

SENATE BILL No. 1176

June 7, 2012, Introduced by Senator JONES and referred to the Committee on Regulatory Reform.

A bill to amend 1980 PA 299, entitled
"Occupational code,"
by amending section 2411 (MCL 339.2411), as amended by 2010 PA 151.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2411. (1) A **PERSON MAY NOT FILE A** complaint ~~filed~~ under
2 this section or article 5, or both, ~~shall be made within 18 months~~
3 ~~after the latest of the following regarding~~ **CONCERNING** a
4 residential structure or a combination of residential and
5 commercial structure ~~as follows:~~ **MORE THAN 10 YEARS AFTER 1 OF THE**
6 **FOLLOWING OCCURS, WHICHEVER IS LATEST:**

7 (a) ~~In the case of~~ **IF THE COMPLAINT CONCERNS** a maintenance and
8 alteration contract:

9 (i) Completion.

10 (ii) Occupancy.

1 (iii) Purchase.

2 (b) ~~In the case of a project requiring~~ **IF THE COMPLAINT**
3 **CONCERNS A PROJECT THAT REQUIRES** an occupancy permit:

4 (i) Issuance of the certificate of occupancy or temporary
5 certificate of occupancy.

6 (ii) Closing.

7 (2) ~~A-IF A PERSON THAT IS A~~ licensee or applicant ~~who commits~~
8 ~~1 or more~~ **DOES ANY** of the following, **THAT PERSON** is subject to the
9 penalties ~~set forth~~ **DESCRIBED** in article 6:

10 (a) ~~Abandonment without~~ **WITHOUT** legal excuse, ~~of~~ **ABANDONS** a
11 contract, construction project, or operation engaged in or
12 undertaken by the licensee.

13 (b) ~~Diversion of funds~~ **DIVERTS MONEY** or property received for
14 ~~prosecution or completion of~~ **PROCEEDING WITH OR COMPLETING** a
15 specific construction project or operation, or for a specified
16 purpose in ~~the prosecution or completion of~~ **PROCEEDING WITH OR**
17 **COMPLETING** a construction project or operation, and ~~the funds or~~
18 ~~property application or use~~ **APPLIES OR USES THE MONEY OR PROPERTY**
19 for any other construction project or operation, obligation, or
20 purposes.

21 (c) ~~Failure~~ **FAILS** to account for or remit money ~~coming~~ **THAT**
22 **COMES** into the person's possession ~~that~~ **AND** belongs to
23 ~~others~~ **ANOTHER PERSON**.

24 (d) ~~A willful departure~~ **WILLFULLY DEPARTS** from or ~~disregard of~~
25 **DISREGARDS** plans or specifications in a material respect and
26 prejudicial to another, without consent of the owner or an
27 authorized representative and without the consent of the person

1 entitled to have the particular construction project or operation
2 completed in accordance with the plans and specifications.

3 (e) ~~A willful violation of~~ **WILLFULLY VIOLATES** the building
4 laws of this state or of a political subdivision of this state.

5 (f) In a residential maintenance and alteration contract,
6 ~~failure~~ **FAILS** to furnish to a lender the purchaser's signed
7 completion certificate executed ~~upon completion of~~ **WHEN** the work to
8 be performed under the contract **IS COMPLETED**.

9 (g) If **THE PERSON IS** a licensed residential builder or
10 licensed residential maintenance and alteration contractor, ~~failure~~
11 **FAILS** to notify the department within 10 days of a change in the
12 control or direction of the business of the licensee ~~resulting~~ **THAT**
13 **RESULTS** from a change in the licensee's partners, directors,
14 officers, or trustees, or a change in the control or direction of
15 the business of the licensee resulting from any other occurrence or
16 event.

17 (h) ~~Failure~~ **FAILS** to deliver to the purchaser the entire
18 agreement of the parties, including any finance or other charge
19 arising out of or incidental to the agreement, if the agreement
20 involves repair, alteration, or addition to, subtraction from,
21 improvement of, wrecking of, or demolition of a residential
22 structure or combination of residential and commercial structure,
23 building of a garage, laying of concrete on residential property,
24 or manufacture, assembly, construction, sale, or distribution of a
25 residential or combination residential and commercial structure
26 that is prefabricated, preassembled, precut, packaged, or shell
27 housing.

