

**Chapter 338**  
**PROFESSIONS AND OCCUPATIONS**  
**EXAMINATION IN BASIC SCIENCES**

**Act 59 of 1937**

338.1-338.13 Repealed. 1972, Act 172, Imd. Eff. June 16, 1972.

**INVESTIGATING AUTHORITY OF DEPARTMENT OF LICENSING AND REGULATION**

**Act 99 of 1972**

AN ACT to provide the department of licensing and regulation with investigatory authority.

**History:** 1972, Act 99, Imd. Eff. Mar. 29, 1972

*The People of the State of Michigan enact:*

**338.21 Definitions.**

Sec. 1.

As used in this act:

- (a) "Department" means the department of licensing and regulation.
- (b) "Director" means the director of the department.

**History:** 1972, Act 99, Imd. Eff. Mar. 29, 1972

**338.22 Investigation and determination of complaints.**

Sec. 2.

(1) The director shall investigate all complaints of alleged violations against or by persons licensed by any board or agency of the department, if the board or agency fails to initiate an investigation within 60 days after the filing of a complaint.

(2) The director shall forward complaints investigated under this section to the board or agency of the department concerned and shall inform the board or agency concerned of all investigations conducted by the director under this section.

(3) Final determination of all complaints shall be forwarded to the director by each board or agency accompanied by a roll call vote of the board or agency.

**History:** 1972, Act 99, Imd. Eff. Mar. 29, 1972

**SALE OF MEDICAL OR DENTAL PRACTICE**

## **Act 297 of 1965**

AN ACT regulating the sale or conveyance of the practice of a healing system; to require the reporting of such sale or conveyance and to impose a penalty.

**History:** 1965, Act 297, Eff. Mar. 31, 1966

*The People of the State of Michigan enact:*

### **338.31 Sale or conveyance of medical or dental practice; notice to state board.**

#### **Sec. 1.**

Any person who sells, purchases or assumes the practice of any person licensed to practice medicine or dentistry in this state from the individual or his estate shall notify, within 10 days of sale, purchase or assumption, the state board which licensed or registered the practitioner, of the sale, purchase or assumption.

**History:** 1965, Act 297, Eff. Mar. 31, 1966

### **338.32 Violation of act; misdemeanor.**

#### **Sec. 2.**

Any person violating any provisions of this act shall be deemed to be guilty of a misdemeanor.

**History:** 1965, Act 297, Eff. Mar. 31, 1966

## **OCCUPATIONAL LICENSE FOR FORMER OFFENDERS**

### **Act 381 of 1974**

AN ACT to encourage and contribute to the rehabilitation of former offenders and to assist them in the assumption of the responsibilities of citizenship; to define the term "good moral character" and establish how good moral character is determined when used as a requirement for an occupational or professional license or when used as a requirement to establish or operate an organization or facility regulated by this state; and to provide administrative and judicial procedures to contest licensing board or agency rulings concerning an individual's good moral character.

**History:** 1974, Act 381, Eff. Apr. 1, 1975 ;-- Am. 1978, Act 294, Imd. Eff. July 10, 1978 ;-- Am. 2020, Act 368, Eff. Apr. 4, 2021

**Compiler's Notes:** For transfer of powers and duties of adult foster care licensing from the department of social services to the director of the department of commerce, see E.R.O. No. 1996-1, compiled at MCL 330.3101 of the Michigan Compiled Laws. For transfer of powers and duties pertaining to adult foster care, adult foster care facility, adult foster care camp, adult camp, adult foster care family home, and adult foster care group home licensing and regulation from department of human services to department of licensing and regulatory affairs, see E.R.O. No. 2015-1, compiled at MCL 400.227.

*The People of the State of Michigan enact:*

### 338.41 Definitions.

#### Sec. 1.

(1) The phrase "good moral character", when used as a requirement for an occupational or professional license or when used as a requirement to establish or operate an organization or facility regulated by this state in a statute of this state or administrative rules promulgated under a statute of this state, means the propensity on the part of an individual to serve the public in the licensed area in a fair, honest, and open manner.

(2) As used in this act:

(a) "Felony" means a violation of a penal law of this state for which the offender may be punished by imprisonment for more than 1 year or an offense expressly designated by law as a felony.

(b) "License" includes a registration.

(c) "Licensing board or agency" means a principal department, or a board or agency within a principal department, that issues occupational or professional licenses.

(d) "Principal department" means a department that has jurisdiction over a licensing board or agency.

**History:** 1974, Act 381, Eff. Apr. 1, 1975 ;-- Am. 1978, Act 294, Imd. Eff. July 10, 1978 ;-- Am. 2020, Act 368, Eff. Apr. 4, 2021

**Compiler's Notes:** For transfer of powers and duties of adult foster care licensing from the department of social services to the director of the department of commerce, see E.R.O. No. 1996-1, compiled at MCL 330.3101 of the Michigan Compiled Laws. For transfer of powers and duties of the bureau of family services from the department of consumer and industry services to the family independence agency by Type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011. For transfer of powers and duties pertaining to adult foster care, adult foster care facility, adult foster care camp, adult camp, adult foster care family home, and adult foster care group home licensing and regulation from department of human services to department of licensing and regulatory affairs, see E.R.O. No. 2015-1, compiled at MCL 400.227.

### 338.42 Judgments in civil actions and criminal convictions as evidence in determining good moral character; consideration of certificate of employability; rebuttal.

#### Sec. 2.

(1) A licensing board or agency may only consider judgments in civil actions entered against an individual as evidence of his or her lack of good moral character if more than 1 judgment in a civil action has been entered against him or her.

(2) A licensing board or agency shall not consider an individual's criminal conviction, in and of itself, as conclusive proof of his or her lack of good moral character. Except as provided in subsection (3), a licensing board or agency may only consider an individual's criminal conviction as evidence in the determination of his or her good moral character if the licensing board or agency finds that the individual's criminal record includes a conviction for a felony and any of the following apply to that felony:

(a) The licensing board or agency concludes that the specific offense for which the individual was convicted has a direct and specific relationship to the activities authorized by the occupational or professional license.

(b) The specific offense for which the individual was convicted involves a demonstrable risk to the public safety.

(c) The individual, based on the nature of the offense for which he or she was convicted and on any additional information provided by the licensee under subsection (4), is more likely to commit a subsequent offense because he or she has the occupational or professional license than if he or she does not have the occupational or professional license.

(d) A subsequent offense committed with the aid of the occupational or professional license will cause greater harm to the public than it would if the individual did not have the occupational or professional license.

(3) A licensing board or agency shall not consider an individual's criminal conviction, in and of itself, as conclusive proof of his or her lack of good moral character, but may use an individual's criminal conviction as evidence in the determination of his or her good moral character without meeting the requirements of subsection (2) if the licensing board or agency is 1 of the following:

(a) A principal department, or a board or agency within a principal department, to the extent that department, board, or agency is responsible for the licensing and regulation of any of the following:

(i) Child care organizations under 1973 PA 116, MCL 722.111 to 722.128.

(ii) Homes for the aged or nursing homes under the public health code, 1978 PA 368, MCL 333.1101 to 333.25211.

(iii) Adult foster care facilities under the adult foster care facility licensing act, 1979 PA 218, MCL 400.701 to 400.737.

(b) The Michigan commission on law enforcement standards created in section 3 of the Michigan commission on law enforcement standards act, 1965 PA 203, MCL 28.603.

(c) The board of law examiners created in section 922 of the revised judicature act of 1961, 1961 PA 236, MCL 600.922.

(4) A licensing board or agency shall also consider an individual's certificate of employability, if any, under section 34d of the corrections code of 1953, 1953 PA 232, MCL 791.234d, and any additional information about his or her current circumstances, such as how long ago the offense occurred, whether he or she completed the sentence for the offense, other evidence of rehabilitation, testimonials, employment history, and employment aspirations as evidence in the determination of an individual's good moral character under subsection (2) or (3).

(5) If a judgment in a civil action is used under subsection (1) or a criminal conviction is used under subsection (2) or (3) as evidence of an individual's lack of good moral character, the licensing board or agency shall notify the individual and he or she is permitted to rebut the evidence by showing that at the current time he or she has the ability to, and is likely to, serve the public in a fair, honest, and open manner, that he or she is rehabilitated, or that the criteria under subsection (1), (2), or (3) have not been met.

**History:** 1974, Act 381, Eff. Apr. 1, 1975 ;-- Am. 1978, Act 294, Imd. Eff. July 10, 1978 ;-- Am. 2014, Act 361, Eff. Jan. 1, 2015 ;-- Am. 2020, Act 368, Eff. Apr. 4, 2021

**Compiler's Notes:** For transfer of powers and duties of the bureau of family services from the department of consumer and industry services to the family independence agency by Type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011. For transfer of powers and duties pertaining to adult foster care, adult foster care facility, adult foster care camp, adult camp, adult foster care family home, and adult foster care group home licensing and regulation from department of human services to department of licensing and regulatory affairs, see E.R.O. No. 2015-1, compiled at MCL 400.227.

### **338.43 Using, examining, or requesting certain criminal records prohibited; prerequisites for furnishing criminal records; rules.**

#### **Sec. 3.**

(1) A licensing board or agency shall not use, examine, or request any of the following criminal records in making a determination of good moral character for use as a requirement to establish or operate an organization or facility regulated by this state or for purposes of occupational or professional licensure:

(a) Records of an arrest that is not followed by a conviction.

(b) Records of a conviction that has been reversed or vacated, including the arrest records relevant to that conviction.

(c) Records of an arrest or conviction for a misdemeanor or a felony unrelated to the individual's likelihood to serve the public in a fair, honest, and open manner.

(d) Records of an arrest or conviction for a misdemeanor for the conviction of which an individual may not be incarcerated in a jail or prison.

(2) A criminal record shall not be furnished to a licensing board or agency except by the principal department, and shall be furnished only after the director of the principal department or an individual designated by the director has determined that the information to be provided to the board or agency meets the criteria set forth in this section.

(3) The director or an individual designated by the director of the principal department shall promulgate rules for each licensing board or agency under that department's jurisdiction that prescribe the offenses or categories of offenses that the department considers indicate an individual is not likely to serve the public as a licensee or registrant in a fair, honest, and open manner. Each licensing board or agency may make recommendations to the director regarding the rules described in this subsection. The rules must be consistent with this act and promulgated under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. Before the promulgation of the rules pertaining to a licensing board or agency, a licensing board or agency shall consider all felonies to be relevant to the ability or likelihood that an individual will serve the public in a fair, honest, and open manner.

**History:** 1974, Act 381, Eff. Apr. 1, 1975 ;-- Am. 1978, Act 294, Imd. Eff. July 10, 1978 ;-- Am. 2020, Act 368, Eff. Apr. 4, 2021

**Compiler's Notes:** For transfer of powers and duties of the bureau of family services from the department of consumer and industry services to the family independence agency by Type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011. For transfer of powers and duties

pertaining to adult foster care, adult foster care facility, adult foster care camp, adult camp, adult foster care family home, and adult foster care group home licensing and regulation from department of human services to department of licensing and regulatory affairs, see E.R.O. No. 2015-1, compiled at MCL 400.227.

### **338.44 Use of public records or other sources to determine person's fitness.**

#### **Sec. 4.**

This act does not prohibit the use by a licensing board or agency in its determination of an individual's good moral character of any other public record that is not related to his or her arrest, prosecution, or conviction or the use of any other source of unbiased and accurate information.

**History:** 1974, Act 381, Eff. Apr. 1, 1975 ;-- Am. 1978, Act 294, Imd. Eff. July 10, 1978 ;-- Am. 2020, Act 368, Eff. Apr. 4, 2021

**Compiler's Notes:** For transfer of powers and duties of the bureau of family services from the department of consumer and industry services to the family independence agency by Type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011. For transfer of powers and duties pertaining to adult foster care, adult foster care facility, adult foster care camp, adult camp, adult foster care family home, and adult foster care group home licensing and regulation from department of human services to department of licensing and regulatory affairs, see E.R.O. No. 2015-1, compiled at MCL 400.227.

### **338.45 Finding person ineligible; statement; rehearing.**

#### **Sec. 5.**

If a licensing board or agency determines that an individual is not eligible for a license because of a lack of good moral character, the licensing board or agency shall provide the individual with a statement to this effect. The statement shall contain a complete record of the evidence on which the determination was based. A licensing board or agency must provide an individual described in this section an opportunity for a rehearing on the issue before the licensing board or agency if he or she has relevant evidence regarding his or her qualifications that was not previously considered.

**History:** 1974, Act 381, Eff. Apr. 1, 1975 ;-- Am. 1978, Act 294, Imd. Eff. July 10, 1978 ;-- Am. 2020, Act 368, Eff. Apr. 4, 2021

**Compiler's Notes:** For transfer of powers and duties of the bureau of family services from the department of consumer and industry services to the family independence agency by Type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011. For transfer of powers and duties pertaining to adult foster care, adult foster care facility, adult foster care camp, adult camp, adult foster care family home, and adult foster care group home licensing and regulation from department of human services to department of licensing and regulatory affairs, see E.R.O. No. 2015-1, compiled at MCL 400.227.

### **338.46 Judicial review; statement; order.**

#### **Sec. 6.**

An individual who is aggrieved by a licensing board or agency regarding his or her good moral character, if unsatisfied by his or her administrative remedy under section 5, may bring an action in circuit court for a review of the record. If, in the opinion of the circuit court, the record does not disclose a lack of good moral character, as determined under this act, the court shall order the licensing board or agency to issue the license when the individual meets all other licensing requirements.

**History:** 1974, Act 381, Eff. Apr. 1, 1975 ;-- Am. 1978, Act 294, Imd. Eff. July 10, 1978 ;-- Am. 2020, Act 368, Eff. Apr. 4, 2021

**Compiler's Notes:** For transfer of powers and duties of the bureau of family services from the department of consumer and industry services to the family independence agency by Type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011. For transfer of powers and duties pertaining to adult foster care, adult foster care facility, adult foster care camp, adult camp, adult foster care family home, and adult foster care group home licensing and regulation from department of human services to department of licensing and regulatory affairs, see E.R.O. No. 2015-1, compiled at MCL 400.227.

### **338.47 Power to discipline licensees not affected.**

Sec. 7.

This act does not affect the power of a licensing board or agency to discipline licensees under its jurisdiction for prohibited acts of professional misconduct or dishonesty.

**History:** 1974, Act 381, Eff. Apr. 1, 1975 ;-- Am. 2020, Act 368, Eff. Apr. 4, 2021

**Compiler's Notes:** For transfer of powers and duties of the bureau of family services from the department of consumer and industry services to the family independence agency by Type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011. For transfer of powers and duties pertaining to adult foster care, adult foster care facility, adult foster care camp, adult camp, adult foster care family home, and adult foster care group home licensing and regulation from department of human services to department of licensing and regulatory affairs, see E.R.O. No. 2015-1, compiled at MCL 400.227.

## **PHYSICIANS AND SURGEONS**

### **Act 237 of 1899**

338.51-338.60 Repealed. 1959, Act 142, Imd. Eff. July 15, 1959; 1973, Act 185, Imd. Eff. Jan. 8, 1974.

## **EXAMINATION OF MEDICAL STUDENTS**

### **Act 56 of 1905**

338.71, 338.72 Repealed. 1978, Act 368, Eff. Sept. 30, 1978.

## **MEDICAL DIPLOMAS**

### **Act 151 of 1899**

338.81 Repealed. 1978, Act 368, Eff. Sept. 30, 1978.

## **STATE MEDICAL PERSONNEL**

### **Act 255 of 1968**

AN ACT relative to the appointment or election of medical personnel to state positions.

**History:** 1968, Act 255, Imd. Eff. July 1, 1968

*The People of the State of Michigan enact:*

**338.91 Medical personnel; appointment to public positions, qualifications.**

Sec. 1.

For the purpose of appointment to governmental positions or serving on state, county, city, township or other public agencies, departments or subsidiaries thereof wherever the laws of the state require the services of or the qualifications of a licensed medical doctor, either a licensed medical physician or a licensed osteopathic physician shall be entitled to equal consideration for such services in all cases except serving on the licensing boards thereof.

**History:** 1968, Act 255, Imd. Eff. July 1, 1968

**OSTEOPATHY**

**Act 162 of 1903**

338.101-338.121 Repealed. 1974, Act 213, Imd. Eff. July 19, 1974;—1978, Act 368, Eff. Sept. 30, 1978.

**CHIROPRACTIC**

**Act 145 of 1933**

338.151-338.159 Repealed. 1974, Act 207, Imd. Eff. July 11, 1974;—1978, Act 368, Eff. Sept. 30, 1978.

**DENTISTRY**

**Act 122 of 1939**

338.201-338.221 Repealed. 1978, Act 368, Eff. Sept. 30, 1978;—1980, Act 299, Imd. Eff. Oct. 21, 1980.

**OPTOMETRY**

**Act 71 of 1909**

338.251-338.262 Repealed. 1978, Act 368, Eff. Sept. 30, 1978.

## **PODIATRY**

### **Act 115 of 1915**

338.301-338.308a Repealed. 1974, Act 148, Imd. Eff. June 12, 1974;â€”1978, Act 368, Eff. Sept. 30, 1978.

## **PHYSICAL THERAPY**

### **Act 164 of 1965**

338.321-338.338 Repealed. 1976, Act 96, Imd. Eff. Apr. 27, 1976;â€”1978, Act 368, Eff. Sept. 30, 1978.

## **NURSES AND TRAINED ATTENDANTS**

### **Act 319 of 1909**

338.351-338.362 Repealed. 1958, Act 36, Imd. Eff. Apr. 7, 1958;â€”1967, Act 149, Eff. Nov. 2, 1967.

## **PHYSICIAN ASSISTANTS**

### **Act 312 of 1972**

338.371-338.379 Expired. 1972, Act 312, Eff. Jan. 2, 1977.

**Compiler's Notes:** The expired sections were subsequently repealed by Act 420 of 1976.

## **COUNTY NURSE**

### **Act 7 of 1925**

338.381-338.385 Repealed. 1978, Act 368, Eff. Sept. 30, 1978.

## **TOWNSHIP NURSE**

### **Act 277 of 1921**

338.391-338.393 Repealed. 1978, Act 368, Eff. Sept. 30, 1978.



## **PHARMACY**

### **Act 134 of 1885**

338.401-338.434 Repealed. 1953, Act 138, Eff. Oct. 2, 1953;—1955, Act 198, Imd. Eff. June 17, 1955;—1962, Act 151, Eff. Mar. 28, 1963.

## **PHARMACIST'S CERTIFICATE**

### **Act 403 of 1913**

338.461 Repealed. 1962, Act 151, Eff. Mar. 28, 1963.

## **PHARMACIES, DRUG STORES, AND APOTHECARY SHOPS**

### **Act 359 of 1927**

AN ACT to regulate the ownership of pharmacies, drug stores and apothecary shops, and to provide a penalty for the violation of the provisions of this act.

**History:** 1927, Act 359, Eff. Sept. 5, 1927

*The People of the State of Michigan enact:*

### **338.481 Ownership of pharmacy, drugstore, or apothecary shop; requirements; exceptions.**

#### **Sec. 1.**

(1) A pharmacy, drugstore, or apothecary shop shall be owned by a pharmacist and a partnership or corporation shall not own a drugstore, pharmacy, or apothecary shop unless at least 25% of the interest in the partnership or the stock of the corporation is held by pharmacists. A corporation, organized and existing under the laws of this state, or another state, authorized to do business in this state and empowered by its charter to own and conduct a pharmacy, drugstore, or apothecary shop and which, at the time of passage of this act, owns and conducts a drugstore, pharmacy, or apothecary shop in this state may continue to own and conduct the drugstore, pharmacy, or apothecary shop and may establish and own additional pharmacies, drugstores, or apothecary shops pursuant to this act.

(2) A corporation which does not continue to own at least 1 pharmacy, drugstore, or apothecary shop theretofore owned by it, or ceases to be actively engaged in the practice of pharmacy in this state, shall not be permitted thereafter to own a drugstore, pharmacy, or apothecary shop.

(3) A person who is not a pharmacist and who at the time of the passage of this act owns a pharmacy, drugstore, or apothecary shop in this state, may continue to own and conduct the pharmacy, drugstore, or apothecary shop pursuant to existing laws and rules.

(4) The administrator, executor, or trustee of the estate of a deceased owner of a pharmacy, drugstore, or apothecary shop, or the widow, heirs, or next of kin of the deceased owner, may continue to own and conduct the pharmacy, drugstore, or apothecary shop pursuant to existing laws and rules.

(5) This act shall not apply to hospitals licensed by the department of public health pursuant to Act No. 368 of the Public Acts of 1978, as amended, being sections 333.1101 to 333.25211 of the Michigan Compiled Laws.

(6) This act shall not apply to a health maintenance organization licensed by the department of public health pursuant to Act No. 368 of the Public Acts of 1978, as amended.

(7) This act shall not apply to a pharmacy in an institution of higher education established by law having

authority to grant a baccalaureate degree if the pharmacy is under the personal charge of a pharmacist.

**History:** 1927, Act 359, Eff. Sept. 5, 1927 ;-- CL 1929, 6861 ;-- CL 1948, 338.481 ;-- Am. 1977, Act 62, Imd. Eff. July 13, 1977 ;-- Am. 1980, Act 99, Imd. Eff. Apr. 17, 1980

**338.482 Violation of act; penalty.**

Sec. 2.

Any individual, firm or corporation violating the provisions of this act shall be deemed guilty of a misdemeanor and upon conviction shall be subject to a fine of not less than 500 dollars and cost of prosecution.

**History:** 1927, Act 359, Eff. Sept. 5, 1927 ;-- CL 1929, 6862 ;-- CL 1948, 338.482

**ACCOUNTANTS**

**Act 353 of 1925**

338.501-338.528 Repealed. 1967, Act 306, Eff. Nov. 2, 1967;â€”1976, Act 130, Eff. July 1, 1976.

**ARCHITECTURE, PROFESSIONAL ENGINEERING, AND LAND SURVEYING**

**Act 240 of 1937**

338.551-338.576 Repealed. 1980, Act 299, Imd. Eff. Oct. 21, 1980.

**SECTION, QUARTER SECTION, AND CENTER SECTION CORNERS**

**Act 314 of 1941**

338.591-338.595 Repealed. 1975, Act 313, Eff. Mar. 31, 1976.

**BARBERS AND HAIRCUTTERS**

**Act 382 of 1927**

338.601-338.625 Repealed. 1968, Act 355, Eff. July 1, 1969.

**BARBER SHOP PRACTICES, OPERATION, AND PRICES**

**Act 309 of 1941**

338.651-338.662 Repealed. 1997, Act 128, Imd. Eff. Nov. 5, 1997.

**SUNDAY CLOSING OF BARBER SHOPS**

**Act 148 of 1893**

338.681-338.683 Repealed. 1996, Act 148, Imd. Eff. Mar. 25, 1996.

**RESIDENTIAL BUILDINGS**

**Act 311 of 1939**

338.701-338.720 Repealed. 1965, Act 383, Imd. Eff. Aug. 18, 1965; 1966, Act 12, Eff. Sept. 1, 1966.

**FORESTERS**

**Act 78 of 1955**

338.721-338.740 Repealed. 1980, Act 299, Imd. Eff. Oct. 21, 1980.

**ACT CONCERNING COSMETOLOGY**

**Act 176 of 1931**

338.751-338.786 Repealed. 1976, Act 350, Imd. Eff. Dec. 21, 1976; 1980, Act 299, Imd. Eff. Oct. 21, 1980.

**PRIVATE DETECTIVE AGENCIES**

**Act 383 of 1927**

338.801-338.813 Repealed. 1965, Act 285, Imd. Eff. July 22, 1965.

**PROFESSIONAL INVESTIGATOR LICENSURE ACT**

**Act 285 of 1965**

AN ACT to license and regulate professional investigators; to provide for certain powers and duties for certain

state agencies and local officials; to provide for the imposition for certain fees; to protect the general public against unauthorized, unlicensed and unethical operations by professional investigators; to provide for immunity for certain persons under certain circumstances; to provide for penalties and remedies; and to repeal acts and parts of acts.

**History:** 1965, Act 285, Imd. Eff. July 22, 1965 ;-- Am. 2002, Act 474, Eff. Oct. 1, 2002 ;-- Am. 2008, Act 146, Imd. Eff. May 28, 2008

*The People of the State of Michigan enact:*

### **338.821 Short title.**

#### **Sec. 1.**

This act shall be known and may be cited as the "professional investigator licensure act".

