

HOUSE BILL No. 5325

January 31, 2012, Introduced by Reps. Franz and Cotter and referred to the Committee on Regulatory Reform.

A bill to amend 1980 PA 299, entitled
"Occupational code,"
by amending sections 411, 601, 2401, 2402, 2403, 2404, 2404b, 2410, 2411, and 2412 (MCL 339.411, 339.601, 339.2401, 339.2402, 339.2403, 339.2404, 339.2404b, 339.2410, 339.2411, and 339.2412), section 411 as amended by 2008 PA 309, section 601 as amended by 2008 PA 319, section 2401 as amended by 1991 PA 166, section 2402 as amended and section 2404b as added by 2007 PA 157, section 2403 as amended by 1984 PA 191, sections 2404 and 2411 as amended by 2010 PA 151, and section 2412 as amended by 2007 PA 155; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 411. (1) Subject to subsection (2), a person who fails to
2 renew a license or registration on or before the expiration date

1 shall not practice the occupation, operate, or use the title after
 2 the expiration date printed on the license or registration. A
 3 license or registration shall lapse on the day after the expiration
 4 date.

5 (2) ~~A~~ **THE DEPARTMENT SHALL PERMIT A** person who fails to renew
 6 a license or registration on or before the expiration date ~~shall be~~
 7 ~~permitted to renew the license or registration by payment of~~ **IF THE**
 8 **PERSON PAYS** the required license or registration fee and a late
 9 renewal fee within 60 days after the expiration date.

10 (3) Except as otherwise provided in this act, **THE DEPARTMENT**
 11 **MAY RENEW THE LICENSE OR REGISTRATION OF** a person who ~~fails~~ **FAILED**
 12 to renew a license or registration within the time period ~~set forth~~
 13 **DESCRIBED** in subsection (2), ~~may be relicensed or reregistered~~
 14 without examination and without ~~meeting~~ **REQUIRING ANY** additional
 15 education or training requirements in force at the time of **THE**
 16 **RENEWAL** application ~~for relicensure or reregistration~~ if all of the
 17 following conditions are met:

18 (a) The person applies within 3 years after the expiration
 19 date of the last license or registration.

20 (b) The person pays an application processing fee, the late
 21 renewal fee, and the per year license or registration fee for the
 22 upcoming licensure or registration period, subject to subsection
 23 (8).

24 (c) ~~Penalties~~ **THE PERSON HAS SATISFIED ANY PENALTIES** and
 25 conditions imposed by disciplinary action in this state or any
 26 other jurisdiction. ~~have been satisfied.~~

27 (d) The person submits proof of having completed the

equivalent of 1 year of continuing education within the 12 months immediately preceding the date of application or as otherwise provided in a specific article or by rule, if continuing education is required of licensees or registrants under ~~a~~**THE** specific article **APPLICABLE TO THE PERSON'S LICENSE OR REGISTRATION**.

(4) Except as otherwise provided in this act, **THE DEPARTMENT MAY RELICENSE OR REREGISTER** a person ~~may be relicensed or reregistered subsequent to~~ 3 or more years after the expiration date of the **PERSON'S** last license or registration ~~upon showing that~~ **IF** the person meets the requirements for licensure or registration ~~as established by the department in rules or procedures. which~~**THE RULES OR PROCEDURES** may require **THAT** a person ~~to~~ pass all or part of a required examination, ~~to~~ complete continuing education requirements, or ~~to~~ meet current education or training requirements.

(5) Unless otherwise provided in this act, a person who seeks reinstatement of a license or registration shall file an application on a form provided by the department, pay the application processing fee, and file a petition to the department and the appropriate board stating reasons for reinstatement and including evidence that the person can and is likely to serve the public in the regulated activity with competence and in conformance with all other requirements prescribed by law, rule, or an order of the department or board. ~~The procedure to be followed in~~**IN** conducting the review of a petition for reinstatement, ~~is prescribed~~**THE DEPARTMENT SHALL FOLLOW THE PROCEDURE ESTABLISHED** in article 5. If approved for reinstatement, the person shall pay the

1 per year license or registration fee for the upcoming license or
 2 registration period, if appropriate, in addition to completing any
 3 requirements imposed ~~in accordance with~~ **UNDER** section 203(2).

4 (6) ~~Beginning~~ **EXCEPT AS PROVIDED IN SUBSECTIONS (7) AND (10),**
 5 **BEGINNING** July 23, 2004, the department shall issue an initial or
 6 renewal license or registration ~~not later than~~ **WITHIN** 90 days after
 7 the applicant files a completed application. ~~Receipt of the~~ **AN**
 8 application is considered **RECEIVED ON** the date the application is
 9 received by any agency or department of ~~the~~ **THIS** state. ~~of~~
 10 ~~Michigan.~~ If the **DEPARTMENT CONSIDERS THE** application ~~is considered~~
 11 incomplete, ~~by the department,~~ the department shall notify the
 12 applicant in writing, or make information electronically available
 13 **TO THE APPLICANT**, within 30 days after ~~receipt of~~ **IT RECEIVES** the
 14 incomplete application, describing the deficiency and requesting
 15 the additional information. The 90-day period **DESCRIBED IN THIS**
 16 **SUBSECTION** is tolled ~~upon notification by~~ **FROM THE DATE** the
 17 department **NOTIFIES THE APPLICANT** of a deficiency until the date
 18 the **DEPARTMENT RECEIVES THE** requested information. ~~is received by~~
 19 ~~the department.~~ ~~The~~ **A** determination of the completeness of **BY THE**
 20 **DEPARTMENT THAT** an application **IS COMPLETE** does not operate as an
 21 approval of the application for the license or registration and
 22 does not confer eligibility ~~of~~ **ON** an applicant ~~determined~~ **THE**
 23 **DEPARTMENT DETERMINES IS** otherwise ineligible for issuance of a
 24 license or registration.

25 (7) Notwithstanding the time periods described in subsection
 26 (6), ~~in the case of~~ **FOR** a real estate broker ~~and~~ **OR** associate
 27 broker ~~licensed~~ **LICENSE** under article 25, the time period for

1 approval by the department of a completed application is 30 days
2 and the time period for ~~notification sent~~ **THE DEPARTMENT TO NOTIFY**
3 **AN APPLICANT** in writing, or ~~made~~ **MAKE INFORMATION** electronically
4 available **TO THE APPLICANT**, ~~by the department to the applicant~~
5 regarding an incomplete application is 15 days after the ~~receipt of~~
6 ~~the application~~ **IS RECEIVED** by any agency or department of ~~the~~ **THIS**
7 state. ~~of Michigan.~~

8 (8) If the department fails to issue or deny a license or
9 registration within the time required ~~by~~ **UNDER** this section, the
10 department shall return the license or registration fee, and shall
11 reduce the license or registration fee for the applicant's next
12 renewal application, if any, by 15%. ~~The~~ **A** failure to issue or deny
13 a license or registration within the time required under this
14 section does not allow the department to otherwise delay the
15 processing of the application, and ~~that~~ **IF THE** application, ~~upon~~
16 ~~completion, shall be placed~~ **IS COMPLETED, THE DEPARTMENT SHALL**
17 **PLACE THE APPLICATION** in sequence with other completed applications
18 received at that same time. The department shall not discriminate
19 against an applicant in the processing of an application based ~~upon~~
20 **ON** the fact that ~~the~~ **A** license or registration fee was refunded or
21 discounted under this subsection.

