

HOUSE BILL No. 6226

November 5, 1998, Introduced by Rep. Hanley and referred to the Committee on Regulatory Affairs.

A bill to amend 1980 PA 299, entitled
"Occupational code,"
by amending sections 2401, 2402, 2404, 2407, 2411, and 2412 (MCL 339.2401, 339.2402, 339.2404, 339.2407, 339.2411, and 339.2412), sections 2401 and 2411 as amended by 1991 PA 166, sections 2404 and 2407 as amended by 1988 PA 463, and section 2412 as amended by 1980 PA 496.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

- 1 Sec. 2401. As used in this article:
- 2 (1) "CARPENTER CONTRACTOR" MEANS A PERSON ENGAGED IN CARPEN-
- 3 TRY FOR A FIXED SUM, PRICE, FEE, PERCENTAGE, OR OTHER VALUABLE
- 4 CONSIDERATION, OTHER THAN WAGES FOR PERSONAL LABOR ONLY.
- 5 (2) "CARPENTRY" MEANS THE ERECTING, INSTALLING, ALTERING,
- 6 REPAIRING, SERVICING, OR MAINTAINING OF WOODEN STRUCTURES OR
- 7 THEIR STRUCTURAL PARTS AND INCLUDES, BUT IS NOT LIMITED TO, ALL

1 FRAMING, DECKS, WALLS, CEILINGS, ROOFS, AND ANY COMPONENTS THAT
2 GO TO MAKE THE FRAMING OF A STRUCTURE COMPLETE IN WOOD CONSTRUC-
3 TION, INCLUDING THE PREFABRICATION OF ANY WOOD STRUCTURE OR
4 COMPONENT.

5 (C) ~~-(a)-~~ "Residential builder" means a person engaged in
6 the construction of a residential structure or a combination res-
7 idential and commercial structure who, for a fixed sum, price,
8 fee, percentage, valuable consideration, or other compensation,
9 other than wages for personal labor only, undertakes with another
10 or offers to undertake or purports to have the capacity to under-
11 take with another for the erection, construction, replacement,
12 repair, alteration, or an addition to, subtraction from, improve-
13 ment, wrecking of, or demolition of, a residential structure or
14 combination residential and commercial structure; a person who
15 manufactures, assembles, constructs, deals in, or distributes a
16 residential or combination residential and commercial structure
17 which is prefabricated, preassembled, precut, packaged, or shell
18 housing; or a person who erects a residential structure or combi-
19 nation residential and commercial structure except for the
20 person's own use and occupancy on the person's property.

21 (D) ~~-(b)-~~ "Residential maintenance and alteration
22 contractor" means a person who, for a fixed sum, price, fee, per-
23 centage, valuable consideration, or other compensation, other
24 than wages for personal labor only, undertakes with another for
25 the repair, alteration, or an addition to, subtraction from,
26 improvement of, wrecking of, or demolition of a residential
27 structure or combination residential and commercial structure, or

1 building of a garage, or laying of concrete on residential
2 property, or who engages in the purchase, substantial rehabilita-
3 tion or improvement, and resale of a residential structure,
4 engaging in that activity on the same structure more than twice
5 in 1 calendar year, except in the following instances:

6 (i) If the work is for the person's own use and occupancy.

7 (ii) If the rehabilitation or improvement work of residen-
8 tial type property or a structure is contracted for, with, or
9 hired entirely to be done and performed for the owner by a person
10 licensed under this article.

11 (iii) If work is performed by a person employed by the owner
12 to perform work for which the person is licensed by the state.

13 (E) ~~-(c)-~~ "Residential structure" means a premises used or
14 intended to be used for a residence purpose and related facili-
15 ties appurtenant to the premises, used or intended to be used, as
16 an adjunct of residential occupancy.

