

HOUSE BILL NO. 5819

May 28, 2020, Introduced by Reps. Maddock, Steven Johnson, Green, Wozniak, Reilly, Hornberger, Eisen, O'Malley, Meerman, Rendon, Bellino and Markkanen and referred to the Committee on Regulatory Reform.

A bill to amend 1980 PA 299, entitled "Occupational code," by amending sections 303a, 411, and 601 (MCL 339.303a, 339.411, and 339.601), sections 303a and 411 as amended by 2014 PA 265 and section 601 as amended by 2016 PA 412; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 303a. The term of office of a member of a board appointed
2 under this article shall commence on 1 of the following dates, as



1 applicable:

2	Accountancy	July 1
3	Architects	April 1
4	Barbers	October 1
5	Collection agencies	July 1
6	Cosmetology	January 1
7	Employment agencies	October 1
8	Hearing aid dealers	October 1
9	Land surveyors	April 1
10	Landscape architects	July 1
11	Mortuary science	July 1
12	Professional engineers	April 1
13	Real estate appraisers	July 1
14	Real estate brokers and salespersons	July 1
15	Residential builders	April 1

16 Sec. 411. (1) Subject to subsection (2), a person that fails
 17 to renew a license or registration on or before the expiration date
 18 shall not practice the occupation, operate, or use the title of
 19 that occupation after the expiration date printed on the license or
 20 registration. A license or registration shall lapse on the day
 21 after the expiration date.

22 (2) A person that fails to renew a license or registration on
 23 or before the expiration date is permitted to renew the license or
 24 registration by payment of the required license or registration fee
 25 and a late renewal fee within 60 days after the expiration date.

26 (3) Except as otherwise provided in this act, a person that
 27 fails to renew a license or registration within the time period set
 28 forth in subsection (2) may be relicensed or reregistered without
 29 examination and without meeting additional education or training



1 requirements in force at the time of application for relicensure or
2 reregistration if all of the following conditions are met:

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

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

9 (c) Any penalties or conditions imposed by disciplinary action
10 in this state or any other jurisdiction have been satisfied.

11 (d) The person submits proof of having completed the
12 equivalent of 1 year of continuing education within the 12 months
13 immediately preceding the date of application or as otherwise
14 provided in a specific article or by rule, if continuing education
15 is required of licensees or registrants under a specific article.

16 (4) Except as otherwise provided in this act, a person may be
17 relicensed or reregistered subsequent to 3 or more years after the
18 expiration date of the last license or registration if the person
19 shows that the person meets the requirements for licensure or
20 registration as established by the department in rules or
21 procedures, which may require a person to pass all or part of a
22 required examination, to complete continuing education
23 requirements, or to meet current education or training
24 requirements.

25 (5) Unless otherwise provided in this act, a person that seeks
26 reinstatement of a license or registration shall file an
27 application on a form provided by the department, pay the
28 application processing fee, and file a petition to the department
29 and the appropriate board stating reasons for reinstatement and



1 including evidence that the person can and is likely to serve the
2 public in the regulated activity with competence and in conformance
3 with all other requirements prescribed by law, rule, or an order of
4 the department or board. The procedure for conducting the review of
5 a petition for reinstatement is prescribed in article 5. If
6 approved for reinstatement, the person shall pay the per year
7 license or registration fee for the upcoming license or
8 registration period if appropriate, in addition to completing any
9 requirements imposed under section 203(2).

10 (6) The department shall issue an initial or renewal license
11 or registration not later than 90 days after the applicant files a
12 completed application. The application is considered received on
13 the date the application is received by any agency or department of
14 this state. If the application is considered incomplete by the
15 department, the department shall notify the applicant in writing,
16 or make information electronically available, within 30 days after
17 receipt of the incomplete application, describing the deficiency
18 and requesting the additional information. The 90-day period is
19 tolled from the date the department notifies the applicant of a
20 deficiency until the date the requested information is received by
21 the department. The determination of the completeness of an
22 application does not operate as an approval of the application for
23 the license or registration and does not confer eligibility of an
24 applicant determined otherwise ineligible for issuance of a license
25 or registration.

26 (7) Notwithstanding the time periods described in subsection
27 (6), in the case of a real estate broker and associate broker
28 licensed under article 25, the time period for approval by the
29 department of a completed application is 30 days and the time



1 period for notification sent in writing, or made electronically
2 available, by the department to the applicant regarding an
3 incomplete application is 15 days after the receipt of the
4 application by any agency or department of this state.