22 (9) Beginning October 1, 2005, the director shall submit a
23 report by December 1 of each year to the standing committees and
24 appropriations subcommittees of the senate and house of
25 representatives concerned with occupational issues. The director
26 shall include all of the following information in the report
27 concerning the preceding fiscal year:

1 (a) The number of initial and renewal applications the
2 department received and completed within the 90-day time period
3 described in subsection (6) and the 30-day time period described in
4 subsection (7).

5 (b) The number of applications **THE DEPARTMENT** denied.

6 (c) The number of applicants **THAT WERE** not issued a license or
7 registration within the applicable time period and the amount of
8 money returned to licensees and registrants under subsection (8).

9 (10) Subsection (6) does not apply to ~~licenses or~~

10 ~~registrations~~ **A LICENSE OR REGISTRATION** for any of the following:

11 (a) An interior designer listed under ~~article 6~~ **SECTION 601A**.

12 (b) A certified public accountant ~~and~~ **OR** registered accountant
13 under article 7.

14 (c) An agency non-owner manager of a collection agency under
15 article 9.

16 (d) A barber, student barber, student instructor, ~~and~~ **OR**
17 barber instructor under article 11.

18 (e) An employment and consulting agent of a personnel agency
19 under article 10.

20 (f) A cosmetologist, manicurist, natural hair culturist,
21 esthetician, electrologist, instructor, ~~and~~ **OR** registered student
22 under article 12.

23 (g) A hearing aid salesperson ~~and~~ **OR** trainee under article 13.

24 (h) A mortuary science licensee, embalmer, ~~and~~ **OR** resident
25 trainee in mortuary science under article 18.

26 (i) An individual architect, surveyor, ~~and~~ **OR** engineer under
27 article 20.

1 (j) A forester under article 21.

2 (k) An individual landscape architect under article 22.

3 (l) A community planner under article 23.

4 (m) An individual residential builder ~~and alteration and~~
5 ~~maintenance contractor and a salesperson for a residential builder~~
6 ~~and alteration and maintenance contractor~~ under article 24.

7 (n) A real estate salesperson under article 25.

8 (o) A real estate appraiser under article 26.

9 (p) An ocularist ~~and~~ **OR** ocularist apprentice under article 27.

10 (11) Notwithstanding any provision in this act to the
11 contrary, an individual or qualifying officer who is a licensee or
12 registrant under this act and who is mobilized for military duty in
13 the armed forces of the United States by the president of the
14 United States is temporarily exempt from the renewal license fee,
15 continuing education requirements, and any other related
16 requirements of this act. It is the obligation of ~~the~~ **A** licensee or
17 registrant to inform the department by written or electronic mail
18 of the desire to exercise the temporary exemption under this
19 subsection. If ~~the~~ **A** licensee applying for the temporary exemption
20 is the individual responsible for supervision and oversight of
21 licensed activities, notice of arrangements for adequate provision
22 of that supervision and oversight shall be provided to the
23 department. The licensee or registrant shall accompany the request
24 with proof, as determined by the department, to verify the
25 mobilized duty status. ~~The department, upon receiving~~ **IF IT**
26 **RECEIVES** a request for a temporary exemption under this subsection,
27 **THE DEPARTMENT** shall make a determination of the requestor's status

1 and grant the temporary exemption after verification of mobilized
2 duty status under this subsection. A temporary exemption is valid
3 until 90 days after the licensee's or registrant's release from the
4 mobilized duty ~~upon~~ **ON** which the exemption was based, but shall not
5 exceed 36 months from the date of expiration of the license or
6 registration.

7 (12) As used in this section, "completed application" means an
8 application complete on its face and submitted with any applicable
9 licensing or registration fees ~~as well as~~ **AND WITH** any other
10 information, records, approval, security, or similar item required
11 by law or rule from a local unit of government, a federal agency,
12 or a private entity but not from another department or agency of
13 ~~the~~ **THIS** state. ~~of Michigan.~~

14 Sec. 601. (1) A person shall not engage in or attempt to
15 engage in the practice of an occupation regulated under this act or
16 use a title designated in this act unless the person possesses a
17 license or registration issued by the department for the
18 occupation.

19 (2) A school, institution, or person shall not operate or
20 attempt to operate a barber college, school of cosmetology, or real
21 estate school unless the school, institution, or person is licensed
22 or approved by the department.

23 (3) Subject to section 411, a person whose license or
24 registration is suspended, revoked, or lapsed, as determined by the
25 records of the department, is considered unlicensed or
26 unregistered.

27 (4) Except as otherwise provided for in **SUBSECTION (6)**,

1 **SUBSECTION (7), OR** section 735, a person, school, or institution
2 that violates subsection (1) or (2) is guilty of a misdemeanor,
3 punishable by a fine of not more than \$500.00, or imprisonment for
4 not more than 90 days, or both.

5 (5) Except as otherwise provided for in **SUBSECTION (6),**
6 **SUBSECTION (7), OR** section 735, a person, school, or institution
7 that violates subsection (1) or (2) a second or any subsequent time
8 is guilty of a misdemeanor, punishable by a fine of not more than
9 \$1,000.00, or imprisonment for not more than 1 year, or both.

10 (6) ~~Notwithstanding subsections (4) and (5), a A person not~~
11 ~~licensed~~ **THAT VIOLATES SUBSECTION (1) BY ENGAGING IN THE OCCUPATION**
12 **OF RESIDENTIAL BUILDER WITHOUT A LICENSE** under article 24 ~~as a~~
13 ~~residential builder or a residential maintenance and alteration~~
14 ~~contractor who violates subsection (1) or (2) is guilty as follows~~
15 **OF 1 OR MORE OF THE FOLLOWING:**

16 (a) ~~In the case of~~ **IF THE VIOLATION IS** a first offense, a
17 misdemeanor punishable by a fine of not less than \$5,000.00 or more
18 than \$25,000.00, or imprisonment for not more than 1 year, or both.

19 (b) ~~In the case of~~ **IF THE VIOLATION IS** a second or subsequent
20 offense, a misdemeanor punishable by a fine of not less than
21 \$5,000.00 or more than \$25,000.00, or imprisonment for not more
22 than 2 years, or both.