17 (F) ~~-(d)-~~ "Salesperson" means an employee or agent, other
18 than a qualifying officer, of a licensed residential builder,
19 CARPENTER CONTRACTOR, or residential maintenance and alteration
20 contractor, who for a salary, wage, fee, percentage, commission,
21 or other consideration, sells or attempts to sell, negotiates or
22 attempts to negotiate, solicits for or attempts to solicit for,
23 obtains or attempts to obtain a contract or commitment for, or
24 furnishes or attempts or agrees to furnish, the goods and serv-
25 ices of a residential builder, CARPENTER CONTRACTOR, or residen-
26 tial maintenance and alteration contractor, except a person
27 working for a licensed residential builder, CARPENTER CONTRACTOR,

1 or residential maintenance and alteration contractor who makes
2 sales which are occasional and incidental to the person's princi-
3 pal employment.

4 (G) ~~(e)~~ "Wages" means money paid or to be paid on an
5 hourly or daily basis by an owner, lessor, or occupant of a resi-
6 dential structure or combination residential and commercial
7 structure as consideration for the performance of personal labor
8 on the structure by a person who does not perform or promise to
9 perform the labor for any other fixed sum, price, fee, percen-
10 tage, valuable consideration, or other compensation and who does
11 not furnish or agree to furnish the material or supplies required
12 to be used in the performance of the labor or an act defined in
13 subdivision (a), ~~or~~ (b), (C), OR (D).

14 Sec. 2402. A residential builders', CARPENTER CONTRACTORS',
15 and maintenance and alteration contractors' board is created.
16 ~~Four~~ TWO members shall be licensed residential builders, 2 MEM-
17 BERS SHALL BE LICENSED CARPENTER CONTRACTORS, and 2 members shall
18 be licensed maintenance and alteration contractors.

19 Sec. 2404. (1) The department may require an applicant,
20 licensee, or each partner, trustee, director, officer, member, or
21 shareholder to submit evidence of good moral character and finan-
22 cial stability. Before the issuance of a license, an applicant
23 shall submit any amount required to be paid under the construc-
24 tion lien act, ~~Act No. 497 of the Public Acts of 1980, being~~
25 ~~sections 570.1101 to 570.1305 of the Michigan Compiled Laws 1980~~
26 PA 497, MCL 570.1101 TO 570.1305.

1 (2) The department shall require an applicant for a license
2 to pass an examination establishing that the applicant has a fair
3 knowledge of the obligations of a residential builder, CARPENTER
4 CONTRACTOR, or residential maintenance and alteration contractor
5 to the public and the applicant's principal, and the statutes
6 relating to the applicant's licensure.

7 (3) The department, upon application, may issue a residen-
8 tial maintenance and alteration contractor's license to an appli-
9 cant who, upon examination, qualifies for a license, which shall
10 authorize the licensee according to the applicant's qualifica-
11 tions, crafts, and trades to engage in the activities of a resi-
12 dential maintenance and alteration contractor. A license shall
13 include the following crafts and trades: ~~carpentry;~~ concrete;
14 swimming pool installation; waterproofing a basement; excavation;
15 insulation work; masonry work; painting and decorating; roofing;
16 siding and gutters; screen or storm sash installation; tile and
17 marble work; and house wrecking. The license shall specify the
18 particular craft or trade for which the licensee has qualified.
19 This subsection shall not prohibit a specialty contractor from
20 taking and executing a contract involving the use of 2 or more
21 crafts or trades if the performance of the work in the craft or
22 trade, other than in which the person is licensed, is incidental
23 and supplemental to the performance of work in the craft for
24 which the specialty contractor is licensed.

25 (4) BEGINNING THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT
26 ADDED THIS SUBSECTION AND FOR A PERIOD OF 12 MONTHS AFTERWARDS,
27 THE DEPARTMENT SHALL ISSUE A CARPENTER CONTRACTOR LICENSE TO A

1 PERSON WHO APPLIES TO THE DEPARTMENT, PAYS THE APPLICABLE LICENSE
2 AND APPLICATION FEES, AND DEMONSTRATES IN A MANNER ACCEPTABLE TO
3 THE DEPARTMENT THAT HE OR SHE HAS BEEN ENGAGED AS A CARPENTER
4 CONTRACTOR FOR AT LEAST 12 OF THE PRECEDING 24 MONTHS.