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

(j) ~~Aiding or abetting~~**AIDS OR ABETS** 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 one's license to be used by~~**ALLOWS** an unlicensed person ~~or acting~~**TO USE ONE'S LICENSE; OR ACTS** as or ~~being~~**BECOMES** an ostensible licensed residential builder or licensed residential maintenance and alteration contractor for an undisclosed person ~~who does or shall control or direct,~~**THAT CONTROLS OR DIRECTS,** or ~~who may have~~**THAT HAS** the right to control or direct, directly or indirectly, the operations of ~~a~~**THE** licensee.

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

(l) ~~Becoming~~**BECOMES** insolvent, ~~filing~~**FILES** a bankruptcy action, ~~becoming~~**BECOMES** subject to a receivership, ~~assigning~~**ASSIGNS** for the benefit of creditors, ~~failing~~**FAILS** to satisfy judgments or liens, or ~~failing~~**FAILS** to pay an obligation as it becomes due in the ordinary course of business.

(m) ~~Workmanship not meeting~~**PERFORMS WORKMANSHIP THAT DOES NOT**

1 MEET the standards of the Michigan residential code as-promulgated
2 BY THE DIRECTOR under the Stille-DeRossett-Hale single state
3 construction code act, 1972 PA 230, MCL 125.1501 to 125.1531.

4 (N) IF THE PERSON IS A LICENSED RESIDENTIAL BUILDER OR
5 LICENSED RESIDENTIAL MAINTENANCE AND ALTERATION CONTRACTOR, FAILS
6 TO PROVIDE A HOMEOWNER A WRITTEN WARRANTY THAT MEETS ALL OF THE
7 FOLLOWING:

8 (i) FOR A PERIOD OF AT LEAST 10 YEARS, WARRANTS THAT THE
9 WORKMANSHIP OF THE BUILDER OR CONTRACTOR MEETS THE STANDARDS OF THE
10 MICHIGAN RESIDENTIAL CODE PROMULGATED BY THE DIRECTOR UNDER THE
11 STILLE-DEROSSETT-HALE SINGLE STATE CONSTRUCTION CODE ACT, 1972 PA
12 230, MCL 125.1501 TO 125.1531, AND THAT THE WORK PERFORMED BY THE
13 BUILDER OR CONTRACTOR IS FREE FROM SUBSTANTIAL DEFECTS IN MATERIALS
14 OR WORKMANSHIP.

15 (ii) PROVIDES FOR REIMBURSEMENT TO THE HOMEOWNER OF UP TO
16 \$50,000.00 FOR A BREACH OR VIOLATION OF THE WARRANTY.

17 (iii) IS ASSIGNABLE BY THE HOMEOWNER TO SUBSEQUENT PURCHASERS OF
18 THE PROPERTY.

19 (iv) INCLUDES A NOTICE TO THE HOMEOWNER THAT THE BUILDER OR
20 CONTRACTOR IS LICENSED BY THE DEPARTMENT UNDER THE OCCUPATIONAL
21 CODE, 1980 PA 299, MCL 339.101 TO 339.2919, AND THAT THE HOMEOWNER
22 HAS RIGHTS UNDER THE OCCUPATIONAL CODE TO FILE A COMPLAINT AGAINST
23 THE BUILDER OR CONTRACTOR FOR A VIOLATION OF THAT STATUTE.

24 (O) IF THE PERSON IS A LICENSED RESIDENTIAL BUILDER OR
25 LICENSED RESIDENTIAL MAINTENANCE AND ALTERATION CONTRACTOR THAT HAS
26 AGREED TO A CONTRACT OR PLANS, PRINTS, OR DRAWINGS WITH A HOMEOWNER
27 FOR AN UNDERTAKING OR PROJECT, DEVIATING FROM THE CONTRACT, PLANS,

1 PRINTS, OR DRAWINGS WITHOUT WRITTEN AUTHORIZATION SIGNED BY THE
2 HOMEOWNER.

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

9 (4) Notwithstanding article 5, the following apply to
10 administrative proceedings regarding workmanship under subsection
11 (2) (m) :

12 (a) A complaint submitted by an owner ~~shall~~ **MUST** describe in
13 writing to the department the factual basis for the allegation. The
14 homeowner shall send a copy of the initial complaint to the
15 licensee ~~concurrent with the submission of~~ **AT THE SAME TIME THE**
16 **HOMEOWNER SUBMITS** the complaint to the department.