23 (c) ~~In the case of an offense that~~ **IF THE VIOLATION** causes
24 death or serious injury, a felony punishable by a fine of not less
25 than \$5,000.00 or more than \$25,000.00, or imprisonment for not
26 more than 4 years, or both.

27 (7) ~~Notwithstanding subsections (4) and (5), a A person not~~

~~licensed under article 20 as an~~ **THAT VIOLATES SUBSECTION (1) BY**
ENGAGING IN THE OCCUPATION OF architect, professional engineer, or
professional land surveyor ~~who violates subsection (1) or (2)~~
WITHOUT A LICENSE UNDER ARTICLE 20 is guilty ~~as follows~~ **OF 1 OR**
MORE OF THE FOLLOWING:

(a) ~~In the case of~~ **IF THE VIOLATION IS** a first offense, a
misdemeanor punishable by a fine of not less than \$5,000.00 or more
than \$25,000.00 or imprisonment for not more than 93 days, or both.

(b) ~~In the case of~~ **IF THE VIOLATION IS** a second or subsequent
offense, a misdemeanor punishable by a fine of not less than
\$5,000.00 or more than \$25,000.00 or imprisonment for not more than
1 year, or both.

(c) ~~In the case of an offense that~~ **IF THE VIOLATION** causes
death or serious injury, a felony punishable by a fine of not less
than \$5,000.00 or more than \$25,000.00 or imprisonment for not more
than 4 years, or both.

(8) ~~Any~~ **A PENALTY FOR A** violation of this act shall include a
requirement that restitution be made, based upon proofs submitted
to and findings made by the trier of fact as provided by law.

(9) Notwithstanding the existence and pursuit of any other
remedy, an affected person may maintain **AN** injunctive action to
restrain or prevent a person from violating subsection (1) or (2).
If successful in obtaining injunctive relief, the affected person
~~shall be~~ **IS** entitled to actual costs and attorney fees.

(10) This act does not apply to a person engaging in or
practicing the following:

(a) Interior design.

1 (b) Residential building design. As used in this subdivision,
2 "residential building design" means the rendering of residential
3 design services for a detached 1- and 2-family residence building
4 by a person ~~exempted from the requirements of~~ **WHO IS EXEMPT FROM**
5 **THIS ARTICLE UNDER** section 2012.

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

8 (d) Any activity for which the person is licensed under the
9 Forbes mechanical contractors act, 1984 PA 192, MCL 338.971 to
10 338.988.

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

13 (11) As used in subsection (9), "affected person" means a
14 person directly affected by the actions of a person suspected of
15 violating subsection (1) or (2) and includes, but is not limited
16 to, a licensee or registrant, a board established ~~pursuant to~~ **UNDER**
17 this act, the department, a person ~~who~~ **THAT** has utilized the
18 services of the person engaging in or attempting to engage in an
19 occupation regulated under this act or using a title designated by
20 this act without being licensed or registered by the department, or
21 a private association composed primarily of members of the
22 occupation in which the person is engaging in or attempting to
23 engage in or in which the person is using a title designated under
24 this act without being registered or licensed by the department.

25 (12) An investigation may be conducted under article 5 to
26 enforce this section. A person ~~who~~ **THAT** violates this section ~~shall~~
27 ~~be~~ **IS** subject to this section and sections 506, 602, and 606.

1 (13) The department, the attorney general, or a county
2 prosecutor may utilize forfeiture as a remedy in the manner
3 ~~provided for~~ **DESCRIBED** in section 606.

4 (14) The remedies under this section are independent and
5 cumulative. The use of 1 remedy by a person ~~shall~~ **DOES** not bar the
6 use of other lawful remedies by that person or the use of a lawful
7 remedy by another person.

8 (15) An interior designer may perform services in connection
9 with the design of interior spaces including preparation of
10 documents relative to finishes, systems furniture, furnishings,
11 fixtures, equipment, and interior partitions that do not affect the
12 building mechanical, structural, electrical, or fire safety
13 systems.

14 (16) ~~Upon entering~~ **IF A COURT ENTERS** a conviction under
15 subsection (4), (5), or (6), a ~~THE~~ court ~~entering the conviction~~
16 shall notify, by mail, facsimile transmission, or electronic mail,
17 the bureau of commercial services at the department **OF THE**
18 **CONVICTION**.

19 Sec. 2401. As used in this article:

20 **(A) "MICHIGAN RESIDENTIAL CODE" MEANS THE MICHIGAN RESIDENTIAL**
21 **CODE PROMULGATED BY THE DIRECTOR UNDER SECTION 4 OF THE STILLE-**
22 **DEROSSETT-HALE SINGLE STATE CONSTRUCTION CODE ACT, 1972 PA 230, MCL**
23 **125.1504.**

24 **(B)** ~~(a)~~—"Residential builder" means a person engaged in the
25 construction of a residential structure or a combination
26 residential and commercial structure who, for a fixed sum, price,
27 fee, percentage, valuable consideration, or other compensation,

1 other than wages for personal labor only, undertakes with another
2 or offers to undertake or purports to have the capacity to
3 undertake with another for the erection, construction, replacement,
4 repair, alteration, or an addition to, subtraction from,
5 improvement, wrecking of, or demolition of, a residential structure
6 or combination residential and commercial structure; a person who
7 manufactures, assembles, constructs, deals in, or distributes a
8 residential or combination residential and commercial structure
9 ~~which~~ **THAT** is prefabricated, preassembled, precut, packaged, or
10 shell housing; or a person who erects a residential structure or
11 combination residential and commercial structure ~~except~~ **THAT IS NOT**
12 for the person's own use and occupancy on the person's property.

13 ~~—— (b) "Residential maintenance and alteration contractor" means~~
14 ~~a person who, for a fixed sum, price, fee, percentage, valuable~~
15 ~~consideration, or other compensation, other than wages for personal~~
16 ~~labor only, undertakes with another for the repair, alteration, or~~
17 ~~an addition to, subtraction from, improvement of, wrecking of, or~~
18 ~~demolition of a residential structure or combination residential~~
19 ~~and commercial structure, or building of a garage, or laying of~~
20 ~~concrete on residential property, or who engages in the purchase,~~
21 ~~substantial rehabilitation or improvement, and resale of a~~
22 ~~residential structure, engaging in that activity on the same~~
23 ~~structure more than twice in 1 calendar year, except in the~~
24 ~~following instances:~~

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

26 ~~—— (ii) If the rehabilitation or improvement work of residential~~
27 ~~type property or a structure is contracted for, with, or hired~~

1 ~~entirely to be done and performed for the owner by a person~~
2 ~~licensed under this article.~~

3 ~~—— (iii) If work is performed by a person employed by the owner to~~
4 ~~perform work for which the person is licensed by the state.~~

5 (c) "Residential structure" means a premises used or intended
6 to be used for a residence purpose, and related facilities
7 appurtenant to the premises ~~—~~**THAT ARE** used or intended to be used
8 ~~—~~as an adjunct of residential occupancy.