**History:** 1965, Act 285, Imd. Eff. July 22, 1965 ;-- Am. 2002, Act 474, Eff. Oct. 1, 2002 ;-- Am. 2008, Act 146, Imd. Eff. May 28, 2008

### **338.822 Definitions.**

#### **Sec. 2.**

As used in this act:

(a) "Certified public accountant" means a person licensed as a certified public accountant under article 7 of the occupational code, 1980 PA 299, MCL 339.720 to 339.736.

(b) "Computer forensics" means the collection, investigation, analysis, and scientific examination of data held on, or retrieved from, computers, computer networks, computer storage media, electronic devices, electronic storage media, or electronic networks, or any combination thereof.

(c) "Department" means the Michigan department of labor and economic growth.

(d) "Insurance adjuster" means a person other than a professional investigator who, for a consideration, engages in the activities described in subdivision (e) in the course of adjusting or otherwise participating in the disposal of claims under or in connection with a policy of insurance. Insurance adjuster includes any of the following:

(i) A person who is employed on a salary basis by an insurance company.

(ii) A person, firm, partnership, company, limited liability company, or corporation who acts for insurance companies solely in the capacity of an independent claim adjuster while performing within that capacity.

(iii) A person, firm, partnership, company, limited liability company, or corporation engaged in the business of public adjuster acting for claimants in securing adjustments of claims against insurance companies and who does not perform investigative services including, but not limited to, surveillance activities.

(e) "Investigation business" means a business that, for a fee, reward, or other consideration, engages in business or accepts employment to furnish, or subcontracts or agrees to make, or makes an investigation for the purpose of obtaining information with reference to any of the following:

(i) Crimes or wrongs done or threatened against the United States or a state or territory of the United States, or any other person or legal entity.

(ii) The identity, habits, conduct, business, occupation, honesty, integrity, credibility, trustworthiness, efficiency, loyalty, activity, movement, whereabouts, affiliations, associations, transactions, acts, reputation, or character of a person.

(iii) The location, disposition, or recovery of lost or stolen property.

(iv) The cause or responsibility for fires, libels, losses, accidents, or damage or injury to persons or property.

(v) Securing evidence to be used before a court, board, officer, or investigating committee.

(vi) The prevention, detection, and removal of surreptitiously installed devices designed for eavesdropping or observation, or both.

(vii) The electronic tracking of the location of an individual or motor vehicle for purposes of detection or investigation.

(viii) Computer forensics to be used as evidence before a court, board, officer, or investigating committee.

(f) "Licensee" means a person licensed under this act.

(g) "Professional engineer" means a person licensed under article 20 of the occupational code, 1980 PA 299,

MCL 339.2001 to 339.2014, as a professional engineer.

(h) "Professional investigator" means a person, other than an insurance adjuster who is on salary and employed by an insurance company, who for a fee, reward, or other consideration engages in the investigation business.

**History:** 1965, Act 285, Imd. Eff. July 22, 1965 ;-- Am. 1967, Act 164, Eff. Nov. 2, 1967 ;-- Am. 1978, Act 311, Imd. Eff. July 10, 1978 ;-- Am. 2002, Act 474, Eff. Oct. 1, 2002 ;-- Am. 2008, Act 146, Imd. Eff. May 28, 2008

### **338.823 License required; investigation of prohibited activities; civil or criminal action; violation; penalty.**

#### **Sec. 3.**

(1) A person, firm, partnership, company, limited liability company, or corporation shall not engage in the business of professional investigator for hire, fee, or reward, and shall not advertise his or her business to be that of professional investigator or of a professional investigator agency without first obtaining a license from the department. A person, firm, partnership, company, limited liability company, or corporation shall not engage in the business of furnishing or supplying, for hire and reward, information as to the personal character of any person or firm, or as to the character or kind of business and occupation of any person, firm, partnership, company, limited liability company, or corporation and shall not own, conduct, or maintain a bureau or agency for the purposes described in this subsection except as to the financial rating of persons, firms, partnerships, companies, limited liability companies, or corporations without having first obtained a license as a professional investigator from the department.

(2) The department, the attorney general, the Michigan state police, or a local law enforcement agency, on its own initiative or at the request of any other person or legal entity, may investigate allegations of a person or legal entity engaging in activities regulated under this act without being appropriately licensed or exempt from licensure under this act. The entity conducting the investigation shall report its findings to the attorney general and county prosecuting attorney having jurisdiction in the location within which the alleged violator is engaged in business. The attorney general or county prosecuting attorney may bring an appropriate civil or criminal action in a court of competent jurisdiction to enjoin any person or legal entity that has engaged or is about to engage in any activity regulated by this act without being appropriately licensed or exempt from licensure under this act. Such an injunction may be issued without proof of actual damage sustained by any person or legal entity. Issuance of an injunction shall not prevent criminal prosecution of a violator. In addition to issuing the injunction, the court may impose a civil violation fine not to exceed \$25,000.00. A person or other legal entity who reports to the department, a local law enforcement agency, a county prosecuting attorney, or the attorney general regarding an allegation of unlicensed activity is immune from tort liability for making the report.

(3) A person violating this section is guilty of a felony punishable by imprisonment for not more than 4 years or by a penal fine of not more than \$5,000.00, or both.

**History:** 1965, Act 285, Imd. Eff. July 22, 1965 ;-- Am. 1974, Act 114, Eff. July 1, 1974 ;-- Am. 2002, Act 474, Eff. Oct. 1, 2002 ;-- Am. 2008, Act 146, Imd. Eff. May 28, 2008

### **338.824 Exemptions from act.**

#### **Sec. 4.**

This act does not apply to any of the following:

(a) A person employed exclusively and regularly by an employer in connection with the affairs of the employer only, if there exists a bona fide employer-employee relationship for which the employee is reimbursed on a salary basis.

(b) An officer or employee of the United States, this state, or a political subdivision of this state while that officer or employee is engaged in the performance of his or her official duties except that such officer or employee does not include a professional investigator hired or employed under contract by the United States, this state, or a political subdivision of this state.

(c) The business of obtaining and furnishing information as to the financial standing, rating, and credit responsibility of persons or as to the personal habits and financial responsibility of applicants for insurance,

indemnity bonds, or commercial credit.

(d) A charitable philanthropic society or association duly incorporated under the laws of this state that is organized and maintained for the public good and not for private profit.

(e) An attorney admitted to practice in this state in performing his or her duties as an attorney at law.

(f) A collection agency or finance company licensed to do business under the laws of this state or any employee of a collection agency or finance company while acting within the scope of his or her employment when making an investigation incidental to the business of the agency, including an investigation of the location of the debtor or his or her assets and property in which the client has an interest or upon which the client has a lien.

(g) An insurance adjuster who is employed on a salary basis by an insurance company or a person, firm, partnership, company, limited liability company, or corporation that acts for an insurance company solely in the capacity of claim adjuster.

(h) A person, firm, partnership, company, limited liability company, or corporation engaged in the business of public adjuster acting for claimants in securing adjustments of claims against insurance companies and who does not perform investigative services, including, but not limited to, surveillance activities.

(i) A professional engineer acting within the scope of his or her licensed professional practice who does not perform investigative services, including, but not limited to, surveillance activities or other activities outside of the scope of his or her licensed professional practice.

(j) A certified public accountant currently licensed, registered, or certified by a regulatory agency of this or any other state or a public accounting firm currently licensed, registered, or certified by a regulatory agency of this or any other state, including the employees of the certified public accountant or public accounting firm acting within the scope of the individual's or the public accounting firm's professional practice.

(k) A bail agent authorized under section 167b of the Michigan penal code, 1931 PA 328, MCL 750.167b, while performing his or her duties as a bail agent.

**History:** 1965, Act 285, Imd. Eff. July 22, 1965 ;-- Am. 2002, Act 474, Eff. Oct. 1, 2002 ;-- Am. 2008, Act 146, Imd. Eff. May 28, 2008 ;-- Am. 2010, Act 359, Imd. Eff. Dec. 22, 2010

### **338.825 License; issuance, duration.**

#### **Sec. 5.**

(1) The department, upon application and after making a determination that the applicant is qualified, shall issue the applicant a license to conduct business as a professional investigator for a period of 3 years from date of issuance.

(2) Upon the issuance of a license under this act to conduct business as a professional investigator, the applicant is not required to obtain any other license from any municipality or political subdivision of this state.

**History:** 1965, Act 285, Imd. Eff. July 22, 1965 ;-- Am. 2002, Act 474, Eff. Oct. 1, 2002 ;-- Am. 2008, Act 146, Imd. Eff. May 28, 2008

### **338.826 License; qualifications; reciprocal agreements.**

#### **Sec. 6.**

(1) The department shall issue a license to conduct business as a professional investigator if satisfied that the applicant is a person, or if a firm, partnership, company, limited liability company, or corporation, the sole or principal license holder is a person who meets all of the following qualifications:

(a) Is a citizen of the United States.

(b) Is not less than 25 years of age.

(c) Has a high school education or its equivalent.

(d) Has not been convicted of a felony, or a misdemeanor involving any of the following:

(i) Dishonesty or fraud.

(ii) Unauthorized divulging or selling of information or evidence.

(iii) Impersonation of a law enforcement officer or employee of the United States or a state, or a political subdivision of the United States or a state.

- (iv) Illegally using, carrying, or possessing a dangerous weapon.
- (v) Two or more alcohol related offenses.
- (vi) Controlled substances under the public health code, 1978 PA 368, MCL 333.1101 to 333.25211.
- (vii) An assault.
- (e) Has not been dishonorably discharged from a branch of the United States military service.
- (f) For a period of not less than 3 years has been or is any of the following on a full-time basis:
  - (i) Lawfully engaged in the professional investigation business as a licensee, registrant, or investigative employee in another state.
  - (ii) Lawfully engaged in the investigation business as an investigative employee of the holder of a license to conduct a professional investigation agency.
  - (iii) An investigator, detective, special agent, intelligence specialist, parole agent, probation officer, or certified police officer employed by any government executive, military, judicial, or legislative agency, or other public authority engaged in investigative or intelligence activities. This subdivision does not include individuals employed by educational or charitable institutions who are solely engaged in academic, consulting, educational, instructional, or research activities. In the case of the experience requirement under this subparagraph for an applicant demonstrating experience as a probation officer or parole agent, the department shall consider any application filed on or after January 1, 2005 for eligibility regarding that experience.
  - (iv) A graduate of an accredited institution of higher education with a baccalaureate or postgraduate degree in the field of police administration, security management, investigation, law, criminal justice, or computer forensics or other computer forensic industry certificated study that is acceptable to the department.
  - (v) Lawfully engaged in the investigation business as a full-time proprietary or in-house investigator employed by a business or attorney, or as an investigative reporter employed by a recognized media outlet, acceptable to the department. This subdivision does not include individuals employed by educational or charitable institutions who are solely engaged in academic, consulting, educational, instructional, or research activities.
  - (g) Has posted with the department a bond or insurance policy provided for in this act.
- (2) In the case of a person, firm, partnership, company, limited liability company, or corporation now doing or seeking to do business in this state, the manager shall comply with the qualifications of this section.
- (3) Beginning July 1, 2010, a law enforcement officer, as that term is defined in section 2 of the commission of law enforcement standards act, 1965 PA 203, MCL 28.602, shall not be issued a new or renewal license and shall not be employed and working in an investigative capacity by, or authorized to operate in a capacity as, a professional investigator unless the law enforcement officer obtains and produces, in a manner acceptable to the department, any 1 of the following:
  - (a) Written permission to act as a professional investigator from the current chief of police, county sheriff, or other official having executive authority and responsibility over the law enforcement matters in that jurisdiction if the law enforcement officer does not work under the authority of a chief of police or county sheriff.
  - (b) A copy of the law enforcement officer's jurisdiction's published policies and procedures allowing off-duty employment, which policies and procedures include the prohibition of the off-duty use of investigative tools or equipment, or both, provided exclusively for law enforcement and indicate that the off-duty employment as a professional investigator is not considered in conflict with employment as a law enforcement officer.
  - (c) A copy of the collective bargaining agreement of the law enforcement officer's jurisdiction.
- (4) This act does not prevent a licensee from acting as a professional investigator outside of this state to the extent allowed by that other state under the laws of that state.
- (5) The department may enter into reciprocal agreements with other states that have professional investigator qualification laws to allow a professional investigator license or registration to be used by that licensee or registrant within the jurisdiction of either this state or another state. The reciprocal agreement shall be limited to only allow professional investigators to continue investigations that originate in the investigator's home state and that require investigation in another state. The department may enter into a reciprocal agreement if the other state meets all of the following conditions:
  - (a) Issues a professional investigator identification card with an expiration date printed on the card.
  - (b) Is available to verify the license or registration status for law enforcement purposes.
  - (c) Has disqualification, suspension, and revocation standards for licenses and registrations.
  - (d) Requires the applicant for a license or registration as a professional investigator to submit to a criminal history records check pursuant to applicable state and federal law.
  - (6) Each reciprocal agreement shall, at a minimum, include the following provisions:
    - (a) A requirement that the professional investigator possess a professional investigator license or registration in good standing from his or her home state.
    - (b) A requirement that the professional investigator shall be time-limited to a maximum of 30 days per case while conducting an investigation in this state, or a lesser amount of time if required to comply with the reciprocity statutes or regulations of the other state.
    - (c) A requirement that the professional investigator from the other state not solicit any business in this state while conducting investigations in this state.



**History:** 1965, Act 285, Imd. Eff. July 22, 1965 ;-- Am. 1967, Act 164, Eff. Nov. 2, 1967 ;-- Am. 1978, Act 311, Imd. Eff. July 10, 1978 ;-- Am. 2002, Act 474, Eff. Oct. 1, 2002 ;-- Am. 2008, Act 146, Imd. Eff. May 28, 2008

### **338.827 Application for license; notarized statement as to qualifications; investigation of applicant.**

#### **Sec. 7.**

(1) The department shall prepare a standard uniform application. The applicant shall obtain notarized reference statements from at least 5 reputable citizens who swear that they have known the applicant and his or her qualifications for a period of at least 5 years and believe that the applicant is honest, of good character, and competent. The individual providing the reference shall not be related or connected to the person so certifying by blood or marriage.

(2) Upon receipt of the application, application processing fee, and license fee as described in section 9, the department shall investigate as to the applicant's qualifications for licensure.

**History:** 1965, Act 285, Imd. Eff. July 22, 1965 ;-- Am. 2002, Act 474, Eff. Oct. 1, 2002 ;-- Am. 2008, Act 146, Imd. Eff. May 28, 2008

### **338.828 Application for license by corporation; contents; copy of incorporation certificate.**

#### **Sec. 8.**

If the applicant is a corporation, the application shall be signed and verified by the president, secretary and treasurer thereof, and shall specify the name of the corporation, the date and place of its incorporation, the location of its principal place of business, and the name of the city, town or village, stating the street and number, and such other description as will indicate the location of the bureau, agency, subagency, office or branch office for which the license is desired, and shall be accompanied by a duly certified copy of a certificate of incorporation.

**History:** 1965, Act 285, Imd. Eff. July 22, 1965 ;-- Am. 2008, Act 146, Imd. Eff. May 28, 2008

### **338.829 License; conditions of issuance; fee; duration; suspension or revocation; bonds; branch office; filing completed application; issuance of license within certain time period; report; application defined.**

#### **Sec. 9.**

(1) The department, when satisfied of the competency and integrity of the applicant, or if the applicant is a firm, partnership, company, limited liability company, or corporation, of its individual members or officers, shall issue to the applicant a license upon the applicant's paying to the department an application processing fee of \$150.00 and an initial license fee of \$600.00. The applicant shall execute, deliver, and file with the department a bond in the sum of \$10,000.00, conditioned for the faithful and honest conduct of the business by the applicant, which bond shall be approved by the department. The license is valid for 3 years but is subject to suspension or revocation at all times by the department for cause shown. The bonds shall be taken in the name of the people of the state, and any person injured by the willful, malicious, and wrongful act of the principal may bring an action on the bond or insurance in his or her own name to recover damages suffered by reason of such willful, malicious, and wrongful act. In lieu of a bond, the applicant may furnish a policy of insurance issued by an insurer authorized to do business in this state naming the licensee and the state as co-insured in the amount of \$10,000.00 for property damages, \$100,000.00 for injury or death of 1 person, and \$200,000.00 for injuries to or deaths of more than 1 person arising out of the operation of the licensed activity. The license shall be in a form to be prescribed by the department and shall specify the full name of the applicant, the location of the principal office or place of business and the location of the bureau,



agency, subagency, office or branch office for which the license is issued, the expiration date, and the name of the person filing the statement required by this act upon which the license is issued.

(2) A licensee desiring to open a branch office or subagency shall receive a license for that branch or subagency upon payment to the department of an additional fee of \$125.00 for each additional license. The additional license shall be posted in a conspicuous place in the branch office or subagency and expires on the date of the initial license.

(3) If the license is suspended or revoked for any cause, the department shall not refund the license or application processing fee or any part of the license or application processing fee.

(4) Beginning the effective date of the amendatory act that added this subsection, the department shall issue an initial or renewal license not later than 90 days after the applicant files a completed application. Receipt of the application is considered the date the application is received by any agency or department of the state of Michigan. If the application is considered incomplete by the department, the department shall notify the applicant in writing, or make information electronically available, within 30 days after receipt of the incomplete application, describing the deficiency and requesting the additional information. The 90-day period is tolled upon notification by the department of a deficiency until the date the requested information is received by the department. The determination of the completeness of an application does not operate as an approval of the application for the license and does not confer eligibility of an applicant determined otherwise ineligible for issuance of a license.

(5) If the department fails to issue or deny a license within the time required by this section, the department shall return the license fee and shall reduce the license fee for the applicant's next renewal application, if any, by 15%. The failure to issue a license within the time required under this section does not allow the department to otherwise delay the processing of the application, and that application, upon completion, shall be placed in sequence with other completed applications received at that same time. The department shall not discriminate against an applicant in the processing of the application based upon the fact that the license fee was refunded or discounted under this subsection.

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

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

(b) The number of applications denied.

(c) The number of applicants not issued a license within the 90-day time period and the amount of money returned to licensees and registrants under subsection (5).

(7) As used in this section and section 26, "completed application" means an application complete on its face and submitted with any applicable licensing fees as well as any other information, records, approval, security, or similar item required by law or rule from a local unit of government, a federal agency, or a private entity but not from another department or agency of the state of Michigan.

**History:** 1965, Act 285, Imd. Eff. July 22, 1965 ;-- Am. 2002, Act 474, Eff. Oct. 1, 2002 ;-- Am. 2004, Act 260, Imd. Eff. July 23, 2004

### **338.830 License; suspension or revocation; grounds; additional sanctions; surrendering license and identification card; noncompliance as misdemeanor.**

#### **Sec. 10.**

(1) The department may suspend or revoke a license issued under this act if the department determines that the licensee or licensee's manager, if an individual, or if the licensee is a person other than an individual, that an officer, director, partner, or its manager, has done any of the following:

(a) Made false statements or given false information in connection with an application for a license or a renewal or reinstatement of a license.

(b) Violated this act or any rule promulgated under this act.

(c) Been convicted of a felony or misdemeanor involving dishonesty or fraud, unauthorized divulging or selling of information or evidence.

(d) Been convicted of impersonation of a law enforcement officer or employee of the United States or a state, or a political subdivision of the United States or a state.

(e) Been convicted of illegally using, carrying, or possessing a dangerous weapon.

(f) In the case of a law enforcement officer issued a license under the conditions contained in section 6(3),

violated the policies and procedures governing off-duty employment.

(2) In addition to the suspension or revocation provisions available to the department under subsection (1), the department may do 1 or more of the following regarding a licensee or a licensee's manager, if an individual, or if the licensee is a person other than an individual, an officer, director, partner, member, or its manager, who violates this act or a rule or order promulgated or issued under this act:

- (a) Place a limitation on a license.
- (b) Deny a renewal of a license.
- (c) Issue an order of censure.
- (d) Issue an order of probation.
- (e) Impose a requirement that restitution be made.

(3) Upon notification from the department of the suspension or revocation of the license, the licensee, within 24 hours, shall surrender to the department the license and his or her identification card. Failure to surrender the license in compliance with this subsection is a misdemeanor.

**History:** 1965, Act 285, Imd. Eff. July 22, 1965 ;-- Am. 1978, Act 311, Imd. Eff. July 10, 1978 ;-- Am. 2002, Act 474, Eff. Oct. 1, 2002 ;-- Am. 2008, Act 146, Imd. Eff. May 28, 2008

### **338.831 License fee; refund; conditions.**

Sec. 11.

The department shall not refund a license fee unless a showing is made of mistake, inadvertence, error in the collection of the fee, or noncompliance with the time periods described in section 9(4).

**History:** 1965, Act 285, Imd. Eff. July 22, 1965 ;-- Am. 2002, Act 474, Eff. Oct. 1, 2002 ;-- Am. 2004, Act 260, Imd. Eff. July 23, 2004

### **338.832 License; posting.**

Sec. 12.

Upon receipt of a license from the department, the licensee shall post it in a conspicuous place in his or her office.

**History:** 1965, Act 285, Imd. Eff. July 22, 1965 ;-- Am. 2002, Act 474, Eff. Oct. 1, 2002

### **338.833 Reporting name or location change in agency; new license.**

Sec. 13.

Any change in the name or location of the agency or of a branch office or subagency shall be reported to the department at least 30 days before the change becomes effective. Upon receipt of the notice of change of name or location, the department shall prepare and forward a license showing the change and the licensee shall return the old license within 3 business days after the change.

**History:** 1965, Act 285, Imd. Eff. July 22, 1965 ;-- Am. 2002, Act 474, Eff. Oct. 1, 2002

### **338.834 Identification card; issuance; form and contents; maintenance, custody, and control; duplicates.**

Sec. 14.

(1) Upon issuing a license, the department shall also issue an identification card to the principal license holder or, if the agency is a partnership, to each partner or, if the license holder is a corporation or limited liability company, to each resident officer, manager, or member.

(2) The identification card issued under subsection (1) shall be in such form and contain such information as may be prescribed by the department and is recallable by the department for the same reasons as the license.

(3) The department shall only issue 1 identification card for each person entitled to receive it. The licensee is responsible for the maintenance, custody, and control of the identification card and shall not lease, loan, sell, or otherwise permit unauthorized persons or employees to use it. This subsection does not prevent each agency from issuing its own identification cards, if approved as to form and content by the department, to its respective employees. The individual identification card shall not bear the seal of the state or the designation of professional investigator, but the identification card may designate the employee as an investigator or operator and may state that the person is employed by a licensee of the department and the state of Michigan.

(4) Upon proper application and for sufficient reasons shown, the department may issue duplicates of the original license or identification card.

**History:** 1965, Act 285, Imd. Eff. July 22, 1965 ;-- Am. 2002, Act 474, Eff. Oct. 1, 2002 ;-- Am. 2008, Act 146, Imd. Eff. May 28, 2008

### **338.835 Nonassignability of license.**

Sec. 15.

A license issued under the provisions of this act is not assignable, and is personal to such licensee.

**History:** 1965, Act 285, Imd. Eff. July 22, 1965

### **338.836 Display of unauthorized badge, shield, identification card, or license; violation; penalties.**

Sec. 16.

(1) A person shall not possess or display a badge or shield that purports to indicate that the holder is a private detective, private investigator, or professional investigator.

(2) A licensee may request authorization to provide employee identification cards only upon the express authorization of the department as to format and content.

(3) A person shall not display any badge, shield, identification card, or license that might mislead the public into thinking that the holder is a licensed professional investigator.

(4) A person who violates this section is guilty of a misdemeanor and any unauthorized badge, shield, identification card, or license shall be confiscated by any law enforcement officer of the state. Each day the violation continues shall constitute a separate offense.

**History:** 1965, Act 285, Imd. Eff. July 22, 1965 ;-- Am. 2002, Act 474, Eff. Oct. 1, 2002 ;-- Am. 2008, Act 146, Imd. Eff. May 28, 2008

### **338.837 Licensees; employment of assistants; records; false statements; fingerprints.**

Sec. 17.

(1) A licensee may employ as many persons as considered necessary to assist in his or her work of professional

investigator and in the conduct of the business. At all times during the employment, the licensee shall have direct involvement in the day-to-day activities and is accountable for the good conduct in the business of each person so employed.

