRIER OF FACT AS PROVIDED BY LAW.

27 (7) ~~(5)~~—Notwithstanding the existence and pursuit of any other

1 remedy, an affected person may maintain injunctive action **IN A**  
2 **COURT OF COMPETENT JURISDICTION** to restrain or prevent a person  
3 from violating subsection (1) or (2). If successful in obtaining  
4 injunctive relief, the affected person ~~shall be~~ **IS** entitled to  
5 actual costs and attorney fees.

6 (8) ~~(6)~~—This act does not apply to a person engaging in or  
7 practicing the following:

8 (a) Interior design.

9 (b) ~~Building~~ **RESIDENTIAL BUILDING** design. **AS USED IN THIS**  
10 **SUBDIVISION, "RESIDENTIAL BUILDING DESIGN" MEANS THE RENDERING OF**  
11 **RESIDENTIAL DESIGN SERVICES FOR A DETACHED 1- AND 2-FAMILY**  
12 **RESIDENCE BUILDING BY A PERSON EXEMPTED FROM THE REQUIREMENTS OF**  
13 **SECTION 2012.**

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

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

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

21 (9) ~~(7)~~—As used in subsection ~~(5)~~ ~~(7)~~, "affected person" means  
22 a person directly affected by the actions of a person suspected of  
23 violating subsection (1) or (2) and includes, but is not limited  
24 to, a licensee or registrant, a board established pursuant to this  
25 act, a person who has utilized the services of the person engaging  
26 in or attempting to engage in an occupation regulated under this  
27 act or using a title designated by this act without being licensed

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

6 (10) ~~(8)~~—An investigation may be conducted under article 5 to  
7 enforce this section. A person who violates this section shall be  
8 subject to this section and section 506.

9 (11) ~~(9)~~—The remedies under this section are independent and  
10 cumulative. The use of 1 remedy by a person ~~shall~~ **DOES** not bar the  
11 use of other lawful remedies by that person or the use of a lawful  
12 remedy by another person.

13 (12) ~~(10)~~—An interior designer may perform services in  
14 connection with the design of interior spaces including preparation  
15 of documents relative to finishes, systems furniture, furnishings,  
16 fixtures, equipment, and interior partitions that do not affect the  
17 building mechanical, structural, electrical, or fire safety  
18 systems.

19 **SEC. 2006. (1) A PERSON, A QUALIFYING OFFICER, A LICENSEE, OR**  
20 **AN AGENT FOR A LICENSEE UNDER THIS ARTICLE SHALL NOT BRING OR**  
21 **MAINTAIN AN ACTION IN A COURT OF THIS STATE FOR THE COLLECTION OF**  
22 **COMPENSATION FOR THE PERFORMANCE OF AN ACT OR CONTRACT FOR WHICH**  
23 **LICENSURE IS REQUIRED UNDER THIS ARTICLE WITHOUT ALLEGING AND**  
24 **PROVING THAT THE PERSON, QUALIFYING OFFICER, LICENSEE, OR AGENT WAS**  
25 **LICENSED UNDER THIS ARTICLE DURING THE PERFORMANCE OF THE ACT OR**  
26 **CONTRACT. A PERSON WHO HAS UTILIZED THE SERVICES OF A PERSON**  
27 **ENGAGING IN OR ATTEMPTING TO ENGAGE IN AN OCCUPATION REGULATED**

1 UNDER THIS ARTICLE OR USING A TITLE DESIGNATED BY THIS ARTICLE  
2 WITHOUT BEING LICENSED BY THE DEPARTMENT MAY BRING AN ACTION IN A  
3 COURT OF COMPETENT JURISDICTION, OR OFFER AS A COUNTERCLAIM TO AN  
4 ACTION BROUGHT BY AN UNLICENSED PERSON, FOR A REFUND OF  
5 COMPENSATION AFTER DEDUCTING THE VALUE OF THE GOODS OR SERVICES  
6 RETAINED BY THE PERSON.

7 (2) IF THE DEPARTMENT SUSPENDS A LICENSE FOR FAILURE TO MAKE  
8 RESTITUTION, IN WHOLE OR IN PART, THE RESTITUTION IN THE FORM OF  
9 REPAIR OR REMEDIAL CORRECTIVE WORK SHALL BE PERFORMED BY A PERSON  
10 APPROPRIATELY LICENSED UNDER THIS ARTICLE AND SHALL BE PAID FOR BY  
11 THE LICENSEE.