

# Legislative Analysis

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## OCCUPATIONAL CODE: REMEDIES AND PENALTIES

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### House Bills 5874 and 5875

Sponsor: Rep. Chris Ward

Committee: Regulatory Reform

Complete to 5-1-06

## A SUMMARY OF HOUSE BILLS 5874 AND 5875 AS INTRODUCED 3-16-06

The Occupational Code provides for the licensing and regulation of certain occupations, which is a responsibility of the Department of Labor and Economic Growth.

House Bill 5874 would amend the Occupational Code in the following ways.

Penalties for Violations. Under Section 601 of the code, a person is prohibited from engaging or attempting to engage in the practice of a regulated occupation or from using a designated title unless the person is licensed or registered by the department for the occupation. Further, a school, institution, or person is prohibited from operating a barber college, a school of cosmetology, or a real estate school unless licensed or approved by the department.

Under the bill, a violation of Section 601 would be a felony, punishable by a fine of not more than \$5,000 and/or imprisonment for up to four years. A second or subsequent violation would be a felony punishable by a fine of not more than \$10,000 and/or imprisonment of up to four years. Currently, the offense is a misdemeanor punishable by a fine of up to \$500 and/or imprisonment for not more than 90 days. Second and subsequent offenses are subject to a \$1,000 maximum fine and/or imprisonment for up to one year.

The act also allows an "affected person" (that is, a person directly affected by suspected violations of Section 601) to maintain injunctive action to restrain or prevent violations of Section 601. The bill would add "in a court of competent jurisdiction."

Court Actions. A person, a qualifying officer, or an agent for a legal entity licensed or registered under the code could not bring or maintain an action in court for the collection of compensation for the performance of an act or contract for which licensure or registration is required without alleging and proving that the person, officer, or agent was licensed or registered during the performance of the act or contract. (This provision is similar to the current Section 2512a, which would be repealed.) A person who has used the services of a person engaging in or attempting to engage in a regulated occupation, or using a designated title, without being licensed or registered by the department could bring an action in a court of competent jurisdiction, or offer as a counterclaim to an action brought by an unlicensed or unregistered person, for a refund of compensation after deducting the value of the goods or services retained by the person.

Forfeiture Remedy. The department, attorney general, a county prosecutor, and an attorney representing a local unit of government could use the forfeiture provisions of Chapter 47 of the Revised Judicature Act for items seized and determined to be proceeds, substituted proceeds, or the instrumentality of a crime related to a violation of this code.

Administrative or Civil Sanctions. The code subjects violations to certain "penalties." The bill would strike that term and refer to "administrative or civil sanctions." There is a current maximum administrative fine of \$10,000. The bill would specify that this fine applies for each violation or for each day of a continuing violation and that the maximum \$10,000 fine is per offense or day of violation.

Restitution. The code allows, as a penalty, that restitution be made. The bill would specify that restitution could be required as a condition for reinstatement. The bill further says that if the department suspends or revokes a license or registration for failure to make restitution, any restitution in the form of repair or remedial corrective work would have to be performed by a person appropriately licensed or registered under the act and would be paid for by the licensee or registrant seeking reinstatement.

Additional Violations. The bill would add violations that subject a person to administrative or civil sanctions. These include: knowingly failing to notify the department of a change in address; knowingly failing to notify the department of a change in partners, officers, or other members if required to do so; knowingly failing to conspicuously display a license or registration or produce a pocket license or registration if so required; and operating or advertising under a name different from the name under which the person is licensed or registered.

Repealers. The bill would repeal Sections 916 and 2512a of the Code. Section 916 allows a person to bring an action for damages or other equitable relief if he or she suffers injury, loss, or damage as a result of a violation. Section 2512a prohibits a person required to be licensed from bringing an action for the collection of compensation without proving he or she is licensed under the act.

House Bill 5875 would amend the Revised Judicature Act of 1961 to add certain violations of the Occupational Code associated with forfeiture of property to the definition of "crime." The bills are tie-barred to each other

## **FISCAL IMPACT:**

A fiscal analysis is in process.

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.