5 (8) If the department fails to issue or deny a license or
6 registration within the time required by this section, the
7 department shall return the license or registration fee, and shall
8 reduce the license or registration fee for the applicant's next
9 renewal application, if any, by 15%. A failure to issue or deny a
10 license or registration within the time required under this section
11 does not allow the department to otherwise delay the processing of
12 the application, and the department shall place that application,
13 when completed, in sequence with other completed applications
14 received at that same time. The department shall not discriminate
15 against an applicant in the processing of an application based on
16 the fact that the license or registration fee was refunded or
17 discounted under this subsection.

18 (9) The director shall submit a report by December 1 of each
19 year to the standing committees and appropriations subcommittees of
20 the senate and house of representatives concerned with occupational
21 issues. The director shall include all of the following information
22 in the report concerning the preceding fiscal year:

23 (a) The number of initial and renewal applications the
24 department received and completed within the 90-day time period
25 described in subsection (6) and the 30-day time period described in
26 subsection (7).

27 (b) The number of applications denied by the department.

28 (c) The number of applicants not issued a license or
29 registration within the applicable time period and the amount of



1 money returned to licensees and registrants under subsection (8).

2 (10) Subsection (6) does not apply to a license or
3 registration for any of the following:

4 (a) A certified public accountant and registered accountant
5 under article 7.

6 (b) An agency non-owner manager of a collection agency under
7 article 9.

8 ~~(c) A barber, student barber, student instructor, or barber
9 instructor under article 11.~~

10 ~~(c) (d)~~ An employment and consulting agent of a personnel
11 agency under article 10.

12 ~~(c) A cosmetologist, manicurist, natural hair culturist,
13 esthetician, electrologist, instructor, or registered student under
14 article 12.~~

15 ~~(d) (f)~~ A hearing aid salesperson and trainee under article
16 13.

17 ~~(e) (g)~~ A mortuary science licensee, embalmer, or resident
18 trainee in mortuary science under article 18.

19 ~~(f) (h)~~ An individual architect, surveyor, or engineer under
20 article 20.

21 ~~(g) (i)~~ An individual landscape architect under article 22.

22 ~~(h) (j)~~ An individual residential builder and alteration and
23 maintenance contractor or a salesperson for a residential builder
24 and alteration and maintenance contractor under article 24.

25 ~~(i) (k)~~ A real estate salesperson under article 25.

26 ~~(j) (l)~~ A real estate appraiser under article 26.

27 (11) Notwithstanding any provision in this act to the
28 contrary, an individual or qualifying officer who is a licensee or
29 registrant under this act and who is mobilized for military duty in



1 the armed forces of the United States by the president of the
2 United States is temporarily exempt from any renewal license fee,
3 continuing education requirements, or other related requirements of
4 this act applicable to that license or registration. It is the
5 obligation of the licensee or registrant to inform the department
6 by written or electronic mail of the desire to exercise the
7 temporary exemption under this subsection. If the licensee applying
8 for the temporary exemption is the individual responsible for
9 supervision and oversight of licensed activities, the licensee
10 shall provide notice of arrangements for adequate provision of that
11 supervision and oversight to the department. The licensee or
12 registrant shall accompany the request with proof, as determined by
13 the department, to verify the mobilized duty status. If it receives
14 a request for a temporary exemption under this subsection, the
15 department shall make a determination of the requestor's status and
16 grant the temporary exemption after verification of mobilized duty
17 status under this subsection. A temporary exemption is valid until
18 90 days after the licensee's or registrant's release from the
19 mobilized duty on which the exemption was based, but shall not
20 exceed 36 months from the date of expiration of the license or
21 registration.

22 (12) As used in this section, "completed application" means an
23 application that is complete on its face and submitted with any
24 applicable licensing or registration fees and any other
25 information, records, approval, security, or similar item required
26 by law or rule from a local unit of government, a federal agency,
27 or a private entity but not from another department or agency of
28 this state.

29 Sec. 601. (1) A person shall not engage in or attempt to



1 engage in the practice of an occupation regulated under this act or
2 use a title designated in this act unless the person possesses a
3 license or registration issued by the department for the
4 occupation.

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

9 (3) Subject to section 411, a person whose license or
10 registration is suspended, revoked, or lapsed, as determined by the
11 records of the department, is considered unlicensed or
12 unregistered.