(2) A licensee shall keep adequate and complete records of all persons he or she employs, which records shall be made available to the department upon request and to police authorities if the police authorities offer legitimate proof for the request in connection with a specific need.

(3) If a licensee falsely states or represents that a person is or has been in his or her employ, the false statement or representation shall be sufficient cause for the suspension or revocation of the license. Any person falsely stating or representing that he or she is or has been a professional investigator or employed by a professional investigator agency is guilty of a misdemeanor.

(4) A licensee shall not knowingly employ any person who does not meet the requirements of this act.

(5) The licensee shall cause fingerprints to be taken of all prospective employees, which fingerprints shall be submitted to the department and the federal bureau of investigation for processing and approval.

(6) The fingerprints required to be taken under subsection (5) may be taken by a law enforcement agency or any other person determined by the department to be qualified to take fingerprints. The licensee shall submit a fingerprint processing fee to the department in accordance with section 3 of 1935 PA 120, MCL 28.273, as well as any costs imposed by the federal bureau of investigation.

**History:** 1965, Act 285, Imd. Eff. July 22, 1965 ;-- Am. 1967, Act 164, Eff. Nov. 2, 1967 ;-- Am. 2002, Act 474, Eff. Oct. 1, 2002 ;-- Am. 2008, Act 146, Imd. Eff. May 28, 2008

### **338.838 Hiring of person convicted of certain felonies or misdemeanors prohibited; refusal to surrender license or identification card.**

#### **Sec. 18.**

(1) A licensee shall not knowingly employ any person who has been convicted of a felony, or convicted of a misdemeanor within the preceding 8 years involving any of the following:

(a) Dishonesty or fraud.

(b) Unauthorized divulging or selling of information or evidence.

(c) Impersonation of a law enforcement officer or employee of the United States, this state, or a political subdivision of this state.

(d) Illegally using, carrying, or possessing a dangerous weapon.

(e) Two or more alcohol related offenses.

(f) Controlled substances under the public health code, 1978 PA 368, MCL 333.1101 to 333.25211.

(g) An assault.

(2) Any employee or operator who, upon demand, fails to surrender to the licensee his or her identification card and any other property issued to him or her for use in connection with his or her employer's business is guilty of a misdemeanor.

**History:** 1965, Act 285, Imd. Eff. July 22, 1965 ;-- Am. 2002, Act 474, Eff. Oct. 1, 2002

### **338.839 Carrying deadly weapon; license required.**

#### **Sec. 19.**

Any person licensed as a professional investigator, or in the employ of a professional investigator agency, is not authorized to carry a deadly weapon unless he is so licensed in accordance with the present laws of this state.

**History:** 1965, Act 285, Imd. Eff. July 22, 1965 ;-- Am. 2008, Act 146, Imd. Eff. May 28, 2008

**338.840 Divulging of information; willful sale of or furnishing false information; penalty; privileged communications; notice and hearing.**

Sec. 20.

(1) Any person who is or has been an employee of a licensee shall not divulge to anyone other than his or her employer or former employer, or as the employer shall direct, except as he or she may be required by law, any information acquired by him or her during his or her employment in respect to any of the work to which he or she shall have been assigned by the employer. Any employee violating the provisions of this section and any employee who willfully makes a false report to his or her employer in respect to any work is guilty of a misdemeanor.

(2) Any principal, manager, or employee of a licensee who willfully furnishes false information to clients, or who willfully sells, divulges, or otherwise discloses to other than clients, except as may be required by law, any information acquired during employment by the client is guilty of a misdemeanor and is subject to summary suspension of license and revocation of license upon satisfactory proof of the offense to the department. Any communications, oral or written, furnished by a professional or client to a licensee, or any information secured in connection with an assignment for a client, is considered privileged with the same authority and dignity as are other privileged communications recognized by the courts of this state.

(3) Suspension, revocation, denial, or other action against a licensee or applicant for a license as described in section 10 shall be accompanied by notice and an opportunity for a hearing under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

**History:** 1965, Act 285, Imd. Eff. July 22, 1965 ;-- Am. 2002, Act 474, Eff. Oct. 1, 2002 ;-- Am. 2008, Act 146, Imd. Eff. May 28, 2008

**338.841 Violation of act; report of conviction by prosecuting attorney.**

Sec. 21.

The prosecuting attorney of the county in which any conviction for a violation of any provision of this act shall, within 10 days thereafter, make and file with the department a report showing the date of the conviction, the name of the person convicted, and the nature of the charge.

**History:** 1965, Act 285, Imd. Eff. July 22, 1965 ;-- Am. 2002, Act 474, Eff. Oct. 1, 2002

**338.842 Advertising; contents; discontinuing misleading advertising; notice.**

Sec. 22.

(1) An advertisement by a licensee soliciting or advertising for business shall contain his or her name and address as they appear in the records of the department.

(2) A licensee shall, on notice from the department, discontinue any advertising or the use of any advertisement, seal, or card, that the department determines to be misleading to the public. Failure to comply with such an order is cause for suspension or revocation of the license.

(3) Unless licensed under this act, a person shall not advertise his or her business to be that of a professional investigator regardless of the name or title actually used.

**History:** 1965, Act 285, Imd. Eff. July 22, 1965 ;-- Am. 2002, Act 474, Eff. Oct. 1, 2002 ;-- Am. 2008, Act 146, Imd. Eff. May 28, 2008

**338.843 Trade names; approval by department.**

Sec. 23.

A licensee shall not use any designation or trade name which has not been first approved by the department and shall not use any designation or trade name that implies any association with any municipal, county, township, or state government or the federal government, or any agency thereof.

**History:** 1965, Act 285, Imd. Eff. July 22, 1965 ;-- Am. 2002, Act 474, Eff. Oct. 1, 2002

**338.844 Record of business transaction and reports; retention.**

Sec. 24.

(1) Each person, partnership, firm, company, limited liability company, or corporation licensed and operating under this act shall make a complete written record of the business transactions and reports made in connection with the operation of the agency.

(2) A professional investigator agency that receives or generates a written or electronic report shall keep the report on file in the office of the professional investigator for at least 2 years unless the file is returned to the client or agent.

**History:** 1965, Act 285, Imd. Eff. July 22, 1965 ;-- Am. 2002, Act 474, Eff. Oct. 1, 2002 ;-- Am. 2008, Act 146, Imd. Eff. May 28, 2008

**338.845 Investigation of applicants; complaints; subpoenas; fees; failure to obey; penalty; testimony under oath.**

Sec. 25.

(1) For the purpose of investigating the character, competency, and integrity of the applicants, or for the purpose of investigating complaints made against the licensee, the director of the department may issue subpoenas and compel the attendance of witnesses. All subpoenas shall be issued under the hand of the director of the department and upon service the witness shall be tendered the fees to which he or she would be entitled to receive if subpoenaed in a court of law.

(2) A person duly subpoenaed who fails to obey the subpoena or, without cause, refuses to be examined or to answer any legal or pertinent questions as to the character, qualifications, or alleged misdeeds of the applicant or licensee is guilty of a misdemeanor.

(3) The testimony of such witnesses shall be under oath, which a designee of the director of the department may administer. Willful false swearing in any such proceeding is considered perjury.

**History:** 1965, Act 285, Imd. Eff. July 22, 1965 ;-- Am. 2002, Act 474, Eff. Oct. 1, 2002

**338.846 License; renewal; fee; bond.**

Sec. 26.

(1) A license granted under this act may be renewed upon application and the payment of a renewal fee of \$300.00, unless reduced under section 9(5), and filing of a renewal surety bond or liability insurance policy in the amount equivalent to that specified in section 9.

(2) A renewal license shall be dated as of the expiration date of the previously existing license. For the renewal of a license, the licensee shall submit an application in such form as prescribed by the department. Upon receipt of a completed application, payment of the renewal fee subject to section 9(5), and proof acceptable to the department of bond or insurance, the department shall renew a license. The department may defer the renewal if there are

uninvestigated complaints then outstanding against the licensee or if there is a criminal complaint then pending against the licensee.

**History:** 1965, Act 285, Imd. Eff. July 22, 1965 ;-- Am. 2002, Act 474, Eff. Oct. 1, 2002 ;-- Am. 2004, Act 260, Imd. Eff. July 23, 2004

### **338.847 Death of licensee; carrying on business; notice to department; sale of business.**

Sec. 27.

(1) Upon the death of a licensee, the business of the decedent may be carried on for a period of 90 days by any of the following:

(a) In the case of an individual licensee, the surviving spouse, or if there is none, the personal representative of the estate of the decedent.

(b) In the case of a partner, the surviving partners.

(c) In the case of an officer of a firm, company, association, limited liability company, or corporation, the officers.

(2) Within 10 days following the death of a licensee, the department shall be notified by a person described in subsection (1) in writing. The notification shall state the name of the person legally authorized to carry on the business of the deceased.

(3) Upon the authorization of the department, the business may be carried on for a further period of time when necessary to complete any investigation or assist in any litigation pending at the death of the decedent.

(4) This section does not authorize the solicitation or acceptance of any business after the death of the decedent except as otherwise provided by this act.

(5) This section shall not be construed to restrict the sale of a professional investigator business if the vendee qualifies for a license under the provisions of this act.

**History:** 1965, Act 285, Imd. Eff. July 22, 1965 ;-- Am. 2002, Act 474, Eff. Oct. 1, 2002 ;-- Am. 2008, Act 146, Imd. Eff. May 28, 2008

### **338.848 Employment of agents; rules.**

Sec. 28.

(1) The department may employ such agents as are necessary to carry out and to enforce this act.

(2) The department may promulgate rules to enforce and administer this act pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

**History:** 1965, Act 285, Imd. Eff. July 22, 1965 ;-- Am. 2002, Act 474, Eff. Oct. 1, 2002

### **338.849 Application of act as to license applications and renewals.**

Sec. 29.

The requirements of this act as to license applications shall apply to all professional investigators, except those who already have been granted a license under prior laws of this state. The requirements as to renewal of license certificates shall apply to all professional investigators licensed under this act or any prior law of this state.

**History:** 1965, Act 285, Imd. Eff. July 22, 1965 ;-- Am. 2008, Act 146, Imd. Eff. May 28, 2008

**338.850 Repeals.**

Sec. 30.

Act No. 383 of the Public Acts of 1927, as amended, being sections 338.801 to 338.813 of the Compiled Laws of 1948, is repealed.

**History:** 1965, Act 285, Imd. Eff. July 22, 1965

**338.851 Violation; penalty.**

Sec. 31.

A licensee, manager, or employee of a licensee who violates this act or a rule promulgated under this act is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or by a fine of not more than \$500.00, or both.

**History:** Add. 1974, Act 114, Eff. July 1, 1974 ;-- Am. 2002, Act 474, Eff. Oct. 1, 2002

**Compiler's Notes:** Former MCL 338.851, deriving from Act 229 of 1939 and pertaining to a state board of embalmers and funeral directors, was repealed by Act 268 of 1949.

**THE EMBALMERS' AND FUNERAL DIRECTORS' ACT**

**Act 229 of 1939**

338.851a-338.860 Repealed. 1949, Act 268, Eff. Sept. 23, 1949.

**MORTUARY SCIENCE**

**Act 268 of 1949**

338.861-338.875 Repealed. 1980, Act 299, Imd. Eff. Oct. 21, 1980.

**ELECTRICAL ADMINISTRATIVE ACT**

**Act 217 of 1956**

338.881-338.892 Repealed. 2016, Act 407, Eff. Apr. 4, 2017.

**EXECUTIVE REORGANIZATION ORDER**

**E.R.O. No. 1992-6**



**338.900 Transfer of powers and duties of the fire alarm industry advisory committee and the electric sign industry advisory committee to the electrical administrative board by type III transfer.**

WHEREAS, Article V, Section 2, of the Constitution of the State of Michigan of 1963 empowers the Governor to make changes in the organization of the Executive Branch or in the assignment of functions among its units which he considers necessary for efficient administration; and

WHEREAS, the Fire Alarm Industry Advisory Committee and the Electric Sign Industry Advisory Committee were created by Act No. 130 of the Public Acts of 1992, but said Act did not specify who shall appoint these committees, the term of such appointments, the qualifications for serving, the compensation for members and otherwise failed to delineate the nature and scope of the duties and responsibilities of the committees; and

WHEREAS, the Electrical Administrative Board was created by Act No. 217 of the Public Acts of 1956, as amended, being Section 338.881 et seq. of the Michigan Compiled Laws; and

WHEREAS, the functions, duties and responsibilities assigned to the Fire Alarm Industry Advisory Committee and the Electric Sign Industry Advisory Committee can be more effectively organized and carried out by the Electrical Administrative Board; and

WHEREAS, it is necessary in the interests of efficient administration and effectiveness of government to effect changes in the organization of the Executive Branch of government.

NOW, THEREFORE, I, John Engler, Governor of the State of Michigan, pursuant to the powers vested in me by the Constitution of the State of Michigan of 1963 and the laws of the State of Michigan, do hereby order the following:

(1) All the statutory authority, powers, duties, functions and responsibilities of the Fire Alarm Industry Advisory Committee and the Electric Sign Industry Advisory Committee are hereby transferred to the Electrical Administrative Board by a Type III transfer, as defined by Section 3 of Act 380 of the Public Acts of 1965, as amended, being Section 16.103 of the Michigan Compiled Laws, and the Fire Alarm Industry Advisory Committee and the Electric Sign Industry Advisory Committee are hereby abolished.

(2) The Director of the Department of Labor shall provide executive direction and supervision for the implementation of the transfers.

(3) All records, personnel, property and unexpended balances of appropriations, allocations, and other funds used, held, employed, available or to be made available to the Fire Alarm Industry Advisory Committee and the Electric Sign Industry Advisory Committee for the functions transferred to the Electrical Administrative Board by this Order are hereby transferred to the Electrical Administrative Board.

(4) The Director of the Department of Labor shall make internal organizational changes as may be administratively necessary to complete the realignment of responsibilities prescribed by this Order. The Electrical Administrative Board may establish advisory committees to carry out the functions transferred by this Order.

(5) The Director of the Department of Labor shall immediately initiate coordination to facilitate the transfer and develop a memorandum of record identifying any pending settlements, issues of compliance with applicable federal and State laws and regulations, or other obligations to be resolved by the Fire Alarm Industry Advisory Committee and the Electric Sign Industry Advisory Committee.

(6) All rules, orders, contracts and agreements relating to the assigned functions lawfully adopted prior to the effective date of this Order shall continue to be effective until revised, amended or repealed.

(7) Any suit, action or other proceeding lawfully commenced by, against or before any entity affected by this Order shall not abate by reason of the taking effect of this Order. Any suit, action or other proceeding may be maintained by, against or before the appropriate successor of any entity affected by this Order.

In fulfillment of the requirement of Article V, Section 2, of the Constitution of the State of Michigan of 1963, the provisions of this Order shall become effective 60 days after the filing of this Order.

**History:** 1992 E.R.O. No. 1992-6, Eff. Oct. 5, 1992

**PLUMBING**

**Act 266 of 1929**

338.901-338.917 Repealed. 2002, Act 733, Eff. Mar. 31, 2003.

**PLUMBING**

**Act 222 of 1901**

338.951-338.965 Repealed. 2002, Act 733, Eff. Mar. 31, 2003.

**FORBES MECHANICAL CONTRACTORS ACT**

**Act 192 of 1984**

338.971-338.988 Repealed. 2016, Act 407, Eff. Apr. 4, 2017.

**PSYCHOLOGIST REGISTRATION ACT**

**Act 257 of 1959**

338.1001-338.1019 Repealed. 1978, Act 368, Eff. Sept. 30, 1978.

**MARRIAGE COUNSELING CERTIFICATION ACT**

**Act 292 of 1966**

338.1031-338.1045 Repealed. 1980, Act 299, Imd. Eff. Oct. 21, 1980.

**PRIVATE SECURITY BUSINESS AND SECURITY ALARM ACT**

**Act 330 of 1968**

AN ACT to license and regulate private security guards, private security police, private security guard agencies, private college security forces, and security alarm systems servicing, installing, operating, and monitoring; to provide penalties for violations; to protect the general public against unauthorized, unlicensed and unethical operations by individuals engaged in private security activity or security alarm systems sales, installations, service, maintenance, and operations; to establish minimum qualifications for individuals as well as private agencies engaged in the security business and security alarm systems and operations; to impose certain fees; to create certain funds; and to prescribe certain powers and duties of certain private colleges and certain state departments, agencies, and officers.

**History:** 1968, Act 330, Imd. Eff. July 12, 1968 ;-- Am. 1975, Act 190, Imd. Eff. Aug. 5, 1975 ;-- Am. 2000, Act 411, Eff. Mar. 28, 2001 ;-- Am. 2002, Act 473, Eff. Oct. 1, 2002 ;-- Am. 2010, Act 68, Imd. Eff. May 13, 2010

**338.1051 Short title.**

Sec. 1.

This act shall be known and may be cited as the "private security business and security alarm act".

**History:** 1968, Act 330, Imd. Eff. July 12, 1968 ;-- Am. 2000, Act 411, Eff. Mar. 28, 2001

**Constitutionality:** This act, which requires the licensing of guards, does not demonstrate the requisite degree of state action to bring the activities of guards under color of state law so as to subject their activities to constitutional restraint and to require guards to give suspects warnings of their constitutional rights before eliciting inculpatory statements, and especially does not subject the activities of private police who are employed to protect the property and employees of their employer to constitutional restraint because such guards need not be licensed under the act. *Grand Rapids v Impens*, 414 Mich 667; 327 NW2d 278 (1982). Participation by an off-duty deputy sheriff from another county, employed as a private guard, with other guards in the apprehension and detention of a shoplifting suspect did not provide a sufficient relationship so as to bring the activities of the guards under color of state law and require warnings of the suspect's constitutional rights before eliciting inculpatory statements by the suspect where the deputy did not obtain the statements and identified himself to the suspect only as a store employee. *Grand Rapids v Impens*, 414 Mich 667; 327 NW2d 278 (1982).

**338.1052 Definitions; persons not subject to act.**

Sec. 2.

(1) As used in this act:

(a) "Commission" means the commission on law enforcement standards created under section 3 of the commission on law enforcement standards act, 1965 PA 203, MCL 28.603.

(b) "Department" means the department of licensing and regulatory affairs, except that in reference to the regulation of private security police and private college security forces, department means the department of state police.

(c) "Governing board" means a board of regents, board of trustees, board of governors, board of control, or other governing body of an institution of higher education.

(d) "Licensee" means a person licensed under this act.

(e) "Person" means an individual, limited liability company, corporation, or other legal entity.

(f) "Private college security force" means a security force authorized under section 37.

(g) "Private security guard" means an individual or an employee of an employer who offers, for hire, to provide protection of property on the premises of another, and includes an employee of a private college security force.

(h) "Private security police" means that part of a business organization or educational institution primarily responsible for the protection of property on the premises of the business organization, but does not include a private college security force.

(i) "Security alarm system" means a detection device or an assembly of equipment and devices that is arranged to signal the presence of a hazard that requires urgent attention and is remotely monitored by a central monitoring system. Security alarm system includes any system that can electronically cause an expected response by a law enforcement agency to a premises by means of the activation of an audible signal, visible signal, electronic notification, or video signal, or any combination of these signals, to a remote monitoring location on or off the premises. Security alarm system does not include any of the following:

(i) A video signal that is not transmitted over a public communication system.

(ii) A fire alarm system.

(iii) An alarm system that monitors temperature, humidity, or other condition that is not directly related to the detection of an unauthorized intrusion into a premises or an attempted robbery at a premises.

(iv) A system that is not monitored by a central monitoring station and does not set off an audible alarm.

(j) "Security alarm system agent" means an individual employed by a security alarm system contractor whose duties include the altering, installing, maintaining, moving, repairing, replacing, selling, servicing, monitoring, responding to, or causing others to respond to a security alarm system.

(k) "Security alarm system contractor" means a person engaged in the installation, maintenance, alteration, monitoring, or servicing of security alarm systems or who responds to a security alarm system. Security alarm

system contractor does not include a business that only sells or manufactures security alarm systems unless the business services security alarm systems, installs security alarm systems, monitors or arranges for the monitoring of a security alarm system, or responds to security alarm systems at a protected premises.

(l) "Security business" means a person engaged in offering, arranging, or providing 1 or more of the following services:

- (i) Security alarm system installation, service, maintenance, alteration, or monitoring.
- (ii) Private security guard.
- (iii) Private security police.

(2) All businesses that provide security alarm systems for the protection of persons and property and whose employees and security technicians travel on public property and thoroughfares in the pursuit of their duties are subject to this act.

(3) A communications common carrier that provides communications channels under tariffs for the transmission of signals in connection with an alarm system is not subject to this act.

(4) A railroad policeman who is appointed and commissioned under the railroad code of 1993, 1993 PA 354, MCL 462.101 to 462.451, is not subject to this act.

(5) A system provider, as defined in section 2 of the security alarm systems act, that is registered under the security alarm systems act, is not subject to this act.

**History:** 1968, Act 330, Imd. Eff. July 12, 1968 ;-- Am. 1969, Act 168, Imd. Eff. Aug. 5, 1969 ;-- Am. 1975, Act 190, Imd. Eff. Aug. 5, 1975 ;-- Am. 2000, Act 411, Eff. Mar. 28, 2001 ;-- Am. 2002, Act 473, Eff. Oct. 1, 2002 ;-- Am. 2010, Act 68, Imd. Eff. May 13, 2010 ;-- Am. 2012, Act 581, Imd. Eff. Jan. 2, 2013

### **338.1053 License required; permission for device delivering recorded message to public service, utility, or police agency required; violation; penalty.**

#### **Sec. 3.**

(1) Unless licensed under this act, a sole proprietorship, firm, company, partnership, limited liability company, or corporation shall not engage in the business of security alarm system contractor, private security guard, private security police, private college security force, patrol service, or an agency furnishing those services. A person, firm, company, partnership, limited liability company, or corporation shall not advertise its business to be that of security alarm system contractor, security alarm system agent, private security guard agency, or an agency furnishing those services without having first obtained from the department a license to do so for each office and branch office to be owned, conducted, managed, or maintained for the conduct of that business.

(2) A person shall not sell, install, operate, adjust, arrange for, or contract to provide a device which upon activation, either mechanically, electronically, or by any other means, initiates the automatic calling or dialing of, or makes a connection directly to, a telephone assigned to a public service, utility, or police agency, for the purpose of delivering a recorded message, without first receiving written permission from that service, utility, or agency.

(3) A person who violates this section is guilty of a felony punishable by imprisonment for not more than 4 years or a fine of not more than \$1,000.00, or both.

**History:** 1968, Act 330, Imd. Eff. July 12, 1968 ;-- Am. 1974, Act 113, Eff. July 1, 1974 ;-- Am. 1975, Act 190, Imd. Eff. Aug. 5, 1975 ;-- Am. 1978, Act 432, Imd. Eff. Oct. 5, 1978 ;-- Am. 2000, Act 411, Eff. Mar. 28, 2001 ;-- Am. 2002, Act 473, Eff. Oct. 1, 2002 ;-- Am. 2010, Act 68, Imd. Eff. May 13, 2010

### **338.1054 Issuance of separate licenses for different security services; private detective or investigator services.**

#### **Sec. 4.**

The department may issue separate licenses to security alarm system contractors, private college security forces, private security police, and private security guard agencies. This section does not prevent a private detective or private investigator licensed under the professional investigator licensure act, 1965 PA 285, MCL 338.821 to 338.851, from performing the services of a private security guard or private security police except that a private

security guard or private security police may not perform the services of a private detective or private investigator without obtaining a private detective or private investigator license.

**History:** 1968, Act 330, Imd. Eff. July 12, 1968 ;-- Am. 1975, Act 190, Imd. Eff. Aug. 5, 1975 ;-- Am. 2000, Act 411, Eff. Mar. 28, 2001 ;-- Am. 2010, Act 68, Imd. Eff. May 13, 2010

### **338.1055 License; issuance; term; local license not required.**

#### **Sec. 5.**

The department, upon proper application and upon being satisfied that the applicant is qualified, shall issue the applicant a license to conduct business as an alarm system contractor or a private security guard or agency for a period of 2 years from date of issuance. Upon the issuance of a license to conduct business as an alarm system contractor or a private security guard or agency, the applicant shall not be required to obtain any other license from a municipality or political subdivision of this state.

