

HOUSE BILL No. 5874

March 15, 2006, Introduced by Reps. Ward, Stewart and Miller and referred to the Committee on Regulatory Reform.

A bill to amend 1980 PA 299, entitled "Occupational code," by amending sections 104, 601, 602, 603, 604, 728, 1009, 1019, and 2412 (MCL 339.104, 339.601, 339.602, 339.603, 339.604, 339.728, 339.1009, 339.1019, and 339.2412), section 104 as amended by 1996 PA 151, sections 601 and 602 as amended by 2005 PA 278, section 604 as amended by 1989 PA 261, section 728 as amended by 2000 PA 334, sections 1009 and 1019 as amended by 1992 PA 253, and section 2412 as amended by 2001 PA 113, and by adding section 2006; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 104. (1) "Department" means the department of ~~commerce~~
2 **LABOR AND ECONOMIC GROWTH.**

1 (2) "Director" means the director of the department ~~of~~
2 ~~commerce~~ or an authorized representative of the director of the
3 department. ~~of commerce.~~

4 (3) "Disability" means an infirmity that prevents a board
5 member from performing a duty assigned to the board member.

6 (4) "Files" means the records, memoranda, opinions, minutes,
7 and similar written materials that were formerly in the physical
8 dominion of a board abolished by this act and the records,
9 memoranda, opinions, minutes, and similar written materials of a
10 board created under this act.

11 (5) "Formal complaint" means a document that states the
12 charges of each alleged violation and is prepared by the department
13 or the department of attorney general after a complaint has been
14 received by the department.

15 (6) "General public" means each individual residing in this
16 state who is 18 years of age or older, other than a person or the
17 spouse of a person who is licensed or registered in the occupation
18 or who has a material financial interest in the occupation being
19 regulated by the specific article in which the term is used.

20 (7) "Good moral character" means good moral character as
21 defined in section 1 of ~~Act No. 381 of the Public Acts of 1974,~~
22 ~~being section 338.41 of the Michigan Compiled Laws~~ **1974 PA 381,**
23 **MCL 338.41.**

24 (8) "Incompetence" means a departure from, or a failure to
25 conform to, minimal standards of acceptable practice for the
26 occupation.

27 (9) "Knowledge and skill" means the information, education,

1 practical experience, and the facility in applying that
2 information, education, and practical experience.

3 Sec. 601. (1) A person shall not engage in or attempt to
4 engage in the practice of an occupation regulated under this act or
5 use a title designated in this act unless the person possesses a
6 license or registration issued by the department for the
7 occupation.

8 (2) A school, institution, or person shall not operate or
9 attempt to operate a barber college, school of cosmetology, or real
10 estate school unless the school, institution, or person is licensed
11 or approved by the department.

12 (3) A person, school, or institution that violates subsection
13 (1) or (2) is guilty of a ~~misdemeanor~~ **FELONY**, punishable by a
14 fine of not more than ~~-\$500.00-~~ **\$5,000.00**, or imprisonment for not
15 more than ~~90 days-~~ **4 YEARS**, or both.

16 (4) A person, school, or institution that violates subsection
17 (1) or (2) a second or any subsequent time is guilty of a
18 ~~misdemeanor~~ **FELONY**, punishable, except as provided in section 735,
19 by a fine of not more than ~~-\$1,000.00-~~ **\$10,000.00**, or imprisonment
20 for not more than ~~1 year-~~ **4 YEARS**, or both.

21 (5) Notwithstanding the existence and pursuit of any other
22 remedy, an affected person may maintain injunctive action **IN A**
23 **COURT OF COMPETENT JURISDICTION** to restrain or prevent a person
24 from violating subsection (1) or (2). If successful in obtaining
25 injunctive relief, the affected person ~~shall be-~~ **IS** entitled to
26 actual costs and attorney fees.

27 (6) This act does not apply to a person engaging in or

1 practicing the following:

2 (a) Interior design.

3 (b) Building design.

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

6 (d) Any activity for which the person is licensed under the
7 Forbes mechanical contractors act, 1984 PA 192, MCL 338.971 to
8 338.988.

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

11 (7) As used in subsection (5), "affected person" means a
12 person directly affected by the actions of a person suspected of
13 violating subsection (1) or (2) and includes, but is not limited
14 to, a licensee or registrant, **THE DEPARTMENT**, a board established
15 pursuant to this act, a person who has utilized the services of the
16 person engaging in or attempting to engage in an occupation
17 regulated under this act or using a title designated by this act
18 without being licensed or registered by the department, or a
19 private association composed primarily of members of the occupation
20 in which the person is engaging in or attempting to engage in or in
21 which the person is using a title designated under this act without
22 being registered or licensed by the department.