5 (5) NOT LATER THAN 180 DAYS AFTER THE EFFECTIVE DATE OF THE
6 AMENDATORY ACT THAT ADDED THIS SUBSECTION, THE DIRECTOR SHALL
7 PROMULGATE RULES ESTABLISHING MASTER, JOURNEY, AND APPRENTICE
8 CLASSES OF CARPENTERS. THE DIRECTOR MAY ADOPT BY REFERENCE
9 EXISTING INDUSTRY STANDARDS DEFINING AND SETTING FORTH SKILL
10 LEVELS REGARDING THE CLASSES WITH THE ADVICE OF THE BOARD.

11 (6) ~~-(4)-~~ A residential builder, CARPENTER CONTRACTOR, or
12 residential maintenance and alteration contractor shall maintain
13 a place of business in this state. If a residential builder,
14 CARPENTER CONTRACTOR, or residential maintenance and alteration
15 contractor maintains more than 1 place of business within this
16 state, a branch office license shall be issued to the builder or
17 contractor for each place of business so maintained.

18 Sec. 2407. (1) A salesperson shall be licensed in the
19 employ of only 1 residential builder, CARPENTER CONTRACTOR, or
20 maintenance and alteration contractor. If a salesperson desires
21 to change employment from 1 residential builder, CARPENTER
22 CONTRACTOR, or maintenance and alteration contractor to another,
23 the license shall be forwarded to the department and application
24 made for a transfer and the issuance of a new license under the
25 salesperson's new employer.

26 (2) An application for a salesperson's license shall be
27 submitted by the employing residential builder, CARPENTER

1 CONTRACTOR, or residential maintenance and alteration
2 contractor.

3 Sec. 2411. (1) A complaint filed as prescribed in article 5
4 shall be made within 18 months after completion, occupancy, or
5 purchase, whichever occurs later, of a residential structure or a
6 combination of residential and commercial structure.

7 (2) A licensee or applicant who commits 1 or more of the
8 following shall be subject to the penalties set forth in article
9 6:

10 (a) Abandonment without legal excuse of a contract, con-
11 struction project, or operation engaged in or undertaken by the
12 licensee.

13 (b) Diversion of funds or property received for prosecution
14 or completion of a specific construction project or operation, or
15 for a specified purpose in the prosecution or completion of a
16 construction project or operation, and the funds or property
17 application or use for any other construction project or opera-
18 tion, obligation, or purposes.

19 (c) Failure to account for or remit money coming into the
20 person's possession which belongs to others.

21 (d) A willful departure from or disregard of plans or speci-
22 fications in a material respect and prejudicial to another, with-
23 out consent of the owner or an authorized representative and
24 without the consent of the person entitled to have the particular
25 construction project or operation completed in accordance with
26 the plans and specifications.

1 (e) A willful violation of the building laws of the state or
2 of a political subdivision of the state.

3 (f) In a maintenance and alteration contract, failure to
4 furnish to a lender the purchaser's signed completion certificate
5 executed upon completion of the work to be performed under the
6 contract.

7 (g) If a licensed residential builder, CARPENTER CONTRACTOR,
8 or licensed residential maintenance and alteration contractor,
9 failure to notify the department within 10 days of a change in
10 the control or direction of the business of the licensee result-
11 ing from a change in the licensee's partners, directors, offi-
12 cers, or trustees, or a change in the control or direction of the
13 business of the licensee resulting from any other occurrence or
14 event.

15 (h) Failure to deliver to the purchaser the entire agreement
16 of the parties including finance and any other charge arising out
17 of or incidental to the agreement when the agreement involves
18 repair, alteration, or addition to, subtraction from, improvement
19 of, wrecking of, or demolition of a residential structure or com-
20 bination of residential and commercial structure, or building of
21 a garage, or laying of concrete on residential property, or manu-
22 facture, assembly, construction, sale, or distribution of a resi-
23 dential STRUCTURE or combination residential and commercial
24 structure which is prefabricated, preassembled, precut, packaged,
25 or shell housing.

26 (i) If a salesperson, failure to pay over immediately upon
27 receipt money received by the salesperson, in connection with a

1 transaction governed by this article to the residential builder,
2 CARPENTER CONTRACTOR, or residential maintenance and alteration
3 contractor under whom the salesperson is licensed.