**History:** 1968, Act 330, Imd. Eff. July 12, 1968 ;-- Am. 1975, Act 190, Imd. Eff. Aug. 5, 1975

### **338.1056 License; qualifications; compliance; "armed forces" defined.**

#### **Sec. 6.**

(1) The department shall issue a license to conduct business as a security alarm system contractor or a private security guard, private security police, or to a private security guard business, if it is satisfied that the applicant, if the applicant is an individual, or the individual who is the sole or principal license holder of the applicant if the applicant is not an individual, meets all of the following qualifications:

(a) Is not less than 21 years of age. However, this subdivision does not apply to an applicant described in subdivision (g)(v).

(b) Has a high school education or its equivalent.

(c) If the applicant's license is issued after March 28, 2001, has not been convicted of a felony.

(d) If the applicant's license was issued on or before March 28, 2001, was not convicted of a felony in the 5-year period preceding the date of application.

(e) Was not convicted of an offense listed in section 10(1)(c) in the 5-year period preceding the date of application.

(f) If he or she served in the armed forces, was separated from that service, and provides a form DD214, DD215, or any other form satisfactory to the department that demonstrates he or she was separated from that service, with an honorable character of service or under honorable conditions (general) character of service.

(g) If the applicant is applying for a private security guard or agency license, meets any of the following:

(i) Was engaged in the private security guard or agency business on his or her own account in another state for a period of at least 3 years.

(ii) Was engaged in the private security guard or agency business for a period of at least 4 years as an employee of the holder of a certificate of authority to conduct a private security guard or agency business and has experience reasonably equivalent to at least 4 years of full-time guard work in a supervisory capacity with rank above that of patrolman.

(iii) Was employed in law enforcement as a certified police officer on a full-time basis for at least 4 years for a city, county, or state government or for the United States government.

(iv) Was engaged in the private security guard or agency business as an employee or on his or her own account or as a security administrator in private business for at least 2 years on a full-time basis, and is a graduate with a baccalaureate degree or its equivalent in the field of police administration or industrial security from an accredited college or university.

(v) Served in the armed forces; while serving in the armed forces, acted as a military police officer or in an equivalent job classification for at least 2 years; was separated from that service, and provides a form DD214, DD215, or any other form satisfactory to the department that demonstrates he or she was separated from that service, with an honorable character of service or under honorable conditions (general) character of service; and

has, and provides with his or her application an affidavit signed by a commanding officer, supervisor, or military superior with direct knowledge of the applicant's service that he or she has, entry-level experience in or basic knowledge of each of the following:

- (A) Enforcing rules, regulations, and guidelines.
- (B) Providing security and physical protection.
- (C) Area and site security operations.
- (D) Overseeing prisoners and correctional facilities.
- (E) Reconnaissance and surveillance.

(h) If the applicant is applying for a security alarm system contractor license, has been lawfully engaged in either or both of the following:

(i) A security alarm system contractor business on his or her own account for a period of not less than 3 years.

(ii) A security alarm system contractor business for a period of not less than 4 years as an employee of the holder of a certificate of authority to conduct a security alarm system contractor business, and has experience reasonably equivalent to at least 4 years of full-time work in a supervisory capacity or passes a written exam administered by the department designed to measure his or her knowledge and training in security alarm systems.

(i) Provided the department the bond or surety required under section 9.

(j) Has not been adjudged insane, unless he or she has been adjudged restored to sanity by court order.

(k) Is not subject to any outstanding warrants for his or her arrest.

(2) If a person now doing or seeking to do business in this state is applying for a license under this section, the resident manager shall comply with the applicable qualifications of this section.

(3) As used in this section and section 9, "armed forces" means that term as defined in section 2 of the veteran right to employment services act, 1994 PA 39, MCL 35.1092.

**History:** 1968, Act 330, Imd. Eff. July 12, 1968 ;-- Am. 1969, Act 168, Imd. Eff. Aug. 5, 1969 ;-- Am. 1975, Act 190, Imd. Eff. Aug. 5, 1975 ;-- Am. 1994, Act 326, Eff. Mar. 30, 1995 ;-- Am. 2000, Act 411, Eff. Mar. 28, 2001 ;-- Am. 2002, Act 473, Eff. Oct. 1, 2002 ;-- Am. 2012, Act 419, Imd. Eff. Dec. 21, 2012 ;-- Am. 2014, Act 128, Eff. Aug. 20, 2014

### **338.1056a License to operate private college security force; issuance to private college or university.**

#### **Sec. 6a.**

The department may issue a license to operate a private college security force to a private college or university, but shall not issue that license until the private college or university has demonstrated compliance with the requirements of sections 37 to 42.

**History:** Add. 2010, Act 68, Imd. Eff. May 13, 2010

### **338.1057 License; application; references; investigation; approval; nonrenewable temporary license; fees; section inapplicable to private college security force.**

#### **Sec. 7.**

(1) The department shall prepare a uniform application for the particular license and shall require the person filing the application to obtain reference statements from at least 5 reputable citizens who have known the applicant for a period of at least 5 years, who can attest that the applicant is honest, of good character, and competent, and who are not related or connected to the applicant by blood or marriage.

(2) Upon receipt of the application and application fee, the department shall investigate the applicant's qualifications for licensure.

(3) Except for a private college security force, the application and investigation are not considered complete until the applicant has received the approval of the prosecuting attorney and the sheriff of the county in this state within which the principal office of the applicant is to be located. If the office is to be located in a city, township, or village, the approval of the chief of police may be obtained instead of the sheriff. Branch offices and branch managers shall be similarly approved.

(4) If a person has not previously been denied a license or has not had a previous license suspended or revoked,

the department may issue a nonrenewable temporary license to an applicant. If approved by the department, the temporary license is valid until 1 or more of the following occur but not to exceed 120 days:

- (a) The completion of the investigations and approvals required under subsections (1), (2), and (3).
- (b) The completion of the investigation of the subject matter addressed in section 6.
- (c) The completion of the investigation of any employees of the licensee as further described in section 17.
- (d) Confirmation of compliance with the bonding or insurance requirements imposed in section 9.
- (e) The applicant fails to meet 1 or more of the requirements for licensure imposed under this act.
- (5) The fees for a temporary license shall be the applicable fees as described in section 9.
- (6) This section does not apply to a private college security force.

**History:** 1968, Act 330, Imd. Eff. July 12, 1968 ;-- Am. 1975, Act 190, Imd. Eff. Aug. 5, 1975 ;-- Am. 2000, Act 411, Eff. Mar. 28, 2001 ;-- Am. 2002, Act 473, Eff. Oct. 1, 2002 ;-- Am. 2010, Act 68, Imd. Eff. May 13, 2010

### **338.1058 Application; signature and verification; contents; photographs; section inapplicable to private college security force.**

#### **Sec. 8.**

- (1) Each applicant shall sign and verify the application. Each application shall contain at least all of the following:
  - (a) The name and principal address where the individual or business entity is located in this state.
  - (b) The address and location of any branch office of the business.
  - (c) The certificate of incorporation of the business, if applicable.
- (2) Each applicant shall submit 2 passport quality photographs of the applicant with the application. If the applicant is a business entity, the resident manager of the business shall submit 2 passport quality photographs of himself or herself.
- (3) This section does not apply to a private college security force.

**History:** 1968, Act 330, Imd. Eff. July 12, 1968 ;-- Am. 2000, Act 411, Eff. Mar. 28, 2001 ;-- Am. 2010, Act 68, Imd. Eff. May 13, 2010

### **338.1059 License; issuance; term; revocation; form; fees; bond; additional license for branch office; refunds; receipt of completed application; issuance of license within certain time period; report; security business fund; service in armed forces; waiver of fee; "completed application" defined.**

#### **Sec. 9.**

- (1) The department shall issue a license to an applicant when the requirements of this act are met and the department is satisfied of the good character, competence, and integrity of the applicant, if the applicant is an individual, or if the applicant is an entity other than a private college or university, of its individual members or officers, or, if the applicant is a private college or university, of its governing board.
- (2) A license issued under this act is valid for 2 years, but the department may revoke a license at any time for good cause shown. The department shall prescribe the form of a license certificate.
- (3) The department shall not issue a license under this act unless the applicant pays the department a fee of \$500.00 if the applicant is a security alarm system contractor, or for any other applicant, 1 of the following fees, as appropriate:
  - (a) If the applicant is an individual or sole proprietorship, \$200.00.
  - (b) If the applicant is an entity, \$300.00.
- (4) The department shall not issue a license under this act unless the applicant provides the department a bond in the principal amount of \$25,000.00. The bond shall be conditioned on the faithful and honest conduct of the business by the applicant and approved by the department. In lieu of a bond, an applicant may furnish a policy of insurance issued by an insurer authorized to do business in this state that names the licensee and the state as coinsureds in the amount of \$25,000.00 for property damages, \$100,000.00 for injury to or death of 1 person, and \$200,000.00 for injuries to or deaths of more than 1 person arising out of the operation of the licensed activity. The bond shall be payable for the benefit of the people of the state and a person injured by the willful, malicious, and wrongful act of the licensee or any agents or employees of a licensee may bring an action on the bond or insurance



policy in his or her own name to recover damages suffered by reason of the wrongful act.

(5) If a licensee intends to open 1 or more branch offices, the licensees may receive a license for each branch if the branch license is approved under section 7 and the licensee pays the department an additional fee of \$50.00 for each private security guard branch office license and \$100.00 for each security alarm system contractor branch office license.

(6) A licensee shall post an additional license issued under subsection (5) in a conspicuous place in the branch office, and each additional license expires on the same date as the initial license.

(7) Subject to subsection (8), if a license is denied, revoked, or suspended for cause, the department shall not refund the license fees or any part of the license fees.

(8) Beginning July 23, 2004, the department shall issue or deny an application for an initial or renewal license within 180 days after the applicant files a completed application. An application is considered received on the date the application is received by any agency or department of this state. If an application is considered incomplete by the department, the department shall notify the applicant in writing, or make the information electronically available, within 30 days after the department receives the incomplete application, describing the deficiency and requesting the additional information. A 180-day period described in this subsection is tolled from the date the department notifies the applicant of a deficiency until the date the requested information is received by the department. The determination of the completeness of an application does not operate as an approval of the application for the license and does not confer eligibility of an applicant determined otherwise ineligible for issuance of a license.

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

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

(a) The number of initial and renewal applications the department received and completed within the 180-day time period described in subsection (8).

(b) The number of applications denied.

(c) The number of applicants not issued a license within the 180-day time period and the amount of money returned to licensees and registrants under subsection (8).

(11) The fees collected by the department under this section shall be deposited into the security business fund created in subsection (12).

(12) The security business fund is created in the state treasury. The department shall deposit all license fees collected under this act into the fund. The state treasurer may receive money or other assets from any source for deposit into the fund. The state treasurer shall direct the investment of the fund. The state treasurer shall credit to the fund interest and earnings from fund investments. Money in the fund at the close of the fiscal year shall remain in the fund and be available for appropriation and expenditure by the department in subsequent fiscal years. The money in the fund shall not lapse to the general fund. The department shall expend money from the fund, on appropriation, only for enforcement and administration of this act. The department is the administrator of the fund for auditing purposes.

(13) The department, or the department of state police if section 29 applies, shall waive an initial license fee required under this section, or any application processing fee charged by the department for an initial license, if the applicant is an individual who served in the armed forces and he or she provides to the department a form DD214, form DD215, or any other form that is satisfactory to the department that demonstrates he or she was separated from that service with an honorable character of service or under honorable conditions (general) character of service.

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

**History:** 1968, Act 330, Imd. Eff. July 12, 1968 ;-- Am. 1975, Act 190, Imd. Eff. Aug. 5, 1975 ;-- Am. 2000, Act 411, Eff. Mar. 28, 2001 ;-- Am. 2002, Act 473, Eff. Oct. 1, 2002 ;-- Am. 2004, Act 270, Imd. Eff. July 23, 2004 ;-- Am. 2010, Act 68, Imd. Eff. May 13, 2010 ;-- Am. 2014, Act 128, Eff. Aug. 20, 2014



**338.1060 License; revocation; grounds; failure to pay fines or fees; surrender of license; misdemeanor.**

Sec. 10.

(1) The department may revoke any license issued under this act if it determines, upon good cause shown, that the licensee or his or her manager, if the licensee is an individual, or if the licensee is not an individual, that any of its officers, directors, partners or its manager, has done any of the following:

(a) Made any false statements or given any false information in connection with an application for a license or a renewal or reinstatement of a license.

(b) Violated any provision of this act.

(c) Been, while licensed or employed by a licensee, convicted of a felony or a misdemeanor involving any of the following:

(i) Dishonesty or fraud.

(ii) Unauthorized divulging or selling of information or evidence.

(iii) Impersonation of a law enforcement officer or employee of the United States, this state, or a political subdivision of this state.

(iv) Illegally using, carrying, or possessing a dangerous weapon.

(v) Two or more alcohol related offenses.

(vi) Controlled substances under the public health code, 1978 PA 368, MCL 333.1101 to 333.25211.

(vii) An assault.

(d) Knowingly submitted any of the following:

(i) A name other than the true name of a prospective employee.

(ii) Fingerprints not belonging to the prospective employee.

(iii) False identifying information in connection with the application of a prospective employee.

(2) The department shall not renew a license of a licensee who owes any fine or fee to the department at the time for a renewal.

(3) Within 48 hours after notification from the department of the revocation of a license under this act, the licensee shall surrender the license and the identification card issued under section 14. A person who violates this subsection is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$500.00, or both.

**History:** 1968, Act 330, Imd. Eff. July 12, 1968 ;-- Am. 1994, Act 326, Eff. Mar. 30, 1995 ;-- Am. 2000, Act 411, Eff. Mar. 28, 2001 ;-- Am. 2002, Act 473, Eff. Oct. 1, 2002

**338.1061 Refund of application or license fee.**

Sec. 11.

The department shall not refund a license or application fee unless a showing is made of mistake, inadvertence, error in the collection of the fee, or noncompliance with the time periods described in section 9(5).

**History:** 1968, Act 330, Imd. Eff. July 12, 1968 ;-- Am. 2000, Act 411, Eff. Mar. 28, 2001 ;-- Am. 2004, Act 270, Imd. Eff. July 23, 2004

**338.1062 Posting certificate of license.**

Sec. 12.

Upon receipt of a certificate of license from the department the licensee shall post it in a conspicuous place in his office.

**History:** 1968, Act 330, Imd. Eff. July 12, 1968

### **338.1063 Change in name or location; report; failure to notify department.**

#### **Sec. 13.**

(1) Any change in the name or location of the agency or of a branch office or subagency shall be reported by the licensee to the department at least 10 days before the change becomes effective, upon receipt of which the department shall prepare and forward a certificate showing the change. The licensee shall return the old certificate within 3 business days after the change.

(2) Failure to notify the department of a change in name or location may result in license suspension.

**History:** 1968, Act 330, Imd. Eff. July 12, 1968 ;-- Am. 2002, Act 473, Eff. Oct. 1, 2002

### **338.1064 Identification card; issuance; form; contents; recall; custody; unauthorized use; suspension and reinstatement; duplicates.**

#### **Sec. 14.**

(1) Upon issuing a license, the department shall issue an identification card to the principal license holder, and if the licensee is a partner in a partnership to each partner, and if the license holder is a corporation to each resident officer or manager but only if requested by a resident officer or manager.

(2) The form and contents of the identification card shall be prescribed by the department, and the card shall be recalled by the department if the license is revoked.

(3) Only 1 identification card shall be issued for each person entitled to receive it. The licensee is responsible for the maintenance, custody, and control of the identification card and shall not let, loan, sell, or otherwise permit unauthorized persons or employees to use it. This section does not prevent an agency from issuing its own identification cards to its employees if they are approved as to form and content by the department. The individual card shall not bear the seal of the state, and the employee shall be designated as either security alarm system agent, private security police officer, private college security force officer, security guard, or security technician.

(4) The department may suspend a license issued under this act if the licensee fails to comply with any of the requirements of this act. Unless a license is required to be revoked for a violation of this act, the department shall reinstate a suspended license upon the licensee complying with this act and the licensee paying a \$100.00 reinstatement fee.

(5) Upon proper application and for sufficient reasons shown, the department may issue duplicates of the original certificate of license or identification card.

**History:** 1968, Act 330, Imd. Eff. July 12, 1968 ;-- Am. 1975, Act 190, Imd. Eff. Aug. 5, 1975 ;-- Am. 2000, Act 411, Eff. Mar. 28, 2001 ;-- Am. 2002, Act 473, Eff. Oct. 1, 2002 ;-- Am. 2010, Act 68, Imd. Eff. May 13, 2010

### **338.1065 Nonassignability of license.**

#### **Sec. 15.**

A license issued under the provisions of this act is not assignable, and is personal to such licensee.

**History:** 1968, Act 330, Imd. Eff. July 12, 1968

**338.1066 Unlawful manufacture of badge or shield; unlawful display of badge, shield, card, or license; distribution of card or license; buying or receiving spurious identification; violation; penalty; confiscation of card or license; separate offenses.**

Sec. 16.

A person shall not manufacture a badge or shield which purports to indicate that the holder is a licensed alarm system contractor, alarm system agent, private security guard or agency, or any of those persons as listed, in section 2. A person shall not display for sale a badge, shield, identification card, or certificate of license, by which the holder might mislead the public into thinking that the holder is a licensed alarm system contractor, alarm system agent, or private security guard, or agency. A person, firm, company, partnership, or corporation shall not distribute an identification card or certificate of license in this state except as provided by this act. A person shall not knowingly buy or receive from a source a form of spurious identification as an alarm system contractor, alarm system agent, or a private security guard or agency. A violation of this section is a misdemeanor, and an unauthorized identification card or certificate of license shall be confiscated by a law enforcement officer of the state. Each day the violation continues shall constitute a separate offense.

**History:** 1968, Act 330, Imd. Eff. July 12, 1968 ;-- Am. 1975, Act 190, Imd. Eff. Aug. 5, 1975

**338.1067 Employees of licensee; conduct and qualifications; personnel information; employee roster to be filed with department; false statements or representations; revocation of license; misdemeanor.**

Sec. 17.

(1) A licensee may employ as many persons as he or she considers necessary to assist him or her in his or her work of security alarm system contractor, private security police, private college security force, or private security guard and in the conduct of his or her business, and at all times during the employment is accountable for the good conduct in the business of each person so employed.

(2) Employees in the employ of a licensee after March 28, 2001 shall meet the qualifications outlined in section 6(1)(c), (e), (j), and (k), be at least 18 years of age, and have had at least an eighth grade education or its equivalent. An employee in the employ of a licensee on or before March 28, 2001 shall meet the qualifications outlined in section 6(1)(d), (e), (j), and (k), be at least 18 years of age, and have had at least an eighth grade education or its equivalent. Employees hired by a licensee after June 21, 2002 shall meet the qualifications outlined in section 6(1)(c), (e), (j), and (k), be at least 18 years of age, and have at least a high school diploma, a GED, or its equivalent.

(3) A licensee shall keep and maintain in this state adequate and complete personnel information on all persons employed by him or her. A complete employee roster in a manner described by the department shall be filed with the department by each licensee on a quarterly basis. The rosters must be filed with the department by April 15, July 15, October 15, and January 15 for the preceding quarter. Failure to submit accurate rosters is cause for suspension of the license. A renewal application shall not be processed if the quarterly roster has not been received for each quarter of the preceding 2-year license period.

(4) If a licensee falsely states or represents that a person is or has been in his or her employ, the false statement or representation is sufficient cause for the revocation of the license.

(5) A person shall not falsely state or represent that he or she is an agent of a licensed security alarm system contractor, private security police officer, private college security force officer, or private security guard. A person who violates this subsection is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$500.00, or both.

**History:** 1968, Act 330, Imd. Eff. July 12, 1968 ;-- Am. 1969, Act 168, Imd. Eff. Aug. 5, 1969 ;-- Am. 1972, Act 78, Imd. Eff. Mar. 9, 1972 ;-- Am. 1975, Act 190, Imd. Eff. Aug. 5, 1975 ;-- Am. 1994, Act 326, Eff. Mar. 30, 1995 ;-- Am. 2000, Act 411, Eff. Mar. 28, 2001 ;-- Am. 2002, Act 473, Eff. Oct. 1, 2002 ;-- Am. 2010, Act 68, Imd. Eff. May 13, 2010

**338.1067a Notifying law enforcement agency of suspected crime.**

Sec. 17a.

If a private security guard, private security police officer, or private college security force officer acting in the course of his or her employment reasonably suspects that any of the following crimes have occurred, he or she shall immediately notify a law enforcement agency of that suspected crime:

(a) An assaultive crime, as defined in section 9a of chapter X of the code of criminal procedure, 1927 PA 175, MCL 770.9a.

(b) A violation of section 145c or 539j of the Michigan penal code, 1931 PA 328, MCL 750.145c and 750.539j.

**History:** Add. 2012, Act 591, Eff. Mar. 28, 2013

**338.1068 Employment of unqualified employees; fingerprints; fee; background check of prospective employee; employment application; refusal to surrender identification.**

Sec. 18.

(1) A licensee shall not knowingly employ any person who fails to meet the requirements of section 17.

(2) The licensee shall cause fingerprints to be taken of all prospective employees who are direct providers of the security business, which fingerprints shall be submitted to the department of state police and the federal bureau of investigation for a state and national criminal history background check. The fingerprints shall be accompanied by a fingerprint processing fee in the amount prescribed by section 3 of 1935 PA 120, MCL 28.273, as well as any fees imposed by the federal bureau of investigation. The results of the national criminal history background check as returned by the federal bureau of investigation to the department of state police shall be used by the department to make a fitness determination. A licensee shall not employ a person who is a direct provider of the security business before submitting fingerprints to the department of state police.

(3) The fingerprints required to be taken under subsection (2) may be taken by a law enforcement agency or any other person determined by the department of state police to be qualified to take fingerprints. If a licensee takes the fingerprints, that licensee shall obtain training in taking fingerprints from the department of state police or a law enforcement agency or other person determined qualified by the department of state police.

(4) A licensee shall request the department of state police to conduct a background check of each prospective employee who is a direct provider of the security business based upon a name check. The licensee shall obtain a complete and signed employment application for all individuals for whom a name check is requested and conducted. The employment application shall be retained for at least 1 year from the date of its submission. The department of state police shall conduct the background check upon a written, electronic, or telephonic request of a licensee accompanied by a fee of \$15.00. The background check shall be conducted not later than 3 days after the date a written request is made and not later than 24 hours after a telephonic or electronic request is made. Provisional clearance based on the name check shall allow the employee to be employed as a security guard, for a period of time not to exceed 90 days, pending final clearance based upon a fingerprint check as provided for in subsection (2). If an approval is once denied, that individual may not again be employed as a direct provider of the security business by the submitting licensee except upon receipt of an approved fingerprint clearance. A licensee or employee of a licensee who uses a name check or results of a name check for purposes other than prospective employment is guilty of a misdemeanor punishable by imprisonment for not more than 93 days, a fine of not more than \$1,000.00, or both.

(5) The department of state police may enter into an agreement with a licensee for the payment of fees imposed pursuant to this act.

(6) Any employee who, upon demand, fails to surrender to the licensee his or her identification card and any other property issued to him or her for use in connection with his or her employer's business is guilty of a misdemeanor.

**History:** 1968, Act 330, Imd. Eff. July 12, 1968 ;-- Am. 1994, Act 326, Eff. Mar. 30, 1995 ;-- Am. 2000, Act 411, Eff. Mar. 28, 2001 ;-- Am. 2002, Act 473, Eff. Oct. 1, 2002

**338.1069 Uniform and insignia; shoulder identification patches or emblems; badge or shield; deadly weapons; tactical baton.**

Sec. 19.

(1) The particular type of uniform and insignia worn by a licensee or his or her employees must be approved by the department and shall not deceive or confuse the public or be identical with that of a law enforcement officer of the federal government, state, or a political subdivision of the state in the community of the license holder. Shoulder identification patches shall be worn on all uniform jackets, coats, and shirts and shall include the name of the licensee or agency. Shoulder identification patches or emblems shall not be less than 3 inches by 5 inches in size.

(2) A badge or shield shall not be worn or carried by a security alarm system agent, private security police officer, private college security force officer, or an employee or licensee of a security alarm system contractor, private security police organization, private college security force, or private security guard agency, unless approved by the director of the department.

(3) A person who is not employed as a security guard shall not display a badge or shield or wear a uniform of a security guard. A person who violates this subsection is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$500.00, or both.

