

**SUBSTITUTE FOR
HOUSE BILL NO. 5874**

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
4 not more than \$500.00 ~~—~~ or imprisonment for not more than 90
5 days, or 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
10 than 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

1 other remedy, an affected person may maintain injunctive action **IN**
2 **A 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"
22 means a person directly affected by the actions of a person
23 suspected of violating subsection (1) or (2) and includes, but is
24 not limited to, a licensee or registrant, a board established
25 pursuant to this act, a person who has utilized the services of the
26 person engaging in or attempting to engage in an occupation
27 regulated under this act or using a title designated by this act

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

6 (10) ~~-(8)-~~ An investigation may be conducted under article 5
7 to enforce this section. A person who violates this section shall
8 be 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
11 the use of other lawful remedies by that person or the use of a
12 lawful 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.