23 (8) An investigation may be conducted under article 5 to
24 enforce this section. A person who violates this section shall be
25 subject to this section and section 506.

26 (9) **A PERSON, A QUALIFYING OFFICER, OR AN AGENT FOR A LEGAL**
27 **ENTITY LICENSED OR REGISTERED UNDER THIS ACT SHALL NOT BRING OR**

1 MAINTAIN AN ACTION IN A COURT OF THIS STATE FOR THE COLLECTION OF
2 COMPENSATION FOR THE PERFORMANCE OF AN ACT OR CONTRACT FOR WHICH
3 LICENSURE OR REGISTRATION IS REQUIRED UNDER THIS ACT WITHOUT
4 ALLEGING AND PROVING THAT THE PERSON, QUALIFYING OFFICER, OR AGENT
5 WAS LICENSED OR REGISTERED UNDER THIS ACT DURING THE PERFORMANCE OF
6 THE ACT OR CONTRACT. A PERSON WHO HAS UTILIZED THE SERVICES OF A
7 PERSON ENGAGING IN OR ATTEMPTING TO ENGAGE IN AN OCCUPATION
8 REGULATED UNDER THIS ACT OR USING A TITLE DESIGNATED BY THIS ACT
9 WITHOUT BEING LICENSED OR REGISTERED BY THE DEPARTMENT MAY BRING AN
10 ACTION IN A COURT OF COMPETENT JURISDICTION, OR OFFER AS A
11 COUNTERCLAIM TO AN ACTION BROUGHT BY AN UNLICENSED OR UNREGISTERED
12 PERSON, FOR A REFUND OF COMPENSATION AFTER DEDUCTING THE VALUE OF
13 THE GOODS OR SERVICES RETAINED BY THE PERSON.

14 (10) THE DEPARTMENT, THE ATTORNEY GENERAL, A COUNTY
15 PROSECUTOR, AND AN ATTORNEY REPRESENTING A LOCAL UNIT OF GOVERNMENT
16 MAY UTILIZE FORFEITURE AS A REMEDY IN THE MANNER PROVIDED FOR IN
17 SECTION 2006.

18 (11) ~~-(9)-~~ The remedies under this section are independent and
19 cumulative. The use of 1 remedy by a person ~~shall~~ DOES not bar
20 the use of other lawful remedies by that person or the use of a
21 lawful remedy by another person.

22 (12) ~~-(10)-~~ An interior designer may perform services in
23 connection with the design of interior spaces including preparation
24 of documents relative to finishes, systems furniture, furnishings,
25 fixtures, equipment, and interior partitions that do not affect the
26 building mechanical, structural, electrical, or fire safety
27 systems.

1 Sec. 602. A person, school, or institution that violates this
 2 act or a rule or order promulgated or issued under this act shall
 3 be assessed 1 or more of the following ~~penalties~~ **ADMINISTRATIVE**
 4 **OR CIVIL SANCTIONS:**

5 (a) Placement of a limitation on a license or ~~certificate of~~
 6 registration for an occupation regulated under ~~articles 8 to 25~~
 7 **THIS ACT.**

8 (b) Suspension of a license or ~~certificate of~~ registration.

9 (c) Denial of a license, ~~certificate of~~ registration, or
 10 renewal of a license or ~~certificate of~~ registration.

11 (d) Revocation of a license or ~~certificate of~~ registration.

12 (e) An administrative fine **FOR EACH VIOLATION OR FOR EACH DAY**
 13 **OF A CONTINUING VIOLATION** to be paid to the department, not to
 14 exceed \$10,000.00 **PER OFFENSE OR DAY OF VIOLATION.**

15 (f) Censure.

16 (g) Probation.

17 (h) A requirement that restitution be made **AS A CONDITION FOR**
 18 **REINSTATEMENT.**

19 Sec. 603. (1) If restitution is required to be made under
 20 section 601 OR 602, OR BOTH, the **DEPARTMENT MAY SUSPEND OR REVOKE**
 21 **THE** license or ~~certificate of~~ registration of the person required
 22 to make the restitution ~~may be suspended~~ until the restitution is
 23 made.