(4) A person licensed as a security alarm system contractor, security alarm system agent, or a private security guard or agency is not authorized to carry a deadly weapon unless he or she is licensed to do so in accordance with the laws of this state.

(5) A licensee may authorize his or her employees to carry any commercially available tactical baton.

**History:** 1968, Act 330, Imd. Eff. July 12, 1968 ;-- Am. 1975, Act 190, Imd. Eff. Aug. 5, 1975 ;-- Am. 2000, Act 411, Eff. Mar. 28, 2001 ;-- Am. 2002, Act 473, Eff. Oct. 1, 2002 ;-- Am. 2010, Act 68, Imd. Eff. May 13, 2010

**338.1070 Confidentiality of information; false reports, penalty.**

Sec. 20.

(1) Any person who is or has been an employee of a licensee shall not divulge to anyone other than his employer or former employer, or as the employer shall direct, except as he may be required by law, any information acquired by him during his employment in respect to any of the work to which he shall have been assigned by the employer. Any employee violating the provisions of this section and any employee who wilfully makes a false report to his employer in respect to any work is guilty of a misdemeanor.

(2) Any manager, executive or employee of a licensee who wilfully sells, divulges or otherwise discloses information to other than clients, except as he may be required by law, any information acquired by him or them during employment by the client is guilty of a misdemeanor, and shall be subjected to immediate suspension of license by the department and revocation of license upon satisfactory proof of the offense to the department.

**History:** 1968, Act 330, Imd. Eff. July 12, 1968

**338.1071 Violations of act; report of convictions.**

Sec. 21.

The prosecuting attorney of the county in which any conviction for a violation of any provision of this act shall, within 10 days thereafter, make and file with the department a report showing the date of such conviction, the name of the person convicted and the nature of the charge.

**History:** 1968, Act 330, Imd. Eff. July 12, 1968

**338.1072 Advertising.**

Sec. 22.

(1) Every advertisement by a licensee soliciting or advertising for business shall contain his or her business name and address as they appear in the records of the department.

(2) A licensee shall, upon notice from and order of the department, discontinue any advertising or the use of any advertisement, seal, or card that, in the opinion of the department, may tend to mislead the public. Failure to comply with any such order of the department is cause for revocation or suspension of the license.

(3) A person not licensed under this act who advertises his or her business to be that of a private security guard or security alarm agency, irrespective of the name or title actually used, is guilty of a misdemeanor punishable by imprisonment for not more than 93 days, a fine of not more than \$1,000.00, or both.

**History:** 1968, Act 330, Imd. Eff. July 12, 1968 ;-- Am. 2000, Act 411, Eff. Mar. 28, 2001

### **338.1073 Trade names; approval.**

Sec. 23.

No licensee shall use any designation or trade name which has not been first approved by the department, nor shall any licensee use any designation or trade name which implies any association with any municipal, county or state government or the federal government, or agency thereof.

**History:** 1968, Act 330, Imd. Eff. July 12, 1968

### **338.1074 Compliance with labor laws.**

Sec. 24.

Each sole proprietorship, partnership, firm, limited liability company, or corporation licensed and operating under the provisions of this act where there is an employer-employee relationship must comply with the state and federal laws applicable and must make written records and reports in accordance with the applicable state and federal laws.

**History:** 1968, Act 330, Imd. Eff. July 12, 1968 ;-- Am. 2002, Act 473, Eff. Oct. 1, 2002

### **338.1075 Renewal license; application; bond; fee; date; form; approval; effect of failure to renew; deposit of fees into security business fund.**

Sec. 25.

(1) Subject to section 9(5), a license granted under this act may be renewed by the department upon application by the licensee, filing a renewal surety bond in the amount specified in section 9, and the payment of a renewal fee of \$100.00 if a sole proprietorship, \$150.00 if a private security police organization, a private college police force, or a private security guard firm, company, partnership, limited liability company, or corporation, or \$250.00 if a security alarm system contractor.

(2) A renewal license shall be dated as of the expiration date of the previously existing license. For the renewal of a license, the licensee shall submit an application in a form provided by the department. The department may defer the renewal of license if there is an uninvestigated outstanding criminal complaint pending against the licensee or a criminal case pending in any court against the licensee.

(3) A person who fails to renew a license on or before the expiration date shall not engage in activities regulated by this act. A person who fails to renew a license on or before the expiration date may, within 30 days after the

expiration date, renew the license by payment of the required license fee and a late renewal fee of \$25.00. An applicant who fails to renew within the 30-day period must reapply for a license under section 7.

(4) The fees collected by the department under this section shall be deposited into the security business fund created in section 9(9).

**History:** 1968, Act 330, Imd. Eff. July 12, 1968 ;-- Am. 1975, Act 190, Imd. Eff. Aug. 5, 1975 ;-- Am. 2000, Act 411, Eff. Mar. 28, 2001 ;-- Am. 2002, Act 473, Eff. Oct. 1, 2002 ;-- Am. 2004, Act 270, Imd. Eff. July 23, 2004 ;-- Am. 2010, Act 68, Imd. Eff. May 13, 2010

### **338.1076 Continuation of business upon death of licensee; notice; sale of business.**

Sec. 26.

Upon the death of an individual licensed under this act, the business with which the decedent was connected may be carried on for a period of 90 days by the following: (a) In the case of an individual licensee, the surviving spouse, or if there be none, the executor or administrator of the estate of the decedent; (b) In the case of a partner, the surviving partners; (c) In the case of an officer of a firm, company, association, organization, or corporation, the officers thereof. Within 10 days following the death of a licensee, the department shall be notified in writing. The notification shall state the name of the person legally authorized to carry on the business of the deceased.

Upon the authorization of the department, the business may be carried on for a further period of time when necessary to complete any business commitments pending at the death of the decedent.

Nothing in this section shall be construed to restrict the sale of an alarm system business or a private security guard agency, if the vendee qualifies for a license under the provisions of this act.

**History:** 1968, Act 330, Imd. Eff. July 12, 1968 ;-- Am. 1975, Act 190, Imd. Eff. Aug. 5, 1975

### **338.1077 Departmental agents; employment, powers, rules and regulations.**

Sec. 27.

The department may employ such agents as are necessary to carry out the provisions of this act and to enforce compliance therewith. The department and each agent employed by him, in respect to violations of any of the provisions of this act, has all the powers of a peace officer. All rules and regulations of the department shall be made in accordance with the provisions of Act No. 88 of the Public Acts of 1943, as amended, being sections 24.71 to 24.80 of the Compiled Laws of 1948, and subject to Act No. 197 of the Public Acts of 1952, as amended, being sections 24.101 to 24.110 of the Compiled Laws of 1948.

**History:** 1968, Act 330, Imd. Eff. July 12, 1968

**Admin Rule:** R 28.4001 et seq. of the Michigan Administrative Code.

### **338.1078 Repealed. 2000, Act 411, Eff. Mar. 28, 2001.**

**Compiler's Notes:** The repealed section pertained to licensing of existing businesses.

### **338.1079 Licensure of private security police; rules; applicability of act to private security guards and police; use of pistols.**



Sec. 29.

(1) The licensure of private security police and private college security forces shall be administered by the department of state police. The application, qualification, and enforcement provisions under this act apply to private security police and private college security forces except that the administration of those provisions shall be performed by, and the payment of the appropriate fees shall be paid to, the department of state police. The director of the department may jointly promulgate rules with the department of state police under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, to facilitate the bifurcation of authority described in this subsection.

(2) This act does not require licensing of any private security guards employed for the purpose of protecting the property and employees of their employer and generally maintaining security for their employer. However, any person, firm, limited liability company, business organization, educational institution, or corporation maintaining a private security police organization or a private college security force may voluntarily apply for licensure under this act. When a private security police employer or private college security force employer as described in this section provides the employee with a pistol for the purpose of protecting the property of the employer, the pistol shall be considered the property of the employer and the employer shall retain custody of the pistol, except during the actual working hours of the employee. All such private security people shall be subject to the provisions of sections 17(1) and 19(1).

**History:** 1968, Act 330, Imd. Eff. July 12, 1968 ;-- Am. 1969, Act 168, Imd. Eff. Aug. 5, 1969 ;-- Am. 2000, Act 411, Eff. Mar. 28, 2001 ;-- Am. 2002, Act 473, Eff. Oct. 1, 2002 ;-- Am. 2010, Act 68, Imd. Eff. May 13, 2010

**Constitutionality:** This act, which requires the licensing of guards, does not demonstrate the requisite degree of state action to bring the activities of guards under color of state law so as to subject their activities to constitutional restraint and to require guards to give suspects warnings of their constitutional rights before eliciting inculpatory statements, and especially does not subject the activities of private police who are employed to protect the property and employees of their employer to constitutional restraint because such guards need not be licensed under the act. *Grand Rapids v Impens*, 414 Mich 667; 327 NW2d 278 (1982). Participation by an off-duty deputy sheriff from another county, employed as a private guard, with other guards in the apprehension and detention of a shoplifting suspect did not provide a sufficient relationship so as to bring the activities of the guards under color of state law and require warnings of the suspect's constitutional rights before eliciting inculpatory statements by the suspect where the deputy did not obtain the statements and identified himself to the suspect only as a store employee. *Grand Rapids v Impens*, 414 Mich 667; 327 NW2d 278 (1982).

### **338.1080 Private security police officers; arrest powers; limitations.**

Sec. 30.

A private security police officer, as described in section 29, who is properly licensed under this act has the authority to arrest a person without a warrant as set forth for public peace officers in section 15 of chapter IV of the code of criminal procedure, 1927 PA 175, MCL 764.15, when that private security police officer is on the employer's premises. Such authority is limited to his or her hours of employment as a private security police officer and does not extend beyond the boundaries of the property of the employer and while the private security police officer is in the full uniform of the employer.

**History:** Add. 1969, Act 168, Imd. Eff. Aug. 5, 1969 ;-- Am. 2000, Act 411, Eff. Mar. 28, 2001

### **338.1081 Training requirements.**

Sec. 31.

An applicant for licensure as private security police under this act under section 29, or the employee of the applicant, shall comply with training requirements as prescribed by the department under this act.

**History:** Add. 1969, Act 168, Imd. Eff. Aug. 5, 1969 ;-- Am. 2000, Act 411, Eff. Mar. 28, 2001 ;-- Am. 2002, Act 473, Eff. Oct. 1, 2002



### **338.1082 Violation of act; penalty.**

Sec. 32.

Except as otherwise provided in this act, a licensee, manager, or employee of a licensee who violates this act is guilty of a misdemeanor, punishable by imprisonment for not more than 90 days or by a fine of not more than \$1,000.00, or both.

**History:** Add. 1974, Act 113, Eff. July 1, 1974 ;-- Am. 2000, Act 411, Eff. Mar. 28, 2001

### **338.1083 Installation or operation of security alarm systems; requirements.**

Sec. 33.

A security alarm system may not be installed or operated in this state unless the security alarm system is either installed by a security alarm system contractor licensed under this act or is installed by the owner or occupant of a residence in his or her residence.

**History:** Add. 1975, Act 190, Imd. Eff. Aug. 5, 1975 ;-- Am. 2000, Act 411, Eff. Mar. 28, 2001

### **338.1085 Repealed. 2000, Act 411, Eff. Mar. 28, 2001.**

**Compiler's Notes:** The repealed section pertained to false alarms.

### **338.1087 Applicability of section to private college security forces; authorization; action by governing board; designation of private college security officer; qualifications; rules; fee; employment as certified or licensed law enforcement officers.**

Sec. 37.

(1) This section and sections 38 to 42 apply only to private college security forces.

(2) Subject to subsection (10) and consistent with this act, a private college or university in this state that has students residing in college or university housing may, through action of its governing board, authorize a private college security force. The action of the governing board shall do all of the following:

(a) Authorize a private college security force.

(b) Authorize appointment of persons to be members of that private college security force.

(c) Authorize the assignment of duties, including the enforcement of college or university regulations, and state and local law under section 37a.

(d) Prescribe the oath of office.

(e) Limit employment to those individuals who meet the requirements of subsections (4), (5), (6), and (7).

(3) A person appointed under subsection (2) shall be known and designated as a private college security officer and may act as a private college security officer upon being appointed by a private college or university licensed under this act.

(4) Except as provided in subsection (7), private college security officers must meet the selection qualifications prescribed in R 28.14203, R 28.14204, and R 28.14209 of the Michigan administrative code, and must meet the standards and requirements applicable to at least 1 category of recruits as set forth in R 28.14313 (military preservice recruits), R 28.14314 (basic recruits), R 28.14315 (preservice recruits and preservice college recruits), R 28.14316 (preservice college recruits), and R 28.14317 (agency basic recruits) of the Michigan administrative code,

as promulgated by the commission.

(5) Private college security forces are subject to the provisions of R 28.14318, R 28.14319, and R 28.14320 of the Michigan administrative code, as promulgated by the commission.

(6) Except as provided in subsection (7), private college security officers may participate in the recognition of prior basic law enforcement training and experience program as prescribed in R 28.14401, R 28.14402, R 28.14403, R 28.14404, R 28.14405, R 28.14406, R 28.14407, R 28.14408, R 28.14409, R 28.14410, R 28.14413, and R 28.14414 of the Michigan administrative code, as promulgated by the commission.

(7) Subsections (4), (5), and (6) do not apply to an individual who meets all of the following requirements:

(a) He or she is employed as a security officer by a private college or university on July 12, 1968.

(b) He or she is certified as a law enforcement officer by the commission on July 12, 1968 or was previously certified as a law enforcement officer by the commission while employed by the private college or university as a law enforcement officer but that certification became void during that period of employment.

(c) The private college or university authorizes the creation of a private college security force under this act.

(8) Investigations conducted to determine if a candidate for appointment as a private college security officer meets the selection qualifications, standards, and requirements in subsection (4) are governed by R 28.14601, R 28.14602, R 28.14603, R 28.14604, R 28.14606, R 28.14608, and R 28.14609 of the Michigan administrative code, as promulgated by the commission. This section does not require the commission to conduct the investigation or review of an applicant for employment as a private college security officer.

(9) The governing board of a private college or university that creates a private college security force under this section may be subject to a fee payable to the commission under section 11 of the commission on law enforcement standards act, 1965 PA 203, MCL 28.610.

(10) The governing board of a private college or university that creates a private college security force under this section and that intends to appoint private college security officers who are sworn and fully empowered to exercise the authority and power of a peace officer under section 37a shall ensure that not less than 50% of those private college security officers have been employed as certified or licensed law enforcement officers under the Michigan commission on law enforcement standards act, 1965 PA 203, MCL 28.601 to 28.615, for not less than 5 years.

**History:** Add. 2010, Act 68, Imd. Eff. May 13, 2010 ;-- Am. 2016, Act 324, Imd. Eff. Nov. 22, 2016

### **338.1087a Authority and power as peace officer.**

Sec. 37a.

(1) A private college security officer appointed under section 37 may be sworn and fully empowered by the chief of police of a village, city, or township law enforcement agency, or deputized by a sheriff as a deputy sheriff, excluding deputation as a special deputy, as provided in section 9d of the commission on law enforcement standards act, 1965 PA 203, MCL 28.609d.

(2) A private college security officer sworn and fully empowered as provided in this section may exercise the authority and power of a peace officer as prescribed in an oath of office administered by a chief of police of a village, city, or township law enforcement agency, or county sheriff, as provided in section 9d of the commission on law enforcement standards act, 1965 PA 203, MCL 28.609d.

**History:** Add. 2016, Act 324, Imd. Eff. Nov. 22, 2016

### **338.1088 Creation of private college security force; approval of county prosecuting attorney, sheriff, and city police chief.**

Sec. 38.

The governing board of a private college or university shall not create a private college security force under section 37 unless, before that security force is created, the governing board obtains the approval of the prosecuting attorney and the sheriff of each county within which the private college or university owns, maintains, or controls property. If the property of the private college or university is located entirely within 1 city, the governing board

also shall obtain the approval of the chief of police of that city. If the property of the private college or university is not located entirely within 1 city, the governing board also shall obtain the approval of the chief of police of each city within which the private college or university owns, maintains, or controls property. Before granting approval, the prosecuting attorney, the sheriff, and the chief of police, as required, shall make a determination that the proposed private college security force is needed to assure adequate public safety on the property of the private college or university. Any of the persons whose approval is required under this section may rescind that approval at any time after his or her approval was granted, in which case the private college security force is no longer authorized and shall cease to operate.

**History:** Add. 2010, Act 68, Imd. Eff. May 13, 2010

### **338.1089 Power to make arrests; limitation.**

Sec. 39.

(1) Unless sworn and fully empowered as provided in section 37a, upon being appointed under section 37 by a private college or university licensed under this act, private college security officers have the power to make arrests as provided in section 30.

(2) Unless sworn and fully empowered as provided in section 37a, upon being appointed under section 37 by a private college or university licensed under this act, private college security officers may exercise the powers conferred in this act only on property owned or leased by the private college or university, wherever situated.

(3) Unless sworn and fully empowered as provided in section 37a, private college security officers are not law enforcement officers as defined in the commission on law enforcement standards act, 1965 PA 203, MCL 28.601 to 28.616.

**History:** Add. 2010, Act 68, Imd. Eff. May 13, 2010 ;-- Am. 2016, Act 324, Imd. Eff. Nov. 22, 2016

### **338.1090 Private college security force oversight committee.**

Sec. 40.

The governing board of a private college or university shall not grant powers and authority to the private college security officers of the private college or university unless, before those powers and authority are granted, the governing board establishes a private college security force oversight committee. The committee shall be composed of the sheriff and the prosecuting attorney of the county in which the private college or university is located, the chief of police if the private college or university is located in a municipality that has a police force, and 6 individuals appointed by the administration of the private college or university. The committee shall receive and address grievances by persons against the private college security officers or the private college security force of the private college or university. The committee may recommend to the governing board that disciplinary measures be taken by the private college or university against a private college security officer who is found responsible for misconduct in office.

**History:** Add. 2010, Act 68, Imd. Eff. May 13, 2010

### **338.1091 Participation in state, county, or municipal retirement system prohibited; uniforms, vehicles, and badges distinct from local law enforcement agency.**

Sec. 41.

Members of the private college security force at a private college or university are not eligible to participate in any state, county, or municipal retirement system and shall not be reimbursed for training with state funds. The uniforms, vehicles, and badges of private college security officers shall be distinctive from those of the local law enforcement agency where the private college or university is located.

**History:** Add. 2010, Act 68, Imd. Eff. May 13, 2010

### **338.1092 Liability insurance.**

Sec. 42.

The governing board of a private college or university that creates a private college security force shall provide liability insurance coverage for each member of the private college security force without cost to the member, which will insure the member against any liability arising out of or in the course of the member's employment for not less than \$250,000.00 of coverage, unless that indemnification is provided by a program of self-insurance.

**History:** Add. 2010, Act 68, Imd. Eff. May 13, 2010

## **PHARMACY**

### **Act 151 of 1962**

338.1101-338.1131 Repealed. 1978, Act 11, Imd. Eff. Feb. 8, 1978;â€”1978, Act 368, Eff. Sept. 30, 1978.

## **NURSING PRACTICE ACT OF 1967**

### **Act 149 of 1967**

338.1151-338.1175 Repealed. 1978, Act 368, Eff. Sept. 30, 1978.

## **NURSING HOME ADMINISTRATORS**

### **Act 166 of 1969**

338.1181-338.1192 Repealed. 1975, Act 186, Imd. Eff. Aug. 2, 1975;â€”1980, Act 299, Imd. Eff. Oct. 21, 1980.

## **LANDSCAPE ARCHITECT ACT**

### **Act 126 of 1963**

338.1201-338.1219 Repealed. 1980, Act 299, Imd. Eff. Oct. 21, 1980.

**SANITARIAN'S REGISTRATION ACT**

**Act 147 of 1963**

338.1301-338.1315 Repealed. 1978, Act 368, Eff. Sept. 30, 1978.

**PROFESSIONAL COMMUNITY PLANNERS ACT**

**Act 218 of 1966**

338.1351-338.1366 Repealed. 1980, Act 299, Imd. Eff. Oct. 21, 1980.

**HOROLOGIST'S CERTIFICATION ACT**

**Act 201 of 1965**

338.1401-338.1414 Repealed. 1980, Act 299, Imd. Eff. Oct. 21, 1980.

**HEARING AID DEALERS AND SALESMEN**

**Act 265 of 1966**

338.1451-338.1466 Repealed. 1980, Act 299, Imd. Eff. Oct. 21, 1980.

**RESIDENTIAL BUILDERS, CONTRACTORS, AND SALESMEN**

**Act 383 of 1965**

338.1501-338.1519 Repealed. 1980, Act 299, Imd. Eff. Oct. 21, 1980.

**BARBER LICENSING AND REGULATION ACT OF 1968**

**Act 355 of 1968**

338.1601-338.1665 Repealed. 1973, Act 113, Imd. Eff. Aug. 19, 1973; 1980, Act 299, Imd. Eff. Oct. 21, 1980.

## FORENSIC POLYGRAPH EXAMINERS ACT

### Act 295 of 1972

AN ACT to license and regulate persons who purport to be able to detect deception, verify truthfulness, or provide a diagnostic opinion of either through the use of any device or instrumentation as lie detectors, forensic polygraphs, deceptographs, emotional stress meters or similar or related devices and instruments; to create a state board of forensic polygraph examiners with licensing and regulatory powers over all such persons and instruments; to provide for administrative proceedings and court review; to establish minimum standards and requirements for all such instrumentation or devices and to prohibit the use of instruments or devices which do not meet minimum standards and requirements; and to provide for injunctions and penalties.

**History:** 1972, Act 295, Eff. Mar. 30, 1973

**Compiler's Notes:** For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws.

*The People of the State of Michigan enact:*

#### 338.1701 Short title.

##### Sec. 1.

This act shall be known and may be cited as the "forensic polygraph examiners act".

**History:** 1972, Act 295, Eff. Mar. 30, 1973

**Compiler's Notes:** For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws. For abolishment of the state board of forensic polygraph examiners and transfer of its powers and duties to the department of labor and economic growth, see E.R.O. No. 2007-18, compiled at MCL 445.2024.

#### 338.1702 Persons not exempted from act.

##### Sec. 2.

A person who purports to be able to detect deception, or verify truthfulness through instrumentation, or who purports to offer or have available such services, shall not be held exempt from the provisions of this act because of the terminology which he may use to refer to himself, to his instrumentation or to his services.

**History:** 1972, Act 295, Eff. Mar. 30, 1973

**Compiler's Notes:** For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws. For abolishment of the state board of forensic polygraph examiners and transfer of its powers and duties to the department of labor and economic growth, see E.R.O. No. 2007-18, compiled at MCL 445.2024.

#### 338.1703 Definitions.

##### Sec. 3.

As used in this act:

- (a) "Person" means any natural person, firm, association, partnership, or corporation.
- (b) "Examiner" means any person, other than an intern, who does any of the following:

(i) Purports to detect deception, verify truthfulness, or provide a diagnostic opinion of these matters through instrumentation or the use of a mechanical device.

(ii) Represents that he or she can or does offer the service of detecting deception, verifying truthfulness, or providing a diagnostic opinion of these matters through instrumentation or the use of a mechanical device.

(iii) Uses instrumentation or a mechanical device to measure or record an individual's bodily responses or psychophysiological activities to enable or assist the detection of deception, the verification of truthfulness, or the reporting of a diagnostic opinion regarding these matters.

(c) "Intern" means a person who is actively engaged in an approved training program pursuant to becoming an examiner.

(d) "Examinee" means an individual who is being examined, tested, or questioned by an examiner or intern for the purpose of detecting deception or verifying truthfulness.

(e) "Board" means the state board of forensic polygraph examiners.

(f) "Public examiner" means an examiner who performs or purports to perform the service of detecting deception or verifying truthfulness exclusively in his or her official capacity as a salaried employee of some agency, county, city, or township of this state.

(g) "Private examiner" means an examiner who performs or purports to perform the service of detecting deception or verifying truthfulness in any instance or under any circumstance other than as a public examiner.

(h) "Employer" means a person who employs 1 or more persons or who accepts applications for employment of persons; or an agent of an employer.

**History:** 1972, Act 295, Eff. Mar. 30, 1973 ;— Am. 1982, Act 46, Eff. Mar. 30, 1983

**Compiler's Notes:** For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws. For abolishment of the state board of forensic polygraph examiners and transfer of its powers and duties to the department of labor and economic growth, see E.R.O. No. 2007-18, compiled at MCL 445.2024.