13 (4) Except as otherwise provided for in section 735, a person,
14 school, or institution that violates subsection (1) or (2) is
15 guilty of a misdemeanor, punishable by a fine of not more than
16 \$500.00, or imprisonment for not more than 90 days, or both.

17 (5) Except as otherwise provided for in section 735, a person,
18 school, or institution that violates subsection (1) or (2) a second
19 or any subsequent time is guilty of a misdemeanor, punishable by a
20 fine of not more than \$1,000.00, or imprisonment for not more than
21 1 year, or both.

22 (6) Notwithstanding subsections (4) and (5), a person that is
23 not licensed under article 24 as a residential builder or a
24 residential maintenance and alteration contractor and that violates
25 subsection (1) or (2) is guilty as follows:

26 (a) In the case of a first offense, a misdemeanor punishable
27 by a fine of not less than \$5,000.00 or more than \$25,000.00, or
28 imprisonment for not more than 1 year, or both.

29 (b) In the case of a second or subsequent offense, a



1 misdemeanor punishable by a fine of not less than \$5,000.00 or more
2 than \$25,000.00, or imprisonment for not more than 2 years, or
3 both.

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

8 (7) Notwithstanding subsections (4) and (5), a person that is
9 not licensed under article 20 as an architect, professional
10 engineer, or professional land surveyor and that violates
11 subsection (1) or (2) is guilty as follows:

12 (a) In the case of a first offense, a misdemeanor punishable
13 by a fine of not less than \$5,000.00 or more than \$25,000.00 or
14 imprisonment for not more than 93 days, or both.

15 (b) In the case of a second or subsequent offense, a
16 misdemeanor punishable by a fine of not less than \$5,000.00 or more
17 than \$25,000.00 or imprisonment for not more than 1 year, or both.

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

22 (8) If a trier of fact finds that a person has violated this
23 act, the trier of fact shall require that person to make
24 restitution, based on proofs submitted to and findings made by the
25 trier of fact as provided by law.

26 (9) Notwithstanding the existence and pursuit of any other
27 remedy, an affected person may maintain injunctive action to
28 restrain or prevent a person from violating subsection (1) or (2).
29 If successful in obtaining injunctive relief, the affected person



1 is entitled to actual costs and attorney fees.

2 (10) This act does not apply to a person that is engaging in
3 or practicing any of the following:

4 (a) Interior design.

5 (b) Residential building design. As used in this subdivision,
6 "residential building design" means the rendering of residential
7 design services for a detached 1- and 2-family residence building
8 by a person that is exempt from the requirements of section 2012.

9 (c) Any activity for which the person is licensed under
10 article 11 of the skilled trades regulation act, **2016 PA 407**, MCL
11 339.6101 to 339.6133.

12 (d) Any activity for which the person is licensed under
13 article 8 of the skilled trades regulation act, **2016 PA 407**, MCL
14 339.5801 to 339.5819.

15 (e) Any activity for which the person is licensed under
16 article 7 of the skilled trades regulation act, **2016 PA 407**, MCL
17 339.5701 to 339.5739.

18 (11) As used in subsection (9), "affected person" means a
19 person that is directly affected by the actions of a person
20 suspected of violating subsection (1) or (2) and includes, but is
21 not limited to, a licensee or registrant, a board established under
22 this act, the department, a person that utilizes the services of
23 the person that is engaging in or attempting to engage in an
24 occupation that is regulated under this act or using a title that
25 is designated by this act without being licensed or registered by
26 the department, or a private association that is composed primarily
27 of members of the occupation in which the person is engaging in or
28 attempting to engage in or in which the person is using a title
29 designated under this act without being registered or licensed by

1 the department.

2 (12) An investigation may be conducted under article 5 to
3 enforce this section. A person that violates this section is
4 subject to this section and sections 506, 602, and 606.

5 (13) The department, the attorney general, or a county
6 prosecutor may utilize forfeiture as a remedy in the manner
7 provided for in section 606.

8 (14) The remedies under this section are independent and
9 cumulative. The use of 1 remedy by a person does not bar the use of
10 other lawful remedies by that person or the use of a lawful remedy
11 by another person.

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

18 (16) At the time a court enters a conviction under subsection
19 (4), (5), or (6), the court shall notify, by mail, facsimile
20 transmission, or electronic mail, the department of the conviction.

21 Enacting section 1. Articles 11 and 12 of the occupational
22 code, 1980 PA 299, MCL 339.1101 to 339.1218, are repealed.

23 Enacting section 2. This amendatory act takes effect 90 days
24 after the date it is enacted into law.