24 (2) **IF THE DEPARTMENT SUSPENDS OR REVOKES A LICENSE OR**
 25 **REGISTRATION FOR FAILURE TO MAKE RESTITUTION, IN WHOLE OR PART, THE**
 26 **RESTITUTION IN THE FORM OF REPAIR OR REMEDIAL CORRECTIVE WORK SHALL**
 27 **BE PERFORMED BY A PERSON APPROPRIATELY LICENSED OR REGISTERED UNDER**

1 THIS ACT AND SHALL BE PAID FOR BY THE LICENSEE OR REGISTRANT
2 SEEKING REINSTATEMENT.

3 Sec. 604. A person who violates 1 or more of the provisions of
4 an article ~~which regulates~~ **REGULATING** an occupation or who
5 commits 1 or more of the following ~~shall be~~ **IS** subject to the
6 ~~penalties~~ **ADMINISTRATIVE OR CIVIL SANCTIONS** prescribed in section
7 602:

8 (a) ~~Practices~~ **ENGAGES IN** fraud or deceit in obtaining a
9 license or registration.

10 (b) ~~Practices~~ **ENGAGES IN** fraud, deceit, or dishonesty in
11 practicing an occupation.

12 (c) Violates a rule of conduct of an occupation.

13 (d) Demonstrates a lack of good moral character.

14 (e) Commits an act of gross negligence in practicing an
15 occupation.

16 (f) ~~Practices~~ **ENGAGES IN** false advertising.

17 (g) Commits an act ~~which~~ **THAT** demonstrates incompetence.

18 (h) Violates any other provision of this act or a rule
19 promulgated under this act for which a penalty **OR SANCTION** is not
20 otherwise prescribed.

21 (i) Fails to comply with a subpoena issued under this act.

22 (j) Fails to respond to a citation as required by section 555.

23 (k) Violates or fails to comply with a final order issued by a
24 board, including a stipulation, settlement agreement, or a
25 citation.

26 (l) **KNOWINGLY FAILS TO NOTIFY THE DEPARTMENT OF A CHANGE IN**
27 **ADDRESS.**

1 (M) KNOWINGLY FAILS TO NOTIFY THE DEPARTMENT OF A CHANGE IN
2 PARTNERS, OFFICERS, OR OTHER MEMBERS IF REQUIRED UNDER A PARTICULAR
3 ARTICLE.

4 (N) KNOWINGLY FAILS TO CONSPICUOUSLY DISPLAY A LICENSE OR
5 REGISTRATION OR PRODUCE A POCKET LICENSE OR REGISTRATION IF
6 REQUIRED UNDER A PARTICULAR ARTICLE.

7 (O) OPERATES OR ADVERTISES UNDER A NAME DIFFERENT THAN THE
8 NAME UNDER WHICH THE PERSON IS LICENSED OR REGISTERED.

9 Sec. 728. ~~(1)~~ A firm organized for the practice of public
10 accounting shall apply for and obtain a license under this article
11 in order to engage in the practice of public accounting in this
12 state. The firm applying for licensure under this article shall
13 meet both of the following requirements:

14 (a) At least a simple majority of the equity and voting rights
15 of the firm are held directly or beneficially by individuals who
16 are licensed in good standing as certified public accountants of
17 this or another state or the equivalent in another licensing
18 jurisdiction acceptable to the board.

19 (b) The principal officer of the firm and each officer or
20 director having authority for the practice of public accounting by
21 the firm are licensed in good standing as certified public
22 accountants in this or another state or the equivalent in another
23 licensing jurisdiction acceptable to the board.

24 ~~———— (2) A firm shall provide a change in address to the department~~
25 ~~within 30 days of the change.~~

26 Sec. 1009. (1) A license issued under this article is not
27 transferable.

1 (2) Within 15 days after a personnel agency changes from a
2 sole proprietorship to a partnership or corporation, or from a
3 partnership to a sole proprietorship or corporation, or from a
4 corporation to a sole proprietorship or partnership, all licensure
5 requirements for the new entity shall be met.

6 (3) A personnel agency ~~which~~ **THAT** seeks to admit a new
7 partner to an existing partnership or a new officer or stockholder
8 to an existing corporation shall notify the department within 15
9 days after a change in the partners of a partnership or the
10 officers of a corporation or the stockholders of a corporation
11 owning 10% or more of the stock of the corporation. The notice
12 shall be made on a form provided by the department and shall
13 contain information by which the department may determine whether
14 the new individual is of good moral character.