17 (b) The department shall presume the innocence of the licensee
18 throughout the proceeding until the administrative law hearing
19 examiner finds otherwise in a determination of findings of fact and
20 conclusions of law under article 5. The licensee has the burden of
21 refuting evidence submitted by a person during the administrative
22 hearing. The licensee also has the burden of proof regarding the
23 reason deficiencies were not corrected.

24 (c) ~~Upon receipt of~~ **IF THE DEPARTMENT RECEIVES** a building
25 inspection report issued to the department by a state or local
26 building enforcement official authorized to do so under the Stille-
27 DeRossett-Hale single state construction code act, 1972 PA 230, MCL

1 125.1501 to 125.1531, ~~which~~ **AND THE** report verifies or confirms the
 2 substance of the complaint, the department shall send by certified
 3 mail a copy of the verified complaint to the licensee. If the
 4 department does not send a copy of the verified complaint within 30
 5 days after ~~receipt of~~ **IT RECEIVES** the building inspection report,
 6 the department shall not assess a fine against the licensee under
 7 article 6, but the department may pursue restitution, license
 8 suspension, or other remedies provided under this act.

9 (d) A licensee may contractually provide for an alternative
 10 dispute resolution ~~procedure~~ **PROCESS** to resolve complaints filed
 11 with the department. ~~The procedure shall be conducted by a~~ **ALL OF**
 12 **THE FOLLOWING APPLY TO A DISPUTE RESOLUTION PROCESS DESCRIBED IN**
 13 **THIS SUBDIVISION:**

14 (i) A neutral third party ~~for determining~~ **SHALL CONDUCT THE**
 15 **PROCESS AND DETERMINE** the rights and responsibilities of the
 16 parties. ~~and shall be initiated by the~~

17 (ii) **THE** licensee, ~~who~~ shall **INITIATE THE PROCESS AND** provide
 18 notice of the initiation of the ~~procedure~~ **PROCESS** to the
 19 complainant by certified mail ~~not less than~~ **AT LEAST** 30 days before
 20 the commencement of ~~that procedure.~~ **THE PROCESS.** The ~~procedure~~
 21 ~~shall be conducted~~ **NEUTRAL THIRD PARTY SHALL CONDUCT THE PROCESS** at
 22 a location mutually agreed to by the parties.

23 (e) The department shall not initiate a proceeding against a
 24 licensee under this subsection if the licensee has contractually
 25 provided for an alternative dispute resolution procedure ~~that~~ **UNDER**
 26 **SUBDIVISION (D) AND THAT PROCEDURE** has not been utilized and
 27 completed unless ~~it is determined~~ **THE DEPARTMENT DETERMINES** that

1 the licensee has not complied with a decision or order issued as a
 2 result of that alternative dispute resolution procedure, ~~that~~ **THE**
 3 alternative dispute resolution procedure was not fully completed
 4 within 90 days after the filing of the complaint with the
 5 department, or ~~an~~ **THE** alternative dispute resolution procedure
 6 ~~meeting the requirements of~~ **PROVIDED BY THE LICENSEE UNDER**
 7 subdivision (d) is not available to the complainant.

8 (f) The complainant ~~shall demonstrate that~~ **ESTABLISHES THAT**
 9 **THE COMPLAINANT PROVIDED** notice ~~has been provided to~~ the licensee
 10 describing reasonable times and dates that the residential
 11 structure was accessible for any needed repairs and **PROVIDES** proof
 12 acceptable to the department that the ~~repairs were not made~~
 13 **LICENSEE DID NOT MAKE THE REPAIRS** within 60 days after the ~~sending~~
 14 ~~of~~ **COMPLAINANT SENT** the notice. This subdivision does not apply if
 15 the department determines ~~a necessity~~ **IT IS NECESSARY** to safeguard
 16 the structure or to protect the occupant's health and safety and,
 17 ~~in such case,~~ **IF IT MAKES THAT DETERMINATION,** the department may
 18 utilize any remedy available under section 504(3).

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

26 (5) If ~~the~~ **A** licensee or respondent fails to appear or
 27 participate in or defend any action, the board shall issue an order

1 granting by default the relief requested, based ~~upon~~**ON** proofs
2 submitted to and findings made by the hearing examiner after a
3 contested case.

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