9 ~~—— (d) "Salesperson" means an employee or agent, other than a~~
10 ~~qualifying officer, of a licensed residential builder or~~
11 ~~residential maintenance and alteration contractor, who for a~~
12 ~~salary, wage, fee, percentage, commission, or other consideration,~~
13 ~~sells or attempts to sell, negotiates or attempts to negotiate,~~
14 ~~solicits for or attempts to solicit for, obtains or attempts to~~
15 ~~obtain a contract or commitment for, or furnishes or attempts or~~
16 ~~agrees to furnish, the goods and services of a residential builder~~
17 ~~or residential maintenance and alteration contractor, except a~~
18 ~~person working for a licensed residential builder or residential~~
19 ~~maintenance and alteration contractor who makes sales which are~~
20 ~~occasional and incidental to the person's principal employment.~~

21 (D) ~~(e)~~—"Wages" means money paid or to be paid on an hourly or
22 daily basis by an owner, lessor, or occupant of a residential
23 structure or combination residential and commercial structure as
24 consideration for the performance of personal labor on the
25 structure by a person who does not perform or promise to perform
26 the labor for any other fixed sum, price, fee, percentage, valuable
27 consideration, or other compensation and who does not furnish or

1 agree to furnish the material or supplies required to be used in
 2 the performance of the labor or an act defined in subdivision (a).
 3 ~~or (b).~~

4 Sec. 2402. ~~(1) A residential builders' and maintenance and~~
 5 ~~alteration contractors' board is created. Of the 9 member board, 4~~
 6 ~~members shall be~~ **THE BOARD SHALL CONSIST OF 9 INDIVIDUALS, AS**
 7 **FOLLOWS:**

8 **(A) SIX INDIVIDUALS WHO ARE** licensed residential builders. ~~7~~
 9 ~~and 2 members shall be licensed maintenance and alteration~~
 10 ~~contractors.~~

11 **(B) ~~(2) Of the members~~ THREE INDIVIDUALS** representing the
 12 general public, at least 1 ~~member shall be~~ **OF WHOM IS** registered
 13 under the building officials and inspectors registration act, 1986
 14 PA 54, MCL 338.2301 to 338.2313.

15 Sec. 2403. **(1)** Notwithstanding article 6, a person may engage
 16 in the business of or act in the capacity of a residential builder
 17 ~~or a residential maintenance and alteration contractor or~~
 18 ~~salesperson~~ in this state without having a license, if the person
 19 is 1 of the following:

20 (a) An authorized representative of the United States
 21 government, this state, or a county, township, city, village, or
 22 other political subdivision of this state.

23 (b) An owner of property ~~, with reference to~~ **ENGAGED IN**
 24 **CONSTRUCTION OF** a structure on the ~~THAT~~ property for the owner's
 25 own use and occupancy.

26 (c) An owner of rental property ~~, with reference to the~~
 27 **ENGAGED IN** maintenance and alteration of that rental property.

1 (d) An officer of a court acting within the ~~terms~~ **SCOPE** of the
2 ~~officer's~~ **THAT** office.

3 (e) A person ~~other than the salesperson who~~ engages solely in
4 the business of performing work and services under contract with a
5 residential builder ~~or a residential maintenance and alteration~~
6 ~~contractor~~ licensed under this article.

7 (f) A person working on 1 undertaking or project by 1 or more
8 contracts, **IF** the aggregate contract price for ~~which~~ **THE** labor,
9 material, and any other item **FOR THE UNDERTAKING OR PROJECT** is less
10 than \$600.00. ~~This~~ **THE** exemption **DESCRIBED IN THIS SUBDIVISION** does
11 not apply if the work of a construction is only a part of a larger
12 or major operation, whether undertaken by the same or a different
13 residential builder, ~~or residential maintenance and alteration~~
14 ~~contractor~~, or in which a division of the operation is made in
15 contracts of amounts less than \$600.00, to evade this act.

16 (g) An electrical contractor ~~who~~ **THAT** is licensed under ~~Act~~
17 ~~No. 217 of the Public Acts of 1956, as amended, being sections~~
18 ~~338.881 to 338.892 of the Michigan Compiled Laws~~ **THE ELECTRICAL**
19 **ADMINISTRATIVE ACT, 1956 PA 217, MCL 338.881 TO 338.892.** ~~This~~ **THE**
20 exemption **DESCRIBED IN THIS SUBDIVISION** applies only to the
21 electrical installation, electrical maintenance, or electrical
22 repair work performed by the electrical contractor.

23 (h) A plumbing contractor licensed under ~~Act No. 266 of the~~
24 ~~Public Acts of 1929, as amended, being sections 338.901 to 338.917~~
25 ~~of the Michigan Compiled Laws~~ **THE STATE PLUMBING ACT, 2002 PA 733,**
26 **MCL 338.3511 TO 338.3569.** ~~This~~ **THE** exemption **DESCRIBED IN THIS**
27 **SUBDIVISION** applies only to plumbing installation, plumbing

1 maintenance, or plumbing repair work performed by the plumbing
2 contractor.

3 (i) A mechanical contractor who is licensed under the **FORBES**
4 mechanical contractors act, 1984 PA 192, MCL 338.971 TO 338.988.
5 ~~This~~**THE** exemption **DESCRIBED IN THIS SUBDIVISION** applies only to
6 mechanical installation, mechanical maintenance, or mechanical
7 repair work performed by the mechanical contractor.

8 (2) **THIS SECTION DOES NOT PROHIBIT A PERSON FROM ENGAGING IN**
9 **ANY OF THE FOLLOWING, FOR A FIXED SUM, PRICE, FEE, PERCENTAGE,**
10 **VALUABLE CONSIDERATION, OR OTHER COMPENSATION, WHETHER ON HIS OR**
11 **HER OWN OR AS A SUBCONTRACTOR FOR A RESIDENTIAL BUILDER:**

12 (A) **THE REPAIR OF, ALTERATION OF, ADDITION TO, SUBTRACTION**
13 **FROM, IMPROVEMENT OF, WRECKING OF, OR DEMOLITION OF A RESIDENTIAL**
14 **STRUCTURE, COMMERCIAL STRUCTURE, OR COMBINATION RESIDENTIAL AND**
15 **COMMERCIAL STRUCTURE.**

16 (B) **THE BUILDING OF A GARAGE.**

17 (C) **THE LAYING OF CONCRETE ON COMMERCIAL OR RESIDENTIAL**
18 **PROPERTY.**

19 (D) **THE CONSTRUCTION, ALTERATION, OR REPAIR OF ANY**
20 **APPURTENANCE OF RESIDENTIAL OR COMMERCIAL PROPERTY.**

21 (E) **THE PURCHASE, SUBSTANTIAL REHABILITATION OR IMPROVEMENT,**
22 **AND RESALE OF A RESIDENTIAL OR COMMERCIAL STRUCTURE.**

23 (F) **ANY OF THE FOLLOWING CRAFTS AND TRADES: CARPENTRY,**
24 **CONCRETE, SWIMMING POOL INSTALLATION, BASEMENT WATERPROOFING,**
25 **EXCAVATION, INSULATION WORK, MASONRY WORK, PAINTING AND DECORATING,**
26 **ROOFING, SIDING AND GUTTERS INSTALLATION, SCREEN OR STORM SASH**
27 **INSTALLATION, TILE AND MARBLE WORK, AND HOUSE WRECKING.**

1 Sec. 2404. (1) The department may require an applicant, **A**
 2 licensee, or each partner, trustee, director, officer, member, or
 3 shareholder **OF AN APPLICANT OR LICENSEE** to submit evidence of good
 4 moral character ~~and~~ financial stability.