4 (j) Aiding or abetting an unlicensed person to evade this
5 article, or knowingly combining or conspiring with, or acting as
6 agent, partner, or associate for an unlicensed person, or allow-
7 ing one's license to be used by an unlicensed person, or acting
8 as or being an ostensible licensed residential builder, CARPENTER
9 CONTRACTOR, or licensed residential maintenance and alteration
10 contractor for an undisclosed person who does or shall control or
11 direct, or who may have the right to control or direct, directly
12 or indirectly, the operations of a licensee.

13 (k) Acceptance of a commission, bonus, or other valuable
14 consideration by a salesperson for the sale of goods or the per-
15 formance of service specified in the article from a person other
16 than the residential builder, CARPENTER CONTRACTOR, or residen-
17 tial maintenance and alteration contractor under whom the person
18 is licensed.

19 (l) Becoming insolvent, filing a bankruptcy action, becoming
20 subject to a receivership, assigning for the benefit of credi-
21 tors, failing to satisfy judgments or liens, or failing to pay an
22 obligation as it becomes due in the ordinary course of business.

23 (m) Poor workmanship or workmanship not meeting the stan-
24 dards of the custom or trade verified by a building code enforce-
25 ment official.

26 (3) The department shall suspend or revoke the license of a
27 person licensed under this article whose failure to pay a lien

1 claimant results in a payment being made from the homeowner
2 construction lien recovery fund pursuant to the construction lien
3 act, ~~Act No. 497 of the Public Acts of 1980, being sections~~
4 ~~570.1101 to 570.1305 of the Michigan Compiled Laws~~ 1980 PA 497,
5 MCL 570.1101 TO 570.1305, regardless of whether the person was
6 performing services as a licensee under this article; under the
7 electrical administrative act, ~~Act No. 217 of the Public Acts of~~
8 ~~1956, as amended, being sections 338.881 to 338.892 of the~~
9 ~~Michigan Compiled Laws~~ 1956 PA 217, MCL 338.881 TO 338.892; or
10 under ~~Act No. 266 of the Public Acts of 1929, as amended, being~~
11 ~~sections 338.901 to 338.917 of the Michigan Compiled Laws~~ 1929
12 PA 266, MCL 338.901 TO 338.917. The license shall not be renewed
13 nor shall a new license be issued until the licensee has repaid
14 in full to the fund the amount paid out plus the costs of litiga-
15 tion and interest at the rate set by section 6013 of the revised
16 judicature act of 1961, ~~Act No. 236 of the Public Acts of 1961,~~
17 ~~as amended, being section 600.6013 of the Michigan Compiled Laws~~
18 1961 PA 236, MCL 600.6013.

19 (4) The department shall conduct a review upon notice by the
20 department of public health that the licensee has violated the
21 asbestos abatement contractors licensing act, ~~Act No. 135 of the~~
22 ~~Public Acts of 1986, being sections 338.3101 to 338.3319 of the~~
23 ~~Michigan Compiled Laws, or sections 57 to 60f of the Michigan~~
24 ~~occupational safety and health act, Act No. 154 of the Public~~
25 ~~Acts of 1974, being sections 408.1057 to 408.1060f of the~~
26 ~~Michigan Compiled Laws~~ 1986 PA 135, MCL 338.3101 TO 338.3319,

1 and may suspend or revoke that person's license for a knowing
2 violation of ~~those acts~~ THAT ACT.

3 Sec. 2412. A person or qualifying officer for a corporation
4 or member of a residential builder, CARPENTER CONTRACTOR, or res-
5 idential maintenance and alteration contractor shall not bring or
6 maintain an action in a court of this state for the collection of
7 compensation for the performance of an act or contract for which
8 a license is required by this article without alleging and prov-
9 ing that the person was licensed under this article during the
10 performance of the act or contract.

11 Enacting section 1. This amendatory act does not take
12 effect unless Senate Bill No. _____ or House Bill No. _____
13 (request no. 06511'98 a) of the 89th Legislature is enacted into
14 law.