

OCCUPATIONS/UNLIC'D. PERSON

**House Bill 5100 as enrolled
Public Act 400 of 1994
Second Analysis (1-27-95)**

Sponsor: Rep. Thomas C. Mathieu
House Committee: Judiciary
Senate Committee: State Affairs and
Military/Veteran Affairs (discharged)

THE APPARENT PROBLEM:

Most people have heard of home repair scams in which a stranger knocks on a homeowner's door, claims to be able for one reason or another to offer an exceptionally good deal on roofing or siding, then accepts payment and departs, leaving shoddy or unfinished work behind. People are often left with little recourse against fly-by-nighters who operate unlicensed and without a permanent place of business. However, even when such operators can be located, statute fails to provide explicit authority for properly licensed individuals to commence a court action to halt unlicensed activity. Legislation to address such concerns has been proposed.

THE CONTENT OF THE BILL:

House Bill 5100 would amend the Occupational Code (MCL 339.601) to specify that in addition to any other remedy, an affected person (including a board, association, or customer) could obtain an injunction or restraining order to prevent a person from practicing a regulated occupation or using a protected title without having a required license or registration. The bill would further specify that various remedies would be independent and cumulative, and that the use of one remedy by a person would not bar the use of other lawful remedies by another person.

The bill would specify that nothing in the occupational code would apply to a person engaging in or practicing the following: interior design; building design; any activity for which the person is licensed under Public Act 266 of 1929 (the act regulating plumbers); any activity for which the person was licensed under the Forbes Mechanical Contractors Act; or any activity for which the person was licensed under the Electrical Administrative Act.

FISCAL IMPLICATIONS:

With regard to an earlier version of the bill, the Senate Fiscal Agency said that the bill would have an indeterminate impact on state and local units of government. (12-12-94)

ARGUMENTS:

For:

By offering injunctive relief, the bill would help concerned citizens and law enforcement in their efforts to put a halt to the unlicensed practice of a wide range of regulated occupations and professions. With explicit authority to seek injunctions, professional boards and associations could obtain court orders against known violators without the necessity of pursuing criminal prosecution.

Against:

A Senate floor amendment to the bill would exempt interior designers and building designers, among others, from the entire occupational code. This raises a number of concerns. It throws into question existing requirements to have, for instance, a licensed architect affix his or her seal to certain projects. Taken to its logical extreme, the amendment exempts anyone who might call himself or herself an interior designer from any of the occupational code's licensure requirements. Thus, for example, to be exempted from licensure requirements for mortuary science, social work, or barbering, one might only have to make a case for being an interior designer.