5 (2) Before the ~~issuance of~~ **DEPARTMENT ISSUES** a license, an
 6 applicant shall submit a copy of an ~~HIS OR HER~~ operator's license
 7 or state personal identification card. ~~to be used by the~~ **THE**
 8 department **MAY** only **USE THE COPY OF THE CARD** for proof of **THE**
 9 **APPLICANT'S** identity. ~~of the applicant.~~

10 (3) ~~(2)~~ The department shall require an applicant for a
 11 license to pass an examination ~~establishing~~ **THAT ESTABLISHES** that
 12 the applicant has a fair knowledge of the obligations of a
 13 residential builder ~~or residential maintenance and alteration~~
 14 contractor to the public and the applicant's principal, and the
 15 statutes relating to the applicant's licensure.

16 ~~(3) The department, upon application, may issue a residential~~
 17 ~~maintenance and alteration contractor's license to an applicant~~
 18 ~~who, upon examination, qualifies for a license, which authorizes~~
 19 ~~the licensee according to the applicant's qualifications, crafts,~~
 20 ~~and trades to engage in the activities of a residential maintenance~~
 21 ~~and alteration contractor. A license includes the following crafts~~
 22 ~~and trades: carpentry, concrete, swimming pool installation,~~
 23 ~~waterproofing a basement, excavation, insulation work, masonry~~
 24 ~~work, painting and decorating, roofing, siding and gutters, screen~~
 25 ~~or storm sash installation, tile and marble work, and house~~
 26 ~~wrecking. The license shall specify the particular craft or trade~~
 27 ~~for which the licensee has qualified. This subsection does not~~

~~prohibit a specialty contractor from taking and executing a contract involving the use of 2 or more crafts or trades if the performance of the work in the craft or trade other than the craft for which the person is licensed is incidental and supplemental to the performance of work in the craft for which the specialty contractor is licensed.~~

(4) A residential builder ~~or residential maintenance and alteration contractor~~ shall maintain a place of business in this state. If a residential builder ~~or residential maintenance and alteration contractor~~ maintains more than 1 place of business ~~within~~ **IN** this state, **THE DEPARTMENT SHALL ISSUE** a branch office license ~~shall be issued to the builder or contractor for each place~~ **OF THOSE PLACES** of business. ~~so maintained.~~

(5) Beginning the license cycle after December 21, 2007, the department shall issue the license of a residential builder ~~and residential maintenance and alteration contractor~~ for a period ~~TERM~~ of 3 years. ~~in duration.~~ Beginning December 21, 2007, an applicant for renewal of a residential builder ~~or maintenance and alteration contractor~~ license shall state that he or she has a current copy of the Michigan residential code and has fulfilled the appropriate requirements regarding continuing competency.

(6) Beginning December 21, 2007, a licensee shall maintain documentation, for at least 5 years, of activities meeting the continuing competency requirements ~~as prescribed~~ **REQUIRED** under this article.

Sec. 2404b. (1) Beginning ~~the effective date of the amendatory act that added this section~~ **JUNE 1, 2008**, applicants ~~AN APPLICANT~~

1 for initial licensure ~~either as a residential builder or as a~~
 2 ~~residential maintenance and alteration contractor shall~~ **MUST**
 3 successfully complete a prelicensure course of study as ~~prescribed~~
 4 ~~by~~ **REQUIRED UNDER** this subsection **TO OBTAIN A LICENSE**. Licensees
 5 ~~holding~~ **A LICENSEE THAT HOLDS** a residential builder ~~or a~~
 6 ~~residential maintenance and alteration contractor license on the~~
 7 ~~effective date of the amendatory act that added this section that~~
 8 ~~are~~ **JUNE 1, 2008 AND IS** renewing a license in the capacity of an
 9 individual or qualifying officer, or both, ~~are~~ **IS** exempt from the
 10 requirement of successfully completing prelicensure courses
 11 described in this subsection. The department shall require an
 12 applicant **WHO IS** not ~~exempted~~ **EXEMPT** under this subsection to
 13 successfully complete 60 hours of approved prelicensure courses
 14 consisting of at least 6 hours of courses in each of the following
 15 areas of competency:

- 16 (a) Business management, estimating, and job costing.
- 17 (b) Design and building science.
- 18 (c) Contracts, liability, and risk management.
- 19 (d) Marketing and sales.
- 20 (e) Project management and scheduling.
- 21 (f) The current Michigan residential code.
- 22 (g) Construction safety standards promulgated under the
- 23 Michigan occupational safety and health act, 1974 PA 154, MCL
- 24 408.1001 to 408.1094.

25 (2) Beginning **IN** the **2009** calendar year, ~~after the effective~~
 26 ~~date of the amendatory act that added this section,~~ a person
 27 ~~obtaining~~ **SHALL NOT RECEIVE AN** initial licensure ~~LICENSE~~ under this

1 article as a residential builder ~~or a residential maintenance and~~
 2 ~~alteration contractor shall~~ **IF HE OR SHE DOES NOT** successfully
 3 complete ~~not less than~~ **1 OF THE FOLLOWING:**

4 **(A) IF SUBDIVISION (B) DOES NOT APPLY, AT LEAST** 3 hours of
 5 activities demonstrating continuing competency ~~per~~ **IN EACH** calendar
 6 year ~~, during the first 6 calendar years of licensure, and 21 hours~~
 7 ~~per~~ **FOR EACH** 3-year time period since the issuance of his or her
 8 license. At least 3 hours shall be devoted to those activities
 9 designed to develop a licensee's understanding and ability to apply
 10 state building codes and laws relating to the licensed occupation,
 11 safety, and changes in construction and business management laws. A

12 **(B) IF A** licensee ~~who has held a license for more than 6 years~~
 13 ~~or who AND has not been determined by the department in~~ **THE SUBJECT**
 14 **OF** a final order ~~to have violated this act or a rule adopted under~~
 15 ~~this act shall successfully complete~~ **UNDER SUBSECTION (3),** at least
 16 3 hours of activities demonstrating continuing competency ~~per~~ **IN**
 17 **EACH** license cycle ~~to include~~ **THAT INCLUDES** 1 hour of codes, 1 hour
 18 of safety, and 1 hour of legal issues as described in this
 19 subsection.