### **338.1704 Minimum standards for instruments or devices.**

#### **Sec. 4.**

A person shall not use, or attempt to use any instrument or device for the purpose of detecting deception, verifying truthfulness or assisting in the reporting of a diagnostic opinion as to either of these unless such instrument or device, as minimum standards, shall be capable of recording visually, permanently and simultaneously indications of a person's cardiovascular pattern and changes therein, and a person's respiratory pattern and changes therein. Indications of other psychophysiological changes or bodily responses in addition may also be recorded. The operation, use or attempted use of any instrument or device for the purposes described which does not meet these minimum requirements shall be subject to penalties and may be enjoined as provided in this act.

**History:** 1972, Act 295, Eff. Mar. 30, 1973

**Compiler's Notes:** For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws. For abolishment of the state board of forensic polygraph examiners and transfer of its powers and duties to the department of labor and economic growth, see E.R.O. No. 2007-18, compiled at MCL 445.2024.

### **338.1705 State board of forensic polygraph examiners; creation; appointment, terms, and qualifications of members; vacancy.**

#### **Sec. 5.**

(1) The state board of forensic polygraph examiners is created within the department of state police and shall consist of 5 members appointed by the governor with the advice and consent of the senate for terms of 4 years, except the terms of office for members of the initial board shall be 2 for 2 years and 3 for 4 years. Any vacancy in an unexpired term shall be filled by appointment of the governor with the advice and consent of the senate for the unexpired term.

(2) The members of the board shall be qualified as follows:

(a) At least 2 members of the board shall be public examiners employed by separate and distinct governmental law enforcement agencies who are at the time of appointment licensed or in the case of the initial board, who fulfill the requirements for examiner licenses under the provisions of this act. Each of these 2 members shall have at least 5 consecutive years of law enforcement experience and at least 2 consecutive years of experience administering polygraph examinations prior to their appointment.

(b) At least 2 members of the board shall be private examiners employed by separate and distinct persons or firms who are at the time of appointment licensed or in the case of the initial board, who fulfill the requirements for examiner licenses under the provisions of this act. Each of these 2 members shall have at least 5 consecutive years of experience administering polygraph examinations prior to their appointment.

(c) At least 1 member shall be a person who shall represent the public at large.

(d) Each member of the board shall be a citizen of the United States, a resident of the state for at least 2 years prior to appointment and at the time of initial appointment shall fulfill the age and educational requirements then in effect for examiner licensing under this act.

**History:** 1972, Act 295, Eff. Mar. 30, 1973

**Compiler's Notes:** For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws. For abolishment of the state board of forensic polygraph examiners and transfer of its powers and duties to the department of labor and economic growth, see E.R.O. No. 2007-18, compiled at MCL 445.2024.

### **338.1706 State board of forensic polygraph examiners; election of officers; conducting business at public meeting; notice of meeting; additional meetings; examinations for examiner's licenses; quorum; majority vote required; expenses; annual report; availability of report and other writings to public.**

#### **Sec. 6.**

(1) The board shall meet not more than 30 days after it is constituted and elect from its members a chairperson, vice-chairperson and from its members, or otherwise, a secretary. The business which the board may perform shall be conducted at a public meeting of the board held in compliance with Act No. 267 of the Public Acts of 1976, being sections 15.261 to 15.275 of the Michigan Compiled Laws. Public notice of the time, date, and place of the meeting shall be given in the manner required by Act No. 267 of the Public Acts of 1976.

(2) Additional meetings of the board shall be held at times and places as the board determines. The board shall specify dates spaced at no more than 6-month intervals on which examinations for examiner's licenses will be held. A majority of the members of the board constitutes a quorum, and the vote of a majority of the board members is sufficient for passage of any business or proposal which comes before the board. Members of the board shall be reimbursed for actual and necessary travel and other expenses incurred in performing official duties.

(3) The board shall make an annual report of its activities to the governor beginning with the fiscal year ending June 30, 1973. The report and other writings prepared, owned, used, in the possession of, or retained by the board in performance of an official function shall be made available to the public in compliance with Act No. 442 of the Public Acts of 1976, being sections 15.231 to 15.246 of the Michigan Compiled Laws.

**History:** 1972, Act 295, Eff. Mar. 30, 1973 ;-- Am. 1977, Act 206, Imd. Eff. Nov. 17, 1977

**Compiler's Notes:** For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws. For abolishment of the state board of forensic polygraph examiners and transfer of its powers and duties to the department of labor and economic growth, see E.R.O. No. 2007-18, compiled at MCL 445.2024.

### **338.1707 Rules; filing of applications; collection and disposition of fees; order as prima facie proof; appropriation of funds.**

#### **Sec. 7.**

(1) The department shall promulgate rules consistent with the provisions of this act for the dissemination, retention and destruction of polygraph results to protect the general public for the administration and enforcement of this act pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. An



application for an examination, license, renewal or other provisions under this act shall comply with the requirements of the department and board and shall be accompanied by the license fee, which is not returnable except by a showing of mistake, inadvertence, error in the collection of the fee, or pursuant to section 15(3).

(2) An order or a certified copy, over the board seal and purporting to be signed by the board members or board chair shall be prima facie proof of the following:

- (a) That the signatures are the genuine signatures of the board members or the board chair.
- (b) That the board members or the chair are duly appointed and qualified.
- (c) That the board and its members are fully qualified to act.

(3) All fees collected under this act shall be deposited to the credit of the general fund of the state. Funds necessary for the enforcement and administration of this act shall be appropriated by the legislature within the budget of the department of labor and economic growth.

**History:** 1972, Act 295, Eff. Mar. 30, 1973 ;-- Am. 2004, Act 276, Imd. Eff. July 23, 2004

**Compiler's Notes:** For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws. For abolishment of the state board of forensic polygraph examiners and transfer of its powers and duties to the department of labor and economic growth, see E.R.O. No. 2007-18, compiled at MCL 445.2024.

**Admin Rule:** R 338.9001 et seq. of the Michigan Administrative Code.

### **338.1708 Activities requiring license.**

#### **Sec. 8.**

A person, including city, county or state employees, shall not use or attempt to use any instrumentation or mechanical device for the purpose of detecting deception, verifying truthfulness or reporting a diagnostic opinion regarding either of these; purport to detect deception or verify truthfulness through instrumentation or mechanical devices; advertise or represent that he can or does offer the service of detecting deception, verifying truthfulness or reporting a diagnostic opinion regarding an individual's deception or truthfulness through instrumentation or mechanical devices; attempt to hold himself out as a polygraph examiner or refer to himself by any terminology which would indicate or convey the impression that he can or does purport to detect deception or verify truthfulness through instrumentation; or use any of the technical descriptive terminology peculiar to, or interchangeable with, the administration of polygraph examinations, the interpretation thereof or the detection of deception and the verification of truthfulness resulting therefrom without first securing a license as provided in this act.

**History:** 1972, Act 295, Eff. Mar. 30, 1973

**Compiler's Notes:** For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws. For abolishment of the state board of forensic polygraph examiners and transfer of its powers and duties to the department of labor and economic growth, see E.R.O. No. 2007-18, compiled at MCL 445.2024.

### **338.1709 Examiner's license; issuance without examination; conditions and qualifications.**

#### **Sec. 9.**

A person upon application to the board dated within 1 year after the effective date of this act, and upon payment of the required license fee, shall be issued an examiner's license hereunder, without examination, if he satisfies the registration requirements established by the board and satisfies the board by affidavit or otherwise that he is qualified as follows:

- (a) He has either 1 of the following:
  - (i) He has actually engaged in the occupation, profession or practice as an examiner prior to January 1, 1969, and continuously since that time, utilizing exclusively during that period instrumentation which satisfies the requirements of section 4.
  - (ii) He has actually engaged in an internship training program, or similar arrangement on a full-time basis prior to the effective date of this act or has satisfactorily completed such internship training program or similar arrangement

and has engaged in the occupation, profession or practice as an examiner or intern prior to the effective date of this act, utilizing exclusively during that period instrumentation which satisfies the requirements of section 4.

(b) He substantially fulfills the requirements for licensing as set forth in section 10. The board may issue temporary examiner's licenses to an applicant who otherwise qualifies under section 10 except for the time and experience factors set forth in section 10 to enable the fulfillment of these requirements by the applicant.

**History:** 1972, Act 295, Eff. Mar. 30, 1973

**Compiler's Notes:** For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws. For abolishment of the state board of forensic polygraph examiners and transfer of its powers and duties to the department of labor and economic growth, see E.R.O. No. 2007-18, compiled at MCL 445.2024.

### **338.1710 Examiner's license; qualifications.**

#### **Sec. 10.**

(1) Upon application and payment of the required fee, a person fulfilling the following is qualified to receive a license as an examiner:

- (a) Is at least 18 years of age.
- (b) Is a citizen of the United States.
- (c) Has not been under sentence for the commission of a felony within 5 years prior to his or her application, including parole, probation, or actual incarceration.
- (d) Has either 1 of the following, subject to subsection (2):
  - (i) An academic degree, at least at the baccalaureate level, from an accredited college or university, with an academic degree to include specialized study in 1 academic major, or 2 academic minor areas that the department determines to be suitable for and related to specialization as an examiner.
  - (ii) A high school diploma or its equivalent from an accredited high school and at least 5 years of continuous investigative experience with a recognized governmental law enforcement or governmental investigative agency.
- (e) Has either 1 of the following:
  - (i) Has satisfactorily completed an internship training program approved by the department.
  - (ii) Satisfies the department that he or she has training or experience equivalent to an internship training program described in subparagraph (i).
- (f) Furnishes the department with satisfactory proof that he or she has suitable experience in the personal administration of polygraph examinations during an internship, or its equivalent.
- (g) Furnishes the department with a completed fingerprint card, bearing the applicant's fingerprints and such other identifying information or certification as to their authenticity as the department may reasonably require and arranges for the conduct of a criminal history check that fails to demonstrate ineligibility under this section. The department shall submit the applicant's fingerprints along with the appropriate state and federal fees to the department of state police for a criminal history check. The department of state police may then forward the fingerprints to the federal bureau of investigation for a criminal history check. The fee shall be paid by the applicant and shall accompany the submission of the fingerprints to the department. The information obtained as a result of the criminal history check of an applicant shall be limited to officially determining the character and fitness of the applicant for licensing purposes.
- (h) Has not previously had an examiner's license, or its equivalent, refused, revoked, suspended or otherwise invalidated for a reason that would also represent lawful grounds for revoking or denying applicant's license under this act.
- (i) Upon reasonable investigation, satisfies the department that no substantial derogatory information exists regarding applicant's loyalty, honesty, or integrity as would reasonably and prudently justify denying him or her a license.
- (j) Has continuously resided in this state or has been continuously eligible to apply for an absentee voter's ballot for the general elections in this state for at least 6 calendar months immediately before the date of the application; or any combination of these 2 requirements that totals at least 6 calendar months.
- (k) Has satisfactorily passed required qualifying examinations conducted by the department, or under its supervision, to determine his or her competency to obtain a license to practice as an examiner, except that the applicant first shall have satisfied all the other requirements in this section before taking such a qualifying examination.

(2) All applicants shall have received an academic degree, at least at the baccalaureate level, from an accredited

college or university, with such academic degree to include specialized study in 1 academic major, or 2 academic minor areas that the department determines to be suitable for and related to specialization as an examiner.

**History:** 1972, Act 295, Eff. Mar. 30, 1973 ;-- Am. 2005, Act 2, Imd. Eff. Apr. 1, 2005

**Compiler's Notes:** For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws. For abolishment of the state board of forensic polygraph examiners and transfer of its powers and duties to the department of labor and economic growth, see E.R.O. No. 2007-18, compiled at MCL 445.2024.

### **338.1711 Intern's license; qualifications.**

Sec. 11.

A person is qualified to receive a license as an intern who satisfies the board that he is engaging in an approved internship training program and that he substantially fulfills the basic requirements of this act for licensing as an examiner. The applicant shall not be required to fulfill the experience or residence requirements in subdivisions (e), (f) and (j) of section 10 in qualifying for an intern's license.

**History:** 1972, Act 295, Eff. Mar. 30, 1973

**Compiler's Notes:** For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws. For abolishment of the state board of forensic polygraph examiners and transfer of its powers and duties to the department of labor and economic growth, see E.R.O. No. 2007-18, compiled at MCL 445.2024.

### **338.1712 Temporary examiner's license; qualifications.**

Sec. 12.

A person is entitled to receive a temporary examiner's license who fulfills the requirements of the board for such licensing and who satisfies the board that he is either 1 of the following:

(a) That he qualifies under section 9.

(b) That he does not meet the residence requirements set forth in section 10 but does substantially fulfill all the other qualifications for licensing as an examiner under this act.

**History:** 1972, Act 295, Eff. Mar. 30, 1973

**Compiler's Notes:** For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws. For abolishment of the state board of forensic polygraph examiners and transfer of its powers and duties to the department of labor and economic growth, see E.R.O. No. 2007-18, compiled at MCL 445.2024.

### **338.1713 Irrevocable consent by nonresident applicant to service of process.**

Sec. 13.

A nonresident applicant for an intern's license or a temporary examiner's license shall file an irrevocable consent that actions against the applicant may be filed in any appropriate court in any county of this state in which the plaintiff resides or in which some part of the transaction occurred out of which the alleged cause of action arose and that process in any action may be served on the applicant by leaving 2 copies thereof with the board. The consent shall stipulate and agree that such service of process shall be taken and held to be valid and binding for all purposes. The board secretary shall send 1 copy of the process to the applicant at the address shown on the records of the board by registered or certified mail.

**History:** 1972, Act 295, Eff. Mar. 30, 1973

**Compiler's Notes:** For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws. For abolishment of the state board of forensic polygraph examiners and transfer of its powers and duties to the department of labor and economic growth, see E.R.O. No. 2007-18, compiled at MCL 445.2024.

### **338.1714 Reciprocity.**

#### **Sec. 14.**

An applicant who is an examiner, licensed under the laws of another state or territory of the United States, may be issued appropriate license without examination by the board upon payment of the required fee and the production of satisfactory proof:

(a) That the requirements for the licensing of examiners in such particular state or territory of the United States were at the date of licensing substantially equivalent to the requirements currently in force in this state to the satisfaction of the board.

(b) That any requirements currently in force for the licensing of examiners in this state significantly differing from or in addition to the requirements for the licensing of examiners in such particular state or territory of the United States are fulfilled by the applicant to the satisfaction of the board.

(c) That such other state or territory grants similar reciprocity to license holders of this state.

**History:** 1972, Act 295, Eff. Mar. 30, 1973

**Compiler's Notes:** For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws. For abolishment of the state board of forensic polygraph examiners and transfer of its powers and duties to the department of labor and economic growth, see E.R.O. No. 2007-18, compiled at MCL 445.2024.

### **338.1715 Fees; receipt of completed application; time period for issuance of license; report; a completed application defined.**

#### **Sec. 15.**

(1) The fees to accompany applications under this act are as follows:

(a) Private examiner's license, original, \$100.00; renewal, \$50.00.

(b) Public examiner's license, original, \$25.00; renewal, \$25.00.

(c) Temporary examiner's license, original and renewal:

(i) Residents applying under section 9, private examiners, \$100.00; public examiners, \$25.00.

(ii) Nonresidents, 10-day license, \$100.00; annual license, original and renewal, \$200.00.

(d) Intern's license, original and renewal, \$25.00.

(e) Duplication or alteration of license, \$5.00.

(f) Reinstatement fee, \$25.00.

(g) Licensing examination fee, \$50.00.

(2) Beginning the effective date of the amendatory act that added this subsection, the department shall issue an initial or renewal license not later than 90 days after the applicant files a completed application. Receipt of the application is considered the date the application is received by any agency or department of the state of Michigan. If the application is considered incomplete by the department, the department shall notify the applicant in writing, or make the information available electronically, within 30 days after receipt of the incomplete application, describing the deficiency and requesting the additional information. The 90-day period is tolled upon notification by the department of a deficiency until the date the requested information is received by the department. The determination of the completeness of an application does not operate as an approval of the application for the license and does not confer eligibility of an applicant determined otherwise ineligible for issuance of a license.

(3) If the department fails to issue or deny a license within the time required by this section, the department shall return the license fee and shall reduce the license fee for the applicant's next renewal application, if any, by 15%. The failure to issue a license within the time required under this section does not allow the department to otherwise delay the processing of the application, and that application, upon completion, shall be placed in sequence with

other completed applications received at that same time. The department shall not discriminate against an applicant in the processing of the application based upon the fact that the license fee was refunded or discounted under this subsection.

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

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

(b) The number of applications denied.

(c) The number of applicants not issued a license within the 90-day time period and the amount of money returned to licensees and registrants under subsection (3).

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

**History:** 1972, Act 295, Eff. Mar. 30, 1973 ;-- Am. 2004, Act 276, Imd. Eff. July 23, 2004

**Compiler's Notes:** For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws. For abolishment of the state board of forensic polygraph examiners and transfer of its powers and duties to the department of labor and economic growth, see E.R.O. No. 2007-18, compiled at MCL 445.2024.

### **338.1716 Duration of licenses.**

Sec. 16.

Licenses shall be issued for terms as follows:

(a) Temporary examiner's licenses issued to applicants who qualify under section 9 and examiner's licenses shall be issued for the term of 1 calendar year, or such portion thereof as remains at the time issued. Each license shall be renewed during the month of December of each year. A license not renewed shall expire at midnight on December 31. A license which has expired may be renewed in accordance with the requirements of the board and payment of the required fee.

(b) Temporary examiner's licenses issued to persons who do not satisfy the residence requirements in section 10 shall be issued for a specific term as determined by the fee paid and may be renewed in accordance with the requirements of the board.

(c) Intern licenses shall be issued for the term of 6 calendar months and may be renewed for additional 6-month terms, if the intern satisfies the requirements of the board regarding the internship.

**History:** 1972, Act 295, Eff. Mar. 30, 1973

**Compiler's Notes:** For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws. For abolishment of the state board of forensic polygraph examiners and transfer of its powers and duties to the department of labor and economic growth, see E.R.O. No. 2007-18, compiled at MCL 445.2024.

### **338.1717 Specific requirements as to licenses.**

Sec. 17.

The board shall establish requirements for the form, issuance, display, change of address notification, surrender and evidence of licenses.

**History:** 1972, Act 295, Eff. Mar. 30, 1973

**Compiler's Notes:** For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled

### **338.1718 Renewal of examiner's license.**

Sec. 18.

The license of an examiner which has not been revoked or is not suspended shall be renewed annually upon application and payment of the required fee by the examiner.

**History:** 1972, Act 295, Eff. Mar. 30, 1973

**Compiler's Notes:** For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws.For abolishment of the state board of forensic polygraph examiners and transfer of its powers and duties to the department of labor and economic growth, see E.R.O. No. 2007-18, compiled at MCL 445.2024.

### **338.1719 Refusal to issue or suspension or revocation of license; grounds.**

Sec. 19.

The board may refuse to issue a license, or may suspend or revoke a license on 1 or more of the following grounds, if the holder or applicant for a license has:

- (a) Made a material misstatement in the application for a license or in the application for a renewal license.
- (b) Disregarded or violated this act or any rule promulgated pursuant to this act.
- (c) Been convicted of a felony; a misdemeanor punishable by more than 1 year imprisonment; or any crime involving moral turpitude including, but not limited to, dishonesty or fraud, or unauthorized divulging or selling of information or evidence.
- (d) Made a misrepresentation or false promise or caused to be printed any false or misleading advertisement for the purpose of directly or indirectly obtaining business or interns.
- (e) Demonstrated unworthiness or incompetency to act as an examiner or intern in a manner as to affect the interests of the public.
- (f) Allowed his or her license to be used by an unlicensed person in violation of this act.
- (g) Aided or abetted another in the violation of this act or of any rule promulgated pursuant to this act.
- (h) Been adjudged mentally ill, mentally deficient, or in need of mental treatment.
- (i) Failed, within a reasonable time, to provide information requested by the board as the result of a formal complaint in writing to the board, or as the result of substantive information otherwise received by the board which would reasonably indicate a violation of this act, or any rules promulgated pursuant to this act.
- (j) Asked test questions during a polygraph examination regarding the examinee's sexual practices, labor union, political, or religious affiliations, or his or her marital relationship, except where such questions have a bearing on the areas or issues under examination.
- (k) Failed to inform the examinee of all specific question areas to be explored prior to their actual exploration during the examination.
- (l) Conducted an examination without having informed the examinee of all of the following:
  - (i) The examinee has the right to refuse or accept the examination.
  - (ii) The examinee cannot be discharged from employment solely because he or she so refuses or accepts the examination.
  - (iii) The examinee cannot be denied employment solely because he or she so refuses or accepts the examination.
  - (iv) The examinee has the right to halt an examination in progress at any time.
  - (v) The examinee is not required to answer any questions or give any information.
  - (vi) Any information that the examinee volunteers could be used against him or her, or made available to the party requesting the examination, unless otherwise specified and agreed to in writing.
- (m) Conducted an examination that he or she knew or should have known violated the polygraph protection act of 1981.

**History:** 1972, Act 295, Eff. Mar. 30, 1973 ;-- Am. 1982, Act 46, Eff. Mar. 30, 1983



**Compiler's Notes:** In subdivision (j), "marital" evidently should read "marital". For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws. For abolishment of the state board of forensic polygraph examiners and transfer of its powers and duties to the department of labor and economic growth, see E.R.O. No. 2007-18, compiled at MCL 445.2024.

### **338.1720 Investigating actions of applicant or licensee; motion or complaint; notice or charges; service of notice; hearing; evidence; continuance; location of hearing; closed hearing; request for public hearing.**

#### **Sec. 20.**

The board upon its own motion and, upon the verified complaint in writing of a person setting forth facts which, if proved, would constitute grounds for denial, suspension, or revocation of a license under this act, shall investigate the actions of an applicant or a person holding or claiming to hold a license. Before denial, suspension, or revocation of a license, and not less than 20 days before the date set for the hearing, the board shall notify the applicant or the holder of a license, in writing, of the nature of the charges and that a hearing will be held on the date designated. The hearing shall determine whether the applicant or holder, called the respondent in this section, may hold the license, and shall afford the respondent an opportunity to be heard in person or by counsel. A written notice may be served by personal delivery to the respondent or by mailing by registered mail with return receipt requested at the address of respondent's last notification to the board. At the time and place fixed in the notice, the board shall hear the charges and both the respondent and complainant shall be accorded ample opportunity to present in person or by counsel statements, testimony, evidence, and arguments as may be pertinent to the charges or to the defense to the charges. The board may continue the hearing from time to time. If the board is not sitting at the time and place fixed in the notice or at the time and place to which the hearing is continued, the board shall continue the hearing for a period not to exceed 30 days. The board for good cause may continue the hearing for longer periods upon stipulation of both parties. All hearings shall be held at locations designated by the board and approved by the director of the department of state police. All hearings shall be closed hearings as authorized by section 8 of Act No. 267 of the Public Acts of 1976, being section 15.268 of the Michigan Compiled Laws, unless the respondent personally, or through counsel, submits a written request for a public hearing.

**History:** 1972, Act 295, Eff. Mar. 30, 1973 ;— Am. 1977, Act 206, Imd. Eff. Nov. 17, 1977

**Compiler's Notes:** For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws. For abolishment of the state board of forensic polygraph examiners and transfer of its powers and duties to the department of labor and economic growth, see E.R.O. No. 2007-18, compiled at MCL 445.2024.

### **338.1721 Surrender or seizure of license.**

#### **Sec. 21.**

Upon the revocation or suspension of a license, the licensee shall surrender the license to the board and if the licensee fails to do so, the board may seize it.

**History:** 1972, Act 295, Eff. Mar. 30, 1973

**Compiler's Notes:** For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws. For abolishment of the state board of forensic polygraph examiners and transfer of its powers and duties to the department of labor and economic growth, see E.R.O. No. 2007-18, compiled at MCL 445.2024.

### **338.1722 Reinstatement of license.**

#### **Sec. 22.**

Any time after suspension or revocation of a license, it may be reinstated at the discretion of the board, upon application and payment of the required fee.

**History:** 1972, Act 295, Eff. Mar. 30, 1973

**Compiler's Notes:** For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws. For abolishment of the state board of forensic polygraph examiners and transfer of its powers and duties to the department of labor and economic growth, see E.R.O. No. 2007-18, compiled at MCL 445.2024.