15 (4) If a designated employment agent or consulting agent is no
16 longer employed by the personnel agency or is no longer charged
17 with the general management of the personnel agency's office, the
18 personnel agency shall designate another licensed employment agency
19 or consulting agent and notify the department within 15 days after
20 the appointment is made. A temporary license may be issued to an
21 applicant for an agent's license pursuant to section 213.

22 (5) An employment agent or consulting agent shall notify the
23 department in writing within 5 business days after the date he or
24 she is no longer employed by a personnel agency or is no longer
25 charged with the general management of the office of that personnel
26 agency.

27 ~~—— (6) A personnel agency shall notify the department, in~~

1 ~~writing, within 30 days after the date of any change of address and~~
 2 ~~shall demonstrate that the premises designated is an acceptable~~
 3 ~~place for the personnel agency to conduct business.~~

4 Sec. 1019. A personnel agency, or any licensed agent or other
 5 agent or employee of a personnel agency shall not do any of the
 6 following:

7 ~~— (a) Use any name other than the name in which the personnel~~
 8 ~~agency is licensed.~~

9 ~~— (b) Bring or maintain an action in a court of this state for~~
 10 ~~the collection of compensation for the performance of an act or~~
 11 ~~contract for services as a personnel agency without alleging and~~
 12 ~~proving that the agency and its agent were licensed under this~~
 13 ~~article during the performance of the act or contract.~~

14 **(A)** ~~—(c)—~~ Use a form ~~which~~ **THAT** contains provisions in
 15 violation of this article, rules promulgated under this article, or
 16 other state or federal laws or regulations.

17 **(B)** ~~—(d)—~~ Share a fee with any other person, except a
 18 personnel agency licensed in this state or in any other state
 19 requiring licenses for personnel agencies or a personnel agency in
 20 a state in which licensure is not required.

21 **(C)** ~~—(e)—~~ Persuade, induce, or solicit an employer to
 22 discharge an employee.

23 **(D)** ~~—(f)—~~ Request or accept a registration fee or any other
 24 fee not set forth in the agency's contract with a client or charge
 25 a fee higher than the fee set forth in the contract.

26 **(E)** ~~—(g)—~~ Request or accept, or give, offer, or promise to
 27 give, a gift of such value that the gift is likely to persuade,

1 induce, or influence an action of an employer or benefit the
2 personnel agency or any of its agents or employees.

3 (F) ~~(h)~~ Knowingly procure, entice, send, or aid in
4 procuring, enticing, or sending a person to perform an illegal act.

5 (G) ~~(i)~~ Prevent an employee of the department from
6 inspecting the records of the agency at any time during normal
7 business hours.

8 SEC. 2006. THE DEPARTMENT, THE ATTORNEY GENERAL, A COUNTY
9 PROSECUTOR, AND AN ATTORNEY REPRESENTING A LOCAL UNIT OF GOVERNMENT
10 MAY UTILIZE THE FORFEITURE PROVISIONS OF CHAPTER 47 OF THE REVISED
11 JUDICATURE ACT OF 1961, 1961 PA 236, MCL 600.4701 TO 600.4709, FOR
12 ITEMS SEIZED AND DETERMINED TO BE PROCEEDS OF A CRIME, SUBSTITUTED
13 PROCEEDS OF A CRIME, OR THE INSTRUMENTALITY OF A CRIME, RELATING TO
14 A VIOLATION OF THIS ARTICLE, AS THOSE TERMS ARE DEFINED UNDER
15 SECTION 4701 OF THE REVISED JUDICATURE ACT OF 1961, 1961 PA 236,
16 MCL 600.4701.

17 Sec. 2412. ~~(1) A person or qualifying officer for a~~
18 ~~corporation or member of a residential builder or residential~~
19 ~~maintenance and alteration contractor shall not bring or maintain~~
20 ~~an action in a court of this state for the collection of~~
21 ~~compensation for the performance of an act or contract for which a~~
22 ~~license is required by this article without alleging and proving~~
23 ~~that the person was licensed under this article during the~~
24 ~~performance of the act or contract. (2) Failure of the person~~
25 bringing a complaint against a licensee to utilize a contractually
26 provided alternative dispute resolution procedure shall be an
27 affirmative defense to an action brought in a court of this state

1 against a licensee under this article.

2 Enacting section 1. Sections 916 and 2512a of the occupational
3 code, 1980 PA 299, MCL 339.916 and 339.2512a, are repealed.

4 Enacting section 2. This amendatory act does not take effect
5 unless Senate Bill No.____ or House Bill No. 5875(request no.
6 02669'05 a **) of the 93rd Legislature is enacted into law.