20 ~~(3) In the case of a licensee who has been~~ **IF THE DEPARTMENT**
 21 **HAS** determined ~~by the department in a final order to have~~ **THAT A**
 22 **LICENSEE HAS** violated this act or a rule adopted under this act, he
 23 ~~or she shall~~ **THE LICENSEE MUST** successfully complete, during the
 24 next complete license cycle, up to 21 hours of activities that
 25 demonstrate the development of continuing competency during that
 26 next license cycle as determined appropriate by order of the
 27 department, ~~at least 3 hours of that continuing competency to~~

1 ~~include~~ **THAT INCLUDES AT LEAST** 1 hour of codes, 1 hour of safety,
2 and 1 hour of legal issues as described in subsection (2).

3 (4) ~~As activities that demonstrate the development of~~
4 ~~continuing competency~~ **FOR PURPOSES OF THIS SECTION**, the education
5 courses described in section 3, pages 3-6 ~~through~~ **TO** 3-58 of the
6 January 2005 edition of the publication "NAHB University of
7 Housing, Blueprint for Success", published by the national
8 association of home builders, and taught by instructors meeting the
9 requirements of section 4, pages 4-5 through 4-9 of the January
10 2005 edition of "NAHB University of Housing, Blueprint for
11 Success", are considered approved, are considered appropriate for
12 fulfilling the prelicensure and continuing competency requirements
13 of subsections (1), (2), and (3), and are incorporated by
14 reference. A licensee may take any courses equivalent to ~~those~~ **THE**
15 courses incorporated by reference by this subsection. Updates to
16 the courses described in this subsection or equivalent courses are
17 acceptable unless the department determines that the courses do not
18 provide a means of developing and maintaining continuing competency
19 for those applicants or licensees who successfully fulfill the
20 course requirements. Any construction code update courses approved
21 by the bureau of construction codes ~~as well as~~ **AND ANY** fire safety
22 or workplace safety courses approved or sponsored by the department
23 are also considered appropriate for fulfilling the continuing
24 competency requirements of this subsection. The department may, by
25 rule, amend, supplement, update, substitute, or determine
26 equivalency regarding any courses or alternate activities for
27 developing continuing competency described in this subsection.

(5) The department may waive the requirement of membership in a local, state, or national trade association contained in the instructor standards of section 4, pages 4-5 through 4-9 of the January 2005 edition of the publication "NAHB University of Housing, Blueprint for Success", published by the national association of home builders, and incorporated by reference. By rule, the department may amend, supplement, update, substitute, or determine equivalency regarding the standards in this subsection and shall establish instructor qualifications for courses not incorporated by reference in subsection (4).

~~(6) The subject matter of~~ **FOR PURPOSES OF THIS SECTION, THE DEPARTMENT SHALL ONLY CONSIDER COURSES OR ACTIVITIES GIVEN OR SPONSORED BY ANY OF THE FOLLOWING AS APPROPRIATE FOR FULFILLING** the prelicensure and continuing competency activities ~~may be offered by~~ **a-REQUIREMENTS DESCRIBED IN THIS SECTION:**

(A) A high school, intermediate school district, community college, **OR** university. ~~τ~~

(B) **THE** bureau of construction codes ~~τ~~ **OR THE** Michigan occupational safety and health administration. ~~τ~~

(C) A trade association. ~~τ or a~~

(D) A proprietary school licensed by the department as meeting the subject matter qualifications described in subsection (4) and the instructional qualifications described in subsection (5).

(7) The department shall promulgate rules to provide for the following:

(a) Requirements other than those listed in subsection (4) for determining that a course meets the minimum criteria for developing

1 and maintaining continuing competency.

2 (b) Requirements for acceptable courses offered at seminars
3 and conventions by trade associations, research institutes, risk
4 management entities, manufacturers, suppliers, governmental
5 agencies other than those named in subsection (4), consulting
6 agencies, or other entities.

7 (c) Acceptable distance learning.

8 (d) Alternate forms of continuing competency, including
9 comprehensive testing, participation in mentoring programs,
10 research, participation in code hearings conducted by the
11 international code council, and publication of articles in a trade
12 journal **JOURNALS** or regional magazine **MAGAZINES** as an expert in the
13 field. The alternate forms shall be designed to maintain and
14 improve the licensee's ability to perform the occupation with
15 competence and shall prescribe proofs that are necessary to
16 demonstrate that the licensee has fulfilled the requirements of
17 continuing competency.

18 (8) Each licensee may select approved courses in his or her
19 subject matter area or specialty. Service as a lecturer or
20 discussion leader in an approved course shall be counted toward the
21 continuing competency requirements of this section. Alternate forms
22 of continuing competency may be earned and documented as
23 promulgated in rules by the department.

24 (9) The department may audit a predetermined percentage of
25 licensees who renew in a year ~~for~~ **TO DETERMINE THEIR** compliance
26 with ~~the requirements of~~ this section. ~~Failure~~ **THE DEPARTMENT SHALL**
27 **INITIATE A COMPLAINT AGAINST AND INVESTIGATE A LICENSEE WHO FAILS**

1 to comply with ~~the~~ **AN** audit or the requirements ~~shall result in the~~
 2 ~~investigation of a complaint initiated by the department~~ **OF THIS**
 3 **SECTION**, and the licensee is subject to the penalties prescribed in
 4 this act **FOR THAT FAILURE**.

5 (10) A ~~licensee as a~~ **LICENSED** residential builder ~~or~~
 6 ~~residential alteration and maintenance contractor~~ may apply for
 7 inactive status by completing an application, made available by the
 8 department, in which he or she declares that he or she is no longer
 9 actively engaged in ~~the practice authorized by his or her license~~
 10 **AS A RESIDENTIAL BUILDER** and temporarily intends to suspend
 11 activity authorized by his or her license. ~~Upon submission of a~~
 12 ~~completed application, the~~ **THE** department shall designate ~~the~~ **A**
 13 licensee **THAT SUBMITS A COMPLETED APPLICATION** as inactive and note
 14 that status on records available to the public. A licensee
 15 designated as inactive must have a current copy of the Michigan
 16 residential code and is exempt from the continuing competency
 17 requirements imposed under this section, but must still pay the
 18 per-year license fee. An inactive licensee may activate his or her
 19 license by submitting an application to the department requesting
 20 activation of the license. ~~Upon activation of a~~ **IF THE DEPARTMENT**
 21 **ACTIVATES THE** license, the licensee must complete at least 1 credit
 22 hour of continuing competency for that calendar year.