### **338.1723 Transcripts and records of proceedings before board; motion for rehearing.**

Sec. 23.

(1) The board shall provide for the transcribing and recording of all proceedings before the board and shall furnish a transcript of the record to any party affected by the proceedings upon payment of the costs for the transcript.

(2) In any case involving the denial, suspension or revocation of a license, a copy of the board's report shall be served upon the respondent by the board, either personally or by registered or certified mail as provided in this act for service of notice of hearing. Within 20 days after such service, the respondent may present to the board a motion in writing for rehearing, which written motion shall specify the particular grounds therefor. If a motion for rehearing is not filed, then upon expiration of the time specified for filing such motion; or if a motion for rehearing is denied, then upon such denial, the secretary shall enter an order in accordance with recommendations of the board. If the respondent orders and pays for a transcript of the record within the time for filing a motion for rehearing, the 20-day period within which a motion may be filed shall commence upon the delivery of the transcript to the respondent.

**History:** 1972, Act 295, Eff. Mar. 30, 1973

**Compiler's Notes:** For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws. For abolishment of the state board of forensic polygraph examiners and transfer of its powers and duties to the department of labor and economic growth, see E.R.O. No. 2007-18, compiled at MCL 445.2024.

### **338.1724 Review.**

Sec. 24.

A person affected by a final administrative decision of the board may have such decision reviewed in accordance with the provisions of law.

**History:** 1972, Act 295, Eff. Mar. 30, 1973

**Compiler's Notes:** For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws. For abolishment of the state board of forensic polygraph examiners and transfer of its powers and duties to the department of labor and economic growth, see E.R.O. No. 2007-18, compiled at MCL 445.2024.

### **338.1725 Witnesses; documents.**

Sec. 25.

A circuit judge upon application of the board or of the person against whom proceedings under sections 4, 7, 8, 17 or 19 are pending, may enter an order requiring the attendance of witnesses and their testimony and the production of documents, papers, files, books and records in connection with any hearing in any proceedings under



those sections. The judge may compel obedience to this order by proceedings for contempt.

**History:** 1972, Act 295, Eff. Mar. 30, 1973

**Compiler's Notes:** For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws. For abolishment of the state board of forensic polygraph examiners and transfer of its powers and duties to the department of labor and economic growth, see E.R.O. No. 2007-18, compiled at MCL 445.2024.

### **338.1726 Repealed. 1982, Act 46, Eff. Mar. 30, 1983.**

**Compiler's Notes:** The repealed section pertained to prohibitions and conditions regarding polygraph examinations.

### **338.1726a Administration of test by examiner or intern in violation of polygraph protection act of 1981; misdemeanor; penalty; liability to employee or applicant.**

Sec. 26a.

(1) An examiner or intern shall not administer a polygraph examination, lie detector test, psychological stress evaluation, or similar test to an employee or applicant for employment that violates the polygraph protection act of 1981.

(2) An examiner or intern who violates this section is guilty of a misdemeanor punishable by a fine of not more than \$1,000.00, or by imprisonment for not more than 90 days, or both.

(3) An examiner or intern who violates this section may be liable to the employee or applicant for employment for damages and for costs and statutory attorney fees.

**History:** Add. 1982, Act 46, Eff. Mar. 30, 1983

**Compiler's Notes:** For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws. For abolishment of the state board of forensic polygraph examiners and transfer of its powers and duties to the department of labor and economic growth, see E.R.O. No. 2007-18, compiled at MCL 445.2024.

### **338.1727 Injunction.**

Sec. 27.

If any person violates the provisions of this act, the board, in the name of the people of the state, through the attorney general, may apply to a court of competent jurisdiction for an order enjoining the violation or for an order enforcing compliance with this act. Upon the filing of a verified petition in the court, the court or any judge thereof, if satisfied by affidavit or otherwise that such person has violated or is violating this act may issue a temporary injunction, without notice or bond, enjoining the continued violation. If it is established that the person has violated or is violating the injunction, the court or any judge thereof may summarily try and punish the offender for contempt of court. Proceedings under this section shall be in addition to, and not in lieu of, all other remedies and penalties provided by this act.

**History:** 1972, Act 295, Eff. Mar. 30, 1973

**Compiler's Notes:** For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws. For abolishment of the state board of forensic polygraph examiners and transfer of its powers and duties to the department of labor and economic growth, see E.R.O. No. 2007-18, compiled at MCL 445.2024.

### **338.1728 Unlawful disclosures; exceptions.**

Sec. 28.

(1) Any person who is or has been an employee of a licensed examiner shall not divulge to anyone other than his employer or former employer, or as the employer shall direct, except as he may be required by law, any information acquired by him during his employment in respect to any of the work to which he shall have been assigned by the employer. Any employee violating the provisions of this section and any employee who makes a false report to his employer in respect to any work is guilty of a misdemeanor.

(2) Any principal, manager or employee of a licensed examiner who furnishes false information to clients, or who sells, divulges or otherwise discloses to other than clients, except as he may be required by law, any information acquired by him or them during employment by the client is guilty of a misdemeanor, and shall be subjected to immediate suspension of license by the board and revocation of license upon satisfactory proof of the offense. Any communications, oral or written, furnished by a professional man or client to a licensed examiner, or any information secured in connection with an assignment for a client, shall be deemed privileged with the same authority and dignity as are other privileged communications recognized by the courts of this state.

(3) Any recipient of information, report or results from a polygraph examiner, except for the person tested, shall not provide, disclose or convey such information, report or results to a third party except as may be required by law and the rules promulgated by the board in accordance with section 7 of this act.

**History:** 1972, Act 295, Eff. Mar. 30, 1973

**Compiler's Notes:** For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws. For abolishment of the state board of forensic polygraph examiners and transfer of its powers and duties to the department of labor and economic growth, see E.R.O. No. 2007-18, compiled at MCL 445.2024.

### **338.1729 Violations; penalties.**

Sec. 29.

(1) Except as provided in subsections (2) and (3), a person violating this act or falsely stating or representing that he or she is or has been an examiner or intern is guilty of a misdemeanor.

(2) A member of the board who intentionally violates section 6(1) shall be subject to the penalties prescribed in Act No. 267 of the Public Acts of 1976.

(3) If the board arbitrarily and capriciously violates section 6(3), the board shall be subject to the penalties prescribed in Act No. 442 of the Public Acts of 1976.

**History:** 1972, Act 295, Eff. Mar. 30, 1973 ;-- Am. 1977, Act 206, Imd. Eff. Nov. 17, 1977

**Compiler's Notes:** For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws. For abolishment of the state board of forensic polygraph examiners and transfer of its powers and duties to the department of labor and economic growth, see E.R.O. No. 2007-18, compiled at MCL 445.2024.

## **SOCIAL WORKERS**

### **Act 352 of 1972**

338.1751-338.1766 Repealed. 1980, Act 299, Imd. Eff. Oct. 21, 1980.

## **MEDICAL PRACTICE ACT**

### **Act 185 of 1973**

338.1801-338.1827 Repealed. 1978, Act 368, Eff. Sept. 30, 1978.

## **MASSAGE**

### **Act 251 of 1974**

338.1851-338.1868 Repealed. 1980, Act 299, Imd. Eff. Oct. 21, 1980.

## **ADVANCED EMERGENCY MEDICAL TECHNICIAN PRACTICES ACT**

### **Act 275 of 1974**

338.1901-338.1913 Repealed. 1976, Act 290, Eff. Mar. 31, 1977.

## **EMERGENCY PERSONNEL ACT**

### **Act 290 of 1976**

338.1921-338.1938 Repealed. 1978, Act 368, Eff. Sept. 30, 1978.

## **PHYSICIAN'S ASSISTANTS ACT**

### **Act 420 of 1976**

338.1951-338.1978 Repealed. 1978, Act 368, Eff. Sept. 30, 1978.

## **PRIVATE EMPLOYMENT BUREAU LICENSING ACT**

### **Act 301 of 1974**

338.2001-338.2060 Repealed. 1980, Act 299, Imd. Eff. Oct. 21, 1980.

## **PUBLIC ACCOUNTANCY ACT**

### **Act 130 of 1976**

338.2101-338.2125 Repealed. 1980, Act 299, Imd. Eff. Oct. 21, 1980.

## **ELEVATOR LICENSING**

### **Act 333 of 1976**

AN ACT to provide for the licensing of elevator journeymen and the regulation of elevators and elevator journeymen; to prescribe the functions of the director of labor and the elevator safety board; and to provide penalties for violations of this act.

**History:** 1976, Act 333, Eff. Mar. 31, 1977

*The People of the State of Michigan enact:*

#### **338.2151 Definitions.**

##### **Sec. 1.**

(1) The definitions contained in Act No. 227 of the Public Acts of 1967, being sections 408.801 to 408.824 of the Michigan Compiled Laws, shall have the same meaning when used in this act.

(2) "Elevator journeyman" means a person who is qualified and licensed by this state to perform, or to provide supervision in the performance of, the work of installation, alteration, maintenance, repair, servicing, adjusting, inspecting, or testing of elevators.

**History:** 1976, Act 333, Eff. Mar. 31, 1977

#### **338.2152 Applicability of provisions.**

##### **Sec. 2.**

(1) This act does not apply to or in a city, village, or township that has regulations in its ordinances that are comparable to this act or 1967 PA 227, MCL 408.801 to 408.824.

(2) This act does not apply to licensed journeymen in a city, village, or township described in subsection (1).

(3) This act does not apply to the installation, construction, repair, alteration, or maintenance of a residential stairway chairlift or residential platform lift that is subject to section 14a of 1967 PA 227, MCL 408.814a.

**History:** 1976, Act 333, Eff. Mar. 31, 1977 ;-- Am. 2015, Act 34, Eff. Aug. 19, 2015

#### **338.2153 Rules.**

##### **Sec. 3.**

In addition to the functions of the board provided in Act No. 227 of the Public Acts of 1967, the board shall promulgate rules for the licensing and examination of elevator journeymen and for the periodic servicing and examination of elevators in accordance with Act No. 306 of the Public Acts of 1969, as amended, being sections

24.201 to 24.315 of the Michigan Compiled Laws.

**History:** 1976, Act 333, Eff. Mar. 31, 1977

**Admin Rule:** R 408.8101 et seq. of the Michigan Administrative Code.

**338.2154 Enforcement of act and rules; variations or modifications of rules.**

Sec. 4.

The director of labor shall enforce this act and the rules promulgated pursuant to this act by the board. Where, because of special conditions, a literal enforcement of the rules will result in unnecessary hardship or involve practical difficulties, the director, upon application in specific cases, may authorize variations or modifications of the rules in a manner not contrary to the public interest and so that the spirit of the rules shall be observed, public safety secured, and substantial justice done.

**History:** 1976, Act 333, Eff. Mar. 31, 1977

**338.2155 Elevator; installation, alteration, maintenance, repair, servicing, adjusting, or testing; entering elevator hoistway or machine room.**

Sec. 5.

(1) The work of installation, alteration, maintenance, repair, servicing, inspecting, adjusting, or testing of an elevator covered by Act No. 227 of the Public Acts of 1967, shall be done by a person who is licensed by the department of labor as an elevator journeyman, or by his helpers under the immediate supervision of a licensed elevator journeyman.

(2) A person entering an elevator hoistway or machine room for any reason, except under an emergency situation, shall be a licensed elevator journeyman, shall be employed as a helper and be under the supervision of a licensed elevator journeyman, or shall be commissioned as a special or general inspector. This requirement does not apply to engineering, management, or sales personnel of a licensed elevator contractor, or owner's authorized representatives.

**History:** 1976, Act 333, Eff. Mar. 31, 1977

**338.2156 Elevator journeyman's license; application; form; issuance without examination; qualifications; restrictions; supervised work of qualified employee; examination.**

Sec. 6.

(1) An application for an elevator journeyman's license shall be made on blank forms furnished by the department.

(2) An elevator journeyman's license shall be issued without written examination to a person who has been engaged in elevator contractor work of supervising installation or repair, or who has been engaged in the installation, alteration, maintenance, repair, servicing, inspecting, or adjusting of elevator equipment, for a period of not less than 3 years before the effective date of this act, provided application for the license is made within 12 months after the effective date of this act. The elevator journeyman's license shall be issued by the director and board upon the employee's submitting a signed affidavit stating his term of employment with a licensed elevator contractor. The license may be restricted to specific types of work by the director.

(3) A degree in electrical or mechanical engineering from a recognized college or university may be considered the equivalent of 1 year toward qualification for an elevator journeyman's license. A qualified employee of a

licensed elevator contractor shall be allowed to work in the installation, alteration, maintenance, repair, servicing, inspecting, adjusting, or testing of elevators under the immediate supervision of a licensed elevator journeyman.

(4) An elevator journeyman's license shall be issued, after the approval of the board and after an applicant successfully passes an examination, to an applicant having a minimum of 3 years of continuous employment as a supervisor of elevator construction or service, or as an elevator constructor, serviceman, maintenance man, or repairman. The license may be restricted to specific types or work by the director.

**History:** 1976, Act 333, Eff. Mar. 31, 1977

### **338.2157 Elevator journeyman's license; expiration; renewal; grounds for suspension or revocation.**

Sec. 7.

An elevator journeyman's license shall expire 1 year after the date of issue, and, unless renewed 60 days thereafter, shall be revoked. An elevator journeyman's license may be suspended or revoked by the director after a hearing, if approved by the board, for incompetence, neglect, misrepresentation, or failure to comply with the requirements of this act or with the rules promulgated pursuant thereto by the board.

**History:** 1976, Act 333, Eff. Mar. 31, 1977 ;-- Am. 1978, Act 238, Imd. Eff. June 15, 1978

### **338.2158 License and examination fees.**

Sec. 8.

(1) Fees for the elevator journeyman's license and elevator journeyman's examination shall be determined by the board.

(2) Fees shall be paid by cash, money order, or certified check to the director. Fees received by the director shall be transmitted to the state treasurer for deposit in the general fund.

**History:** 1976, Act 333, Eff. Mar. 31, 1977

### **338.2159 Servicing and examining power elevators; exceptions; minimum requirements.**

Sec. 9.

A power elevator, except a private residence elevator and a private residence inclined lift, shall be serviced and examined for defects by a licensed elevator journeyman at such periods as may be necessary, but not less than every 60 days, to maintain the equipment in safe operating condition. Minimum requirements shall be established by the board.

**History:** 1976, Act 333, Eff. Mar. 31, 1977

### **338.2160 Violation; penalty.**

Sec. 10.

A person, firm, or corporation who violates a provision of this act or a rule promulgated by the board, for the first offense shall be fined not more than \$50.00, and, for each subsequent offense, fined not more than \$100.00, or imprisoned for not more than 90 days, or both.

**History:** 1976, Act 333, Eff. Mar. 31, 1977

## SECURITY ALARM SYSTEMS ACT

### Act 580 of 2012

AN ACT to register and regulate certain providers of security alarm systems; to provide for the assessment of registration fees; and to prescribe the powers and duties of certain state departments, agencies, officers, and political subdivisions.

**History:** 2012, Act 580, Imd. Eff. Jan. 2, 2013

*The People of the State of Michigan enact:*

#### 338.2181 Short title.

Sec. 1.

This act shall be known and may be cited as the "security alarm systems act".

**History:** 2012, Act 580, Imd. Eff. Jan. 2, 2013

#### 338.2182 Definitions.

Sec. 2.

As used in this act:

(a) "Alarm system" means any mechanical or electrical device, including an electronic access control system, a video monitoring system, a burglar alarm system, smoke detectors, or any other electronic system that is designed to emit an audible alarm or transmit a signal or message to a central monitoring station if it is activated and that is used to detect an unauthorized entry into a protected premises or alert other persons of the occurrence of a fire or medical emergency or the commission of an unlawful act against a person or in a protected premises. The term includes, but is not limited to, a silent, panic, holdup, robbery, duress, burglary, medical alert, or proprietor alarm that signals a central monitoring station.

(b) "Applicant" means a person for which a registration statement is filed under section 3.

(c) "Background check" means a criminal history check administered by a public or private entity that examines federal and state government records in a manner that allows for the successful identification of the criminal offenses listed in section 4(3)(c).

(d) "Department" means department of licensing and regulatory affairs.

(e) "Local unit of government" means a city, county, village, or township, or a special district designated by law that exercises limited government powers or powers in respect to limited government subjects.

(f) "Operator" means an employee or independent contractor who performs alarm operator, dispatcher, or monitor functions for a security alarm system at a central monitoring station. The term does not include a system user who receives signals or messages about his or her own security alarm system.

(g) "Person" means an individual, partnership, corporation, limited liability company, or other legal entity.

(h) "Protected premises" means a location at or in which a system user's security alarm system is installed and

maintained.

(i) "Registrant" means a person that is registered by the department as a system provider.

(j) "Registration" means a registration that is issued by the department.

(k) "Remote monitoring" means the retransmission of information received from a security alarm system to a central monitoring system.

(l) "Security alarm system" means a detection device or an assembly of equipment and devices that transmits signals to a central monitoring station and is arranged to signal the presence of a hazard that requires urgent attention or to which police are expected to respond. The term includes any electronic system that transmits signals to a central monitoring station and monitors or records various components designed to detect or prevent burglaries, intrusions, theft, or robbery of the protected premises, including, but not limited to, an intrusion detection system, video monitoring or recording system, access control system, and 1-way or 2-way audio monitoring systems. The term does not include a fire alarm system or an alarm system that monitors temperature, humidity, or other condition that is not directly related to the detection or prevention of burglaries, intrusions, theft, or robbery of the protected premises.

(m) "System provider" means a person that engages in the business of selling, leasing, renting, maintaining, repairing, installing, or otherwise providing security alarm systems to the public at the protected premises or by remote monitoring. The term does not include any of the following:

(i) A person that purchases, rents, or uses an alarm system that is affixed to a motor vehicle.

(ii) A person that owns or conducts a business of selling, leasing, renting, installing, maintaining, or monitoring an alarm system that is affixed to a motor vehicle.

(iii) An alarm system that is operated by this state, a political subdivision of this state, an agency or department of this state or a political subdivision of this state, or any other governmental agency or department.

(iv) A person that installs a nonmonitored alarm system for a business that the person owns, is employed by, or manages.

(v) A person that only manufactures or sells security alarm systems, unless that person services, installs, monitors, or responds to signals from security alarm systems at the protected premises.

(vi) A person that sells security alarm systems that are designed to be installed and monitored by any of the following:

(A) The customer, and not the person selling the security alarm system.

(B) An affiliate of or contractor to the person selling the security alarm system if the affiliate or contractor that installs at the protected premises or monitors the security alarm system is registered under this act.

(vii) A security alarm system contractor, as defined in section 2 of the private security business and security alarm act, 1968 PA 330, MCL 338.1052, that is required to obtain a license under that act.

(n) "System user" means a person that uses a security alarm system at a protected premises or remotely.

**History:** 2012, Act 580, Imd. Eff. Jan. 2, 2013

### **338.2183 System provider; requirements; wrongful act.**

#### **Sec. 3.**

(1) A person shall not act as a system provider in this state without first doing both of the following:

(a) Filing a registration statement with the department that meets the requirements of section 4. A person that acts as a system provider in multiple locations in this state is only required to file 1 registration statement with the department.

(b) Meeting 1 of the following:

(i) Providing a bond to the department that is in the principal amount of \$25,000.00; is conditioned on the applicant's or registrant's compliance with this act; is acceptable to the department; and is for the benefit of the residents of this state.

(ii) Providing a policy of insurance to the department, in the amount of \$25,000.00 for property damages, \$100,000.00 for injury to or death of 1 person, and \$200,000.00 for injuries to or deaths of more than 1 person arising out of the operation of the licensed activity, that is issued by an insurer authorized to do business in this state and names the applicant or registrant and the state as coinsureds.

(iii) Demonstrating to the department that the applicant or registrant, or an affiliate of the applicant or registrant, is licensed as a basic local exchange provider under the Michigan telecommunications act, 1991 PA 179, MCL 484.2101 to 484.2603.

(iv) Demonstrating to the department that the applicant or registrant, or an affiliate of the applicant or registrant,



has annual revenue of \$10,000,000.00 or more.

(2) An individual injured by the willful, malicious, and wrongful act of an applicant or registrant, or any agent or employee of an applicant or registrant, may bring an action on a bond or insurance policy provided under subsection (1)(b) in his or her own name to recover damages suffered by reason of the wrongful act.

**History:** 2012, Act 580, Imd. Eff. Jan. 2, 2013

**338.2184 Registration statement; affidavit; contents; background check of each employee or independent contractor; employment prohibited; conditions.**

**Sec. 4.**

(1) A registration statement filed with the department shall include a completed affidavit, submitted by the registrant or applicant and signed by an officer or another individual who is authorized to bind the registrant, that affirms all of the following:

(a) The registrant's or applicant's legal name and any name under which the registrant or applicant does or will do business in this state that is authorized by the department.

(b) The address and telephone number of the registrant's or applicant's principal place of business and contact information for the individual responsible for ongoing communications with the department.

(c) A description of the geographic areas in this state the registrant or applicant does or will serve.

(d) A description of the training the registrant will provide to its employees or independent contractors who are involved in installing or monitoring security alarm systems. The department may refuse to accept a registration statement if it determines that the training is not commercially reasonable considering the nature of the security alarm systems installed or monitored by the registrant or applicant.

(e) A description of the security alarm system services that the registrant or applicant does or will provide.

(f) That the registrant or applicant will file an updated registration statement annually, or sooner if a material change to the information occurs.

(2) A registrant, applicant, or affiliate or contractor described in section 2(m)(vi)(B) shall conduct a background check of each employee or independent contractor of the registrant, applicant, affiliate, or contractor who, in the normal course of his or her employment or engagement, enters a customer's premises to sell, lease, rent, maintain, repair, install, or otherwise provide a security alarm system at a protected premises. The background check required under this subsection shall include the taking of fingerprints of the employee or independent contractor and submission of those fingerprints to the department of state police or the federal bureau of investigation for the purpose of a criminal history record search. However, a registrant, applicant, affiliate, or contractor is not required to submit the fingerprints of an employee or independent contractor under this subsection if the employee's or independent contractor's fingerprints were previously submitted for the purpose of a criminal history record search for the purposes of meeting the requirements of a regulatory authority in another state and the registrant, applicant, affiliate, or contractor has the results of that submission.

(3) An applicant, registrant, or affiliate or contractor described in section 2(m)(vi)(B) shall not employ or engage, or continue to employ or engage, an individual for whom a background check is required under subsection (2) if he or she meets any of the following:

(a) Is not at least 18 years old.

(b) Does not have a high school diploma or a general education development (GED) certificate or its equivalent.

(c) His or her background check under subsection (2) discloses any of the following:

(i) He or she was convicted of a felony.

(ii) Within the 5-year period preceding the date of the background check, he or she was convicted of a misdemeanor involving any of the following:

(A) Dishonesty or fraud.

(B) Unauthorized divulging or selling of information or evidence.

(C) Impersonation of a law enforcement officer or employee of the United States, this state, or a political subdivision of this state.

(D) Illegally using, carrying, or possessing a dangerous weapon.

(E) Two or more alcohol-related offenses.

(F) Controlled substances under the public health code, 1978 PA 368, MCL 333.1101 to 333.25211.

(G) An assault.

(H) Criminal sexual conduct in the fourth degree under section 520e of the Michigan penal code, 1931 PA 328, MCL 750.520e.

- (iii) He or she has been adjudged insane unless restored to sanity by court order.
- (iv) He or she has any outstanding warrants for his or her arrest.

**History:** 2012, Act 580, Imd. Eff. Jan. 2, 2013

### **338.2185 Registration statement; limitation on administration of act; fee.**

#### **Sec. 5.**

(1) The department shall accept a registration statement filed under section 3 if the requirements of this act are met.

(2) The department's authority to administer this act is limited to the powers and duties explicitly provided under this act. The department does not have the authority to limit or expand the obligations and requirements provided in this act or to regulate or control a person to the extent that the person is providing security alarm system services except as provided in this act.

(3) The department may charge a fee for filing a registration statement under this act in an amount determined by the department. Any fee charged by the department may not exceed the department's actual costs to process and review a registration statement.