23 Sec. 2410. A person or qualifying officer for a corporation or
 24 member of a partnership or other business association who currently
 25 holds a residential builder ~~or maintenance and alteration~~
 26 ~~contractor~~ license ~~shall~~ **IS** not ~~be~~ required to repeat an
 27 examination for that license ~~when making application~~ **IF HE OR SHE**

1 **IS APPLYING** for an additional license. ~~However, a maintenance and~~
 2 ~~alteration contractor who currently holds a license and makes~~
 3 ~~application for a residential builders' license shall be required~~
 4 ~~to take an examination for that license.~~

5 Sec. 2411. (1) A **PERSON MUST FILE A** complaint ~~filed~~ under this
 6 section or article 5 ~~, or both, shall be made within 18 months~~
 7 ~~after the latest of the following regarding~~ **CLOSING OF THE PURCHASE**
 8 **OF** a residential structure or a combination of residential and
 9 commercial structure ~~as follows:~~ **OR THE ISSUANCE OF AN OCCUPANCY OR**
 10 **TEMPORARY OCCUPANCY CERTIFICATE FOR THAT STRUCTURE.**

11 ~~—— (a) In the case of a maintenance and alteration contract:~~

12 ~~—— (i) Completion.~~

13 ~~—— (ii) Occupancy.~~

14 ~~—— (iii) Purchase.~~

15 ~~—— (b) In the case of a project requiring an occupancy permit:~~

16 ~~—— (i) Issuance of the certificate of occupancy or temporary~~
 17 ~~certificate of occupancy.~~

18 ~~—— (ii) Closing.~~

19 (2) A licensee or applicant who commits 1 or more of the
 20 following is subject to the penalties ~~set forth in~~ **UNDER** article 6:

21 (a) ~~Abandonment without legal excuse of~~ **ABANDONING** a contract,
 22 construction project, or operation engaged in or undertaken by the
 23 licensee, **WITHOUT LEGAL EXCUSE.**

24 (b) ~~Diversion of funds~~ **IF MONEY** or property **IS** received for
 25 ~~prosecution or completion of~~ **ALL OR PART OF** a specific construction
 26 project or operation, or for a specified purpose in the ~~prosecution~~
 27 ~~or completion of~~ **ALL OR PART OF** a construction project or

1 operation, and the funds or property **DIVERTING THE** application or
2 use ~~for~~ **OF THAT MONEY OR PROPERTY TO** any other construction project
3 or operation, obligation, or purposes.

4 (c) ~~Failure~~ **FAILING** to account for or remit money coming into
5 the person's possession that belongs to others.

6 (d) ~~A willful departure~~ **WILLFULLY DEPARTING** from or disregard
7 ~~of~~ **DISREGARDING** plans or specifications in a material respect and
8 prejudicial to another, without consent of the owner or an
9 authorized representative and without the consent of the person
10 entitled to have the particular construction project or operation
11 completed in accordance with the plans and specifications.

12 (e) ~~A willful violation of~~ **WILLFULLY VIOLATING** the building
13 laws of this state or of a political subdivision of this state.

14 ~~—— (f) In a residential maintenance and alteration contract,~~
15 ~~failure to furnish to a lender the purchaser's signed completion~~
16 ~~certificate executed upon completion of the work to be performed~~
17 ~~under the contract.~~

18 ~~—— (g) If a licensed residential builder or licensed residential~~
19 ~~maintenance and alteration contractor, failure~~

20 **(F) FAILING** to notify the department within 10 days of a
21 change in the control or direction of the business of the licensee
22 resulting from a change in the licensee's partners, directors,
23 officers, or trustees, or a change in the control or direction of
24 the business of the licensee resulting from any other occurrence or
25 event.

26 ~~—— (h) Failure to deliver to the purchaser the entire agreement~~
27 ~~of the parties including any finance or other charge arising out of~~

~~or incidental to the agreement if the agreement involves repair, alteration, or addition to, subtraction from, improvement of, wrecking of, or demolition of a residential structure or combination of residential and commercial structure, building of a garage, laying of concrete on residential property, or manufacture, assembly, construction, sale, or distribution of a residential or combination residential and commercial structure that is prefabricated, preassembled, precut, packaged, or shell housing.~~

~~—— (i) If a salesperson, failure to pay over immediately upon receipt money received by the salesperson, in connection with a transaction governed by this article to the residential builder or residential maintenance and alteration contractor under whom the salesperson is licensed.~~

(G) ~~(j)~~ Aiding or abetting an unlicensed person to evade this article, or knowingly combining or conspiring with, or acting as agent, partner, or associate for an unlicensed person, allowing **AN UNLICENSED PERSON TO USE** one's license, ~~to be used by an unlicensed person,~~ or acting as or being an ostensible licensed residential builder ~~or licensed residential maintenance and alteration contractor~~ for an undisclosed person who ~~does or shall control or direct~~ **CONTROLS OR DIRECTS**, or who may have the right to control or direct, directly or indirectly, the operations of a ~~THE~~ licensee.

(H) ~~(k)~~ Acceptance of **IF A PERSON IS A SALESPERSON, ACCEPTING** a commission, bonus, or other valuable consideration ~~by a salesperson~~ for the sale of goods or the performance of service specified in the article from a person other than the residential builder ~~or residential maintenance and alteration contractor under~~

1 whom the person is licensed.

2 (I) ~~(H)~~ Becoming insolvent, filing a bankruptcy action,
3 becoming subject to a receivership, assigning for the benefit of
4 creditors, failing to satisfy judgments or liens, or failing to pay
5 an obligation as it becomes due in the ordinary course of business.

6 (J) ~~(m) Workmanship not meeting~~ **ENGAGING IN WORKMANSHIP THAT**
7 **DOES NOT MEET** the standards of the Michigan residential code. ~~as~~
8 ~~promulgated under the Stille DeRossett Hale single state~~
9 ~~construction code act, 1972 PA 230, MCL 125.1501 to 125.1531.~~

10 (3) The department shall conduct a review ~~upon~~ **IF IT RECEIVES**
11 notice that ~~the~~ **A** licensee has violated the asbestos abatement
12 contractors licensing act, 1986 PA 135, MCL 338.3101 to 338.3319.
13 The department may suspend or revoke that person's license for a
14 knowing violation of the asbestos abatement contractors licensing
15 act, 1986 PA 135, MCL 338.3101 to 338.3319.

16 (4) Notwithstanding article 5, the following apply to
17 administrative proceedings regarding workmanship under subsection
18 ~~(2) (m)~~ **(2) (J) :**

19 (a) A complaint submitted by an owner ~~shall~~ **MUST** describe in
20 writing to the department the factual basis for the allegation. The
21 homeowner shall send a copy of the initial complaint to the
22 licensee ~~concurrent with the submission of~~ **AT THE SAME TIME THE**
23 **OWNER SUBMITS** the complaint to the department.

24 (b) The department shall presume the innocence of the licensee
25 throughout the proceeding until the administrative law hearing
26 examiner finds otherwise in a determination of findings of fact and
27 conclusions of law under article 5. The licensee has the burden of

1 refuting evidence submitted by a person during the administrative
2 hearing. The licensee also has the burden of proof regarding the
3 reason deficiencies were not corrected.

4 (c) ~~Upon receipt of~~ **IF THE DEPARTMENT RECEIVES** a building
5 inspection report issued to the department by a state or local
6 building enforcement official authorized to do so under the Stille-
7 DeRossett-Hale single state construction code act, 1972 PA 230, MCL
8 125.1501 to 125.1531, ~~which~~ **AND THE** report verifies or confirms the
9 substance of the complaint, the department shall send by certified
10 mail a copy of the verified complaint to the licensee. If the
11 department does not send a copy of the verified complaint within 30
12 days after ~~receipt of~~ **IT RECEIVES** the building inspection report,
13 the department shall not assess a fine against the licensee under
14 article 6, but the department may pursue restitution, license
15 suspension, or other remedies provided under this act.

16 (d) A licensee may contractually provide for an alternative
17 dispute resolution procedure to resolve complaints filed with the
18 department. ~~The procedure shall be conducted by a~~ **ALL OF THE**
19 **FOLLOWING APPLY TO A DISPUTE RESOLUTION PROCEDURE DESCRIBED IN THIS**
20 **SUBDIVISION:**

21 (i) A neutral third party ~~for determining~~ **SHALL CONDUCT THE**
22 **PROCEDURE AND DETERMINE** the rights and responsibilities of the
23 parties. ~~and shall be initiated by the~~

24 (ii) **THE** licensee ~~, who~~ shall **INITIATE THE PROCEDURE AND**
25 provide notice of the initiation of the procedure to the
26 complainant by certified mail ~~not less than~~ **AT LEAST** 30 days before
27 the commencement of that procedure.

1 (iii) The **NEUTRAL THIRD PARTY SHALL CONDUCT THE** procedure ~~shall~~
2 ~~be conducted~~ at a location mutually agreed to by the parties.

3 (e) The department shall not initiate a proceeding against a
4 licensee under this subsection if the licensee has contractually
5 provided for an alternative dispute resolution procedure **UNDER**
6 **SUBDIVISION (D) AND** that **PROCEDURE** has not been utilized and
7 completed, unless ~~it is determined~~ **THE DEPARTMENT DETERMINES** that
8 the licensee has not complied with a decision or order issued as a
9 result of that alternative dispute resolution procedure, ~~that~~ **THE**
10 alternative dispute resolution procedure was not fully completed
11 within 90 days after the filing of the complaint with the
12 department, or ~~an~~ **THE** alternative dispute resolution procedure
13 ~~meeting the requirements of~~ **PROVIDED BY THE LICENSEE UNDER**
14 subdivision (d) is not available to the complainant.

15 (f) ~~The~~ **SUBJECT TO SUBDIVISION (G), THE** complainant shall
16 ~~demonstrate that~~ **DOES ALL OF THE FOLLOWING:**

17 (i) **DEMONSTRATES THAT THE COMPLAINANT PROVIDED** notice ~~has been~~
18 ~~provided to the licensee describing reasonable times and dates that~~
19 **THE WORKMANSHIP THAT IS THE SUBJECT OF THE COMPLAINT.**

20 (ii) **DEMONSTRATES THAT THE COMPLAINANT MADE** the residential
21 structure ~~was accessible~~ **TO THE LICENSEE AT REASONABLE TIMES AND**
22 **DATES** for any needed repairs. ~~and~~

23 (iii) **PROVIDES** proof acceptable to the department that the
24 **LICENSEE DID NOT MAKE** repairs ~~were not made~~ within 60 days after
25 the ~~sending of~~ **COMPLAINANT SENT** the notice. ~~This subdivision~~

26 **(G) SUBDIVISION (F)** does not apply if the department
27 determines ~~a necessity~~ **IT IS NECESSARY** to safeguard the structure

1 or to protect the occupant's health and safety. ~~and, in such case,~~
2 **IF IT MAKES A DETERMINATION UNDER THIS SUBDIVISION,** the department
3 may utilize any remedy available under section 504(3).

4 (H) ~~(g)~~ If the owner and licensee have agreed contractually on
5 mutually acceptable performance guidelines relating to workmanship,
6 ~~the department shall consider those guidelines in its evaluation of~~
7 ~~a complaint. The guidelines shall be~~ **AND THE GUIDELINES ARE**
8 consistent with the Stille-DeRossett-Hale single state construction
9 code act, 1972 PA 230, MCL 125.1501 to 125.1531, **THE DEPARTMENT**
10 **SHALL CONSIDER THOSE GUIDELINES IN EVALUATING THE COMPLAINT.**

11 (5) If the licensee or respondent fails to appear or
12 participate in or defend any action, the board shall issue an order
13 granting by default the relief requested, based ~~upon~~ **ON** proofs
14 submitted to and findings made by the hearing examiner after a
15 contested case.

16 (6) As used in this section, "verified complaint" means a
17 complaint in which all or a portion of the allegations ~~have been~~
18 **ARE** confirmed by an affidavit of the state or local building
19 official.

20 Sec. 2412. (1) A person or qualifying officer for a
21 corporation or member of a residential builder ~~or residential~~
22 ~~maintenance and alteration contractor~~ shall not bring or maintain
23 an action in a court of this state for the collection of
24 compensation for the performance of an act or contract for which a
25 license is required by this article without alleging and proving
26 that the person was licensed under this article during the
27 performance of the act or contract.

1 (2) Failure of the person ~~bringing~~ **THAT BRINGS** a complaint
2 against a licensee to utilize a contractually provided alternative
3 dispute resolution procedure ~~shall be~~ **IS** an affirmative defense to
4 an action brought in a court of this state against a licensee under
5 this article.

6 (3) A person or qualifying officer for a corporation or a
7 member of a residential builder ~~or residential maintenance and~~
8 ~~alteration contractor~~ shall not impose or take any legal or other
9 action to impose a lien on real property unless that person was
10 licensed under this article during the performance of the act or
11 contract.

12 (4) A prosecuting attorney and the attorney general may bring
13 an action for a civil violation in a court of competent
14 jurisdiction against a person not licensed under this article that
15 has violated section 601(1) or (2). The court shall assess a civil
16 fine, to be paid to the prosecuting attorney or the attorney
17 general bringing the action, of not less than \$5,000.00 and not
18 more than \$25,000.00, ~~aside from~~ **IN ADDITION TO** any civil damages
19 or restitution **ORDERED BY THE COURT.**

20 Enacting section 1. Section 2407 of the occupational code,
21 1980 PA 299, MCL 339.2407, is repealed.

22 Enacting section 2. This amendatory act does not take effect
23 unless Senate Bill No. ____ or House Bill No. 5326(request no.
24 00669'11 a) of the 96th Legislature is enacted into law.