**History:** 2012, Act 580, Imd. Eff. Jan. 2, 2013

### **338.2186 Provisions of act superseding local requirements.**

#### **Sec. 6.**

The provisions of this act supersede and preempt any rule, regulation, code, or ordinance of any local unit of government of this state relating to the authorization or registration of system providers and their employees or independent contractors. A local unit of government of this state shall not require the issuance of a certificate, license, or permit or otherwise regulate any person that provides any form of security alarm security, monitoring, and control services or the installation and maintenance of facilities associated with security alarm systems, except that a local unit of government of this state may do any of the following:

- (a) By ordinance, establish decibel limits, length, or time period of audible alarm sounding.
- (b) By ordinance, regulate or prohibit automated calls, automated signals, or other automated communications to local units of government, including public safety access points.
- (c) Require a permit for high-voltage electrical or plumbing work to be performed by a system provider.
- (d) Enforce any preexisting rights with respect to the use of its rights-of-way.

**History:** 2012, Act 580, Imd. Eff. Jan. 2, 2013

### **338.2187 Violation as misdemeanor; penalty.**

#### **Sec. 7.**

A person that violates this act is guilty of a misdemeanor punishable by imprisonment for not more than 180 days or a fine of not more than \$1,000.00, or both, for each violation.

**History:** 2012, Act 580, Imd. Eff. Jan. 2, 2013

## STATE LICENSE FEE ACT

### Act 152 of 1979

AN ACT to provide for the establishment and collection of fees for the investigation, regulation, and enforcement of certain occupations and professions, and for certain agencies and businesses; to create certain funds for certain purposes; and to prescribe certain powers and duties of certain state agencies and departments.

**History:** 1979, Act 152, Eff. Jan. 1, 1980 ;-- Am. 1988, Act 461, Eff. Sept. 1, 1989 ;-- Am. 1990, Act 268, Imd. Eff. Oct. 17, 1990 ;-- Am. 2006, Act 645, Imd. Eff. Jan. 5, 2007

**Compiler's Notes:** For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws. For transfer of powers and duties of certain health-related functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws.

*The People of the State of Michigan enact:*

#### 338.2201 Short title.

Sec. 1.

This act shall be known and may be cited as the "state license fee act".

**History:** 1979, Act 152, Eff. Jan. 1, 1980

**Compiler's Notes:** For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws. For transfer of powers and duties of certain health-related functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws.

#### 338.2202 Definitions.

Sec. 2.

As used in this act:

- (a) "Department" means the department of licensing and regulatory affairs.
- (b) "Occupational code" means 1980 PA 299, MCL 339.101 to 339.2919.

**History:** Add. 1988, Act 461, Eff. Sept. 1, 1989 ;-- Am. 1999, Act 171, Imd. Eff. Nov. 10, 1999 ;-- Am. 2012, Act 308, Imd. Eff. Oct. 1, 2012

**Compiler's Notes:** For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws.

#### 338.2203 Licensing and regulation fund; creation; requirements.

Sec. 3.

The licensing and regulation fund is created in the state treasury. All of the following apply to the licensing and regulation fund:

- (a) Except as otherwise provided in sections 11, 37, 38, and 39, the fees collected under this act shall be

deposited into the fund.

(b) Money in the fund shall be used only to offset the cost of operating the department.

(c) The state treasurer shall direct the investment of the fund and shall credit to the fund interest and earnings from fund investments.

(d) Money in the fund at the close of the fiscal year shall remain in the fund and shall not lapse to the general fund.

(e) The department is the administrator of the fund for auditing purposes.

**History:** 1979, Act 152, Eff. Jan. 1, 1980 ;-- Am. 1988, Act 461, Eff. Sept. 1, 1989 ;-- Am. 1990, Act 268, Imd. Eff. Oct. 17, 1990 ;-- Am. 1993, Act 139, Imd. Eff. Aug. 2, 1993 ;-- Am. 2006, Act 645, Imd. Eff. Jan. 5, 2007 ;-- Am. 2007, Act 77, Imd. Eff. Sept. 30, 2007 ;-- Am. 2012, Act 308, Imd. Eff. Oct. 1, 2012

**Compiler's Notes:** For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws. MCL 338.2203, which was purported to be amended by 2007 PA 77, was not amended and should not have appeared in the title as an amended section.

### **338.2204 Service in armed forces; dependent of member of armed forces; waiver of license, registration, or application fee; definitions.**

#### **Sec. 4.**

(1) The department shall waive the fee for an initial license or initial registration that is otherwise required under this act, or an application processing fee charged by the department for an initial license or initial registration, if the applicant meets 1 of the following requirements:

(a) Is actively serving in the armed forces or the uniformed services.

(b) Is an individual who served in the armed forces or uniformed services and he or she provides to the department a form DD214, form DD215, or any other form that is satisfactory to the department that demonstrates he or she was separated from that service with an honorable character of service or under honorable conditions (general) character of service.

(c) Is a dependent of a member of the armed forces, a dependent of a member of the uniformed services, or a dependent of a veteran and he or she provides proof acceptable to the department that he or she is a dependent as described in this subdivision.

(2) As used in this section:

(a) "Armed forces" means that term as defined in section 103 of the occupational code, MCL 339.103.

(b) "Dependent" means that term as defined in section 104 of the occupational code, MCL 339.104.

(c) "Uniformed services" means that term as defined in section 105 of the occupational code, MCL 339.105.

(d) "Veteran" means that term as defined in section 1 of 1965 PA 190, MCL 35.61.

**History:** Add. 2014, Act 127, Eff. Aug. 20, 2014 ;-- Am. 2021, Act 23, Eff. Sept. 7, 2021

### **338.2205 Refund of fees; rules.**

#### **Sec. 5.**

(1) Except under rules promulgated by the department pursuant to this section or as provided under section 411 of the occupational code, a fee collected by the department, when paid pursuant to this act, shall not be refunded.

(2) The department shall promulgate rules concerning the refund of fees, pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

**History:** 1979, Act 152, Eff. Jan. 1, 1980 ;-- Am. 1988, Act 461, Eff. Sept. 1, 1989 ;-- Am. 2004, Act 263, Imd. Eff. July 23, 2004

**Compiler's Notes:** For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled

Laws.

**Admin Rule:** R 338.941 et seq. of the Michigan Administrative Code.

### **338.2205a Report; fees charged by third party exam administrator; selection process; definition.**

#### **Sec. 5a.**

(1) The department shall submit a report each year to the house and senate appropriations committees and the house and senate fiscal agencies for the preceding fiscal year concerning the fees charged by each third party exam administrator for each examination or test conducted by that administrator pursuant to an agreement with the department.

(2) The department shall utilize a competitive selection process that meets the requirements of article 2 of the management and budget act, 1984 PA 431, MCL 18.1201 to 18.1299, when selecting a third party exam administrator to administer an examination or test. The contract with the third party exam administrator shall state the examination fee an individual is required to pay to take the examination or test.

(3) As used in this act, "third party exam administrator" means a person outside of the department with which the department has entered into an agreement to administer an examination or test required under an article of the occupational code.

**History:** Add. 2012, Act 308, Imd. Eff. Oct. 1, 2012

### **338.2206 Late renewal fee.**

#### **Sec. 6.**

The department shall charge a \$20.00 late renewal fee if a person fails to renew a license or registration on or before the expiration date prescribed by the department by rule as authorized under the occupational code.

**History:** Add. 1988, Act 461, Eff. Sept. 1, 1989 ;-- Am. 1999, Act 171, Imd. Eff. Nov. 10, 1999

**Compiler's Notes:** For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws.

### **338.2207 Duplicate license or registration; signed statement; fee.**

#### **Sec. 7.**

The department may charge a fee for the issuance of a duplicate license or registration. The duplicate shall not be issued unless the person applying for the duplicate signs a statement that the original document has been lost, stolen, or destroyed. The fee for the duplicate shall be \$10.00.

**History:** 1979, Act 152, Eff. Jan. 1, 1980 ;-- Am. 1988, Act 461, Eff. Sept. 1, 1989

**Compiler's Notes:** For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws.

### **338.2208 Written verification that person not licensed or registered; fee; charge for specific detailed**

**information.**

Sec. 8.

(1) The department may charge a \$5.00 fee for providing written verification that a person is or is not licensed or registered at the time of the request for verification.

(2) If the person requesting written verification seeks specific detailed information beyond the information described in subsection (1), the charge for verification shall be \$15.00.

**History:** Add. 1988, Act 461, Eff. Sept. 1, 1989

**Compiler's Notes:** For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws.

**338.2209 Publication and distribution of public act and rules; fee.**

Sec. 9.

The department may charge a fee for the publication and distribution of the public act from which a board's authority is derived and the rules promulgated under that act. The fee shall be \$2.00 or the cost of the publication, whichever is greater.

**History:** 1979, Act 152, Eff. Jan. 1, 1980 ;-- Am. 1988, Act 461, Eff. Sept. 1, 1989

**Compiler's Notes:** For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws.

**338.2210 Correcting records and issuing new document; fee.**

Sec. 10.

The department may charge a \$10.00 fee for correcting its records and issuing a new document when a person notifies the department of a change of name, address, or employer. If the change does not require the issuance of a new document, no charge shall be made for correcting the department's records.

**History:** Add. 1988, Act 461, Eff. Sept. 1, 1989

**Compiler's Notes:** For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws.

**338.2211 Public accountant; fees; accountancy enforcement fund; creation; administration; use; carrying forward unexpended balance.**

Sec. 11.

(1) Fees for a person certified, registered, or licensed or seeking certification, registration, or licensure to engage in the practice of public accounting, under article 7 of the occupational code, MCL 339.720 to 339.736, are as follows:

- (a) Application processing fee for individuals and firms \$ 100.00
- (b) License to practice for individuals and firms, per year 100.00
- (c) Individual registration, per year 25.00

- (d) Permit for temporary practice, per year 100.00
- (e) Peer review fee 100.00

(2) The accountancy enforcement fund is created in the state treasury and shall be administered by the department. Beginning October 1, 2006, the money representing the increase in fees and the addition of the peer review fee imposed in subsection (1) shall be deposited into the accountancy enforcement fund. The department shall utilize the accountancy enforcement fund for the enforcement of article 7 of the occupational code, MCL 339.720 to 339.736, regarding unlicensed activity, licensee and registrant disciplinary actions, and the peer review program conducted by the state board of accountancy and to reimburse the attorney general for expenses incurred in conducting prosecutions of any unlicensed practice and disciplinary actions. A reasonable amount of money in the fund may be used for expenses regarding participation in national accounting organizations essential to the regulation of certified public accountants, as determined and approved by the department. Any unexpended balance in the accountancy enforcement fund at the end of a fiscal year shall carry forward to the next fiscal year.

**History:** 1979, Act 152, Eff. Jan. 1, 1980 ;-- Am. 1988, Act 461, Eff. Sept. 1, 1989 ;-- Am. 2003, Act 87, Imd. Eff. July 23, 2003 ;-- Am. 2005, Act 277, Imd. Eff. Dec. 19, 2005

**Compiler's Notes:** For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws.

### **338.2213 Architect, professional engineer, or land surveyor; fees.**

#### **Sec. 13.**

(1) Fees for a person licensed or seeking licensure as an architect under article 20 of the occupational code, MCL 339.2001 to 339.2014, are as follows:

- (a) Application processing fee \$ 30.00
- (b) Supplemental application processing fee 20.00
- (c) License fee, per year 35.00

(2) Fees for a person licensed or seeking licensure as a professional engineer under article 20 of the occupational code, MCL 339.2001 to 339.2014, are as follows:

- (a) Application processing fee as follows:
  - (i) If paid after September 30, 2027 \$ 30.00
  - (ii) Beginning October 1, 2003 through September 30, 2027 35.00
- (b) Supplemental application processing fee 20.00
- (c) License fee, per year as follows:
  - (i) If paid after September 30, 2027 20.00
  - (ii) Beginning October 1, 2003 through September 30, 2027 40.00

(3) Fees for a person licensed or seeking licensure as a land surveyor under article 20 of the occupational code, MCL 339.2001 to 339.2014, are as follows:

- (a) Application processing fee as follows:
  - (i) If paid after September 30, 2027 \$ 30.00
  - (ii) Beginning October 1, 2003 through September 30, 2027 35.00
- (b) Supplemental application processing fee 20.00
- (c) Examination fees:
  - (i) Complete examination 110.00
  - (ii) Part 1 of the examination (fundamentals) 55.00
  - (iii) Part 2a of the examination (principles and practice) 45.00
  - (iv) Part 2b of the examination (Michigan practice) 40.00
- (d) Examination review 20.00
- (e) License fee, per year 50.00

**History:** 1979, Act 152, Eff. Jan. 1, 1980 ;-- Am. 1980, Act 295, Eff. Jan. 1, 1981 ;-- Am. 1988, Act 461, Eff. Sept. 1, 1989 ;-- Am. 2003, Act 87, Imd. Eff. July 23, 2003 ;-- Am. 2007, Act 77, Imd. Eff. Sept. 30, 2007 ;-- Am. 2012, Act 308, Imd. Eff. Oct. 1, 2012 ;-- Am. 2015, Act 75, Eff. Oct. 1, 2015 ;-- Am. 2019, Act 71, Imd. Eff. Sept. 30, 2019 ;-- Am. 2023, Act 131, Imd. Eff. Sept. 29, 2023

**Compiler's Notes:** For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws.

### **338.2215 Landscape architect; fees.**

Sec. 15.

Fees for a person licensed or seeking licensure as a landscape architect under article 22 of the occupational code, MCL 339.2201 to 339.2211, are as follows:

(a) Application processing fee	\$ 200.00
(b) Supplemental application processing fee	20.00
(c) Examination fees:	
(i) Complete examination	265.00
(ii) Section 1 of the examination	25.00
(iii) Section 2 of the examination	35.00
(iv) Section 3 of the examination	100.00
(v) Section 4 of the examination	125.00
(d) Examination review	25.00
(e) License fee, per year	60.00

**History:** 1979, Act 152, Eff. Jan. 1, 1980 ;-- Am. 1980, Act 295, Eff. Jan. 1, 1981 ;-- Am. 1988, Act 461, Eff. Sept. 1, 1989 ;-- Am. 2003, Act 87, Imd. Eff. July 23, 2003 ;-- Am. 2007, Act 77, Imd. Eff. Sept. 30, 2007 ;-- Am. 2008, Act 491, Eff. May 13, 2009 ;-- Am. 2012, Act 308, Imd. Eff. Oct. 1, 2012

**Compiler's Notes:** For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws.

### **338.2217 Barber, student barber, student instructor, barber instructor, person operating barbershop or barber college, or person seeking permit for demonstration or demonstrator's permit; fees.**

Sec. 17.

Fees for a person licensed or seeking licensure as a barber, student barber, student instructor, or barber instructor, for a person licensed or seeking licensure to operate a barbershop or barber college, or for a person seeking a permit for a demonstration or a demonstrator's permit under article 11 of the occupational code, MCL 339.1101 to 339.1118, are as follows:

(a) Application processing fees:	
(i) Student barber as follows:	
(A) If paid after September 30, 2027	\$ 15.00
(B) Beginning October 1, 2003 through September 30, 2027	20.00
(ii) Barber as follows:	
(A) If paid after September 30, 2027	15.00
(B) Beginning October 1, 2003 through September 30, 2027	20.00
(iii) Student instructor as follows:	
(A) If paid after September 30, 2027	15.00
(B) Beginning October 1, 2003 through September 30, 2027	20.00



- (iv) Barber instructor as follows:
  - (A) If paid after September 30, 2027 15.00
  - (B) Beginning October 1, 2003 through September 30, 2027 20.00
- (v) Barbershop as follows:
  - (A) If paid after September 30, 2027 40.00
  - (B) Beginning October 1, 2003 through September 30, 2027 50.00
- (vi) Barber college as follows:
  - (A) If paid after September 30, 2027 50.00
  - (B) Beginning October 1, 2003 through September 30, 2027 75.00
- (b) Examination fees:
  - (i) Complete barber examination 75.00
    - (A) Written portion only 35.00
    - (B) Practical portion only 45.00
  - (ii) Complete instructor examination 75.00
    - (A) Written portion only 35.00
    - (B) Practical portion only 45.00
  - (c) Examination review 20.00
- (d) License fees, per year:
  - (i) Student barber as follows:
    - (A) If paid after September 30, 2027 15.00
    - (B) Beginning October 1, 2003 through September 30, 2027 30.00
  - (ii) Barber as follows:
    - (A) If paid after September 30, 2027 15.00
    - (B) Beginning October 1, 2003 through September 30, 2027 30.00
  - (iii) Student instructor as follows:
    - (A) If paid after September 30, 2027 15.00
    - (B) Beginning October 1, 2003 through September 30, 2027 30.00
  - (iv) Barber instructor as follows:
    - (A) If paid after September 30, 2027 25.00
    - (B) Beginning October 1, 2003 through September 30, 2027 40.00
  - (v) Barbershop as follows:
    - (A) If paid after September 30, 2027 30.00
    - (B) Beginning October 1, 2003 through September 30, 2027 40.00
  - (vi) Barber college 150.00
- (e) Demonstrator's temporary permit as follows:
  - (i) If paid after September 30, 2027 10.00
  - (ii) Beginning October 1, 2003 through September 30, 2027 15.00
- (f) Demonstration temporary permit as follows:
  - (i) If paid after September 30, 2027 10.00
  - (ii) Beginning October 1, 2003 through September 30, 2027 15.00

**History:** 1979, Act 152, Eff. Jan. 1, 1980 ;-- Am. 1984, Act 24, Imd. Eff. Mar. 12, 1984 ;-- Am. 1988, Act 461, Eff. Sept. 1, 1989 ;-- Am. 2003, Act 87, Imd. Eff. July 23, 2003 ;-- Am. 2007, Act 77, Imd. Eff. Sept. 30, 2007 ;-- Am. 2012, Act 308, Imd. Eff. Oct. 1, 2012 ;-- Am. 2015, Act 75, Eff. Oct. 1, 2015 ;-- Am. 2019, Act 71, Imd. Eff. Sept. 30, 2019 ;-- Am. 2023, Act 131, Imd. Eff. Sept. 29, 2023

**Compiler's Notes:** For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws.

### **338.2219 Repealed. 1995, Act 126, Eff. Jan. 1, 1996.**

**Compiler's Notes:** The repealed section pertained to marriage counselor fees.

### **338.2221 Collection agency or collection agency manager; fees.**

Sec. 21.

Fees for a person licensed or seeking licensure to operate a collection agency or to be a collection agency manager under article 9 of the occupational code, MCL 339.901 to 339.920, are as follows:

- (a) Application processing fees:
  - (i) Agency nonowner manager as follows:
    - (A) If paid after September 30, 2027 25.00
    - (B) Beginning October 1, 2003 through September 30, 2027 35.00
  - (ii) Agency 100.00
- (b) Examination fee 50.00
- (c) Examination review fee 20.00
- (d) License fee, per year:
  - (i) Agency nonowner manager 50.00
  - (ii) Agency 125.00

**History:** 1979, Act 152, Eff. Jan. 1, 1980 ;-- Am. 1980, Act 295, Eff. Jan. 1, 1981 ;-- Am. 1981, Act 227, Imd. Eff. Jan. 7, 1982 ;-- Am. 1988, Act 461, Eff. Sept. 1, 1989 ;-- Am. 2003, Act 87, Imd. Eff. July 23, 2003 ;-- Am. 2007, Act 77, Imd. Eff. Sept. 30, 2007 ;-- Am. 2012, Act 308, Imd. Eff. Oct. 1, 2012 ;-- Am. 2015, Act 75, Eff. Oct. 1, 2015 ;-- Am. 2019, Act 71, Imd. Eff. Sept. 30, 2019 ;-- Am. 2023, Act 131, Imd. Eff. Sept. 29, 2023

**Compiler's Notes:** For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws.

### **338.2223 Repealed. 2014, Act 153, Imd. Eff. June 11, 2014.**

**Compiler's Notes:** The repealed section pertained to professional community planner registration fees.

### **338.2225 Cosmetologist, manicurist, natural hair culturist, esthetician, electrologist, instructor, operator of cosmetology establishment or school of cosmetology, person seeking student registration or transfer, or person conducting apprenticeship program; fees.**

Sec. 25.

Fees for a person licensed or seeking licensure as a cosmetologist, manicurist, natural hair culturist, esthetician, electrologist, or instructor or a person licensed or seeking licensure to operate a cosmetology establishment or school of cosmetology, seeking a student registration or transfer, or seeking a permit to conduct an apprenticeship program under article 12 of the occupational code, MCL 339.1201 to 339.1218, are as follows:

- (a) Application processing fees:
  - (i) Apprenticeship program \$ 25.00
  - (ii) Cosmetologist, manicurist, natural hair culturist, esthetician, electrologist, or instructor as follows:

(A) If paid after September 30, 2027	10.00
(B) Beginning October 1, 2003 through September 30, 2027	15.00
(iii) Cosmetology establishment	25.00
(iv) School of cosmetology	100.00
(b) Examination fees:	
(i) Complete examination for cosmetologist, manicurist, natural hair culturist, esthetician, electrologist, or instructor	25.00
(ii) Written portion only	15.00
(iii) Practical portion only	15.00
(iv) Examination review	20.00
(c) License fees, per year:	
(i) Cosmetologist, manicurist, natural hair culturist, esthetician, electrologist, or instructor as follows:	
(A) If paid after September 30, 2027	12.00
(B) Beginning October 1, 2003 through September 30, 2027	24.00
(ii) Cosmetology establishment	25.00
(iii) School of cosmetology	100.00
(d) Student registration or transfer fee as follows:	
(i) If paid after September 30, 2027	5.00
(ii) Beginning October 1, 2003 through September 30, 2027	15.00

**History:** 1979, Act 152, Eff. Jan. 1, 1980 ;-- Am. 1980, Act 295, Eff. Jan. 1, 1981 ;-- Am. 1988, Act 461, Eff. Sept. 1, 1989 ;-- Am. 1997, Act 98, Imd. Eff. Aug. 7, 1997 ;-- Am. 2003, Act 87, Imd. Eff. July 23, 2003 ;-- Am. 2007, Act 77, Imd. Eff. Sept. 30, 2007 ;-- Am. 2012, Act 308, Imd. Eff. Oct. 1, 2012 ;-- Am. 2015, Act 75, Eff. Oct. 1, 2015 ;-- Am. 2019, Act 71, Imd. Eff. Sept. 30, 2019 ;-- Am. 2023, Act 131, Imd. Eff. Sept. 29, 2023

**Compiler's Notes:** For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws.

### **338.2227 Employment or consulting agent or operator of personnel agency; fees.**

#### **Sec. 27.**

Fees for a person licensed or seeking licensure as an employment or consulting agent or for a person licensed or seeking licensure to operate a personnel agency under article 10 of the occupational code, MCL 339.1001 to 339.1022, are as follows:

(a) Application processing fees:	
(i) Personnel agency	\$ 225.00
(ii) Employment or consulting agent	30.00
(iii) Office or stockholder change	25.00
(b) Examination fee	50.00
(c) Examination review	20.00
(d) License fee, per year:	
(i) Personnel agency	125.00
(ii) Employment or consulting agent as follows:	
(A) If paid after September 30, 2027	30.00
(B) Beginning October 1, 2003 through September 30, 2027	40.00

**History:** 1979, Act 152, Eff. Jan. 1, 1980 ;-- Am. 1980, Act 295, Eff. Jan. 1, 1981 ;-- Am. 1988, Act 461, Eff. Sept. 1, 1989 ;-- Am. 1992,

Act 252, Imd. Eff. Nov. 19, 1992 ;-- Am. 2003, Act 87, Imd. Eff. July 23, 2003 ;-- Am. 2007, Act 77, Imd. Eff. Sept. 30, 2007 ;-- Am. 2012, Act 308, Imd. Eff. Oct. 1, 2012 ;-- Am. 2015, Act 75, Eff. Oct. 1, 2015 ;-- Am. 2019, Act 71, Imd. Eff. Sept. 30, 2019 ;-- Am. 2023, Act 131, Imd. Eff. Sept. 29, 2023

**Compiler's Notes:** For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws.

### **338.2228 Repealed. 2014, Act 152, Eff. June 24, 2014.**

**Compiler's Notes:** The repealed section pertained to auctioneer registration fees.

### **338.2229 Repealed. 2018, Act 116, Eff. July 25, 2018.**

**Compiler's Notes:** The repealed section pertained to fees for person registered or seeking registration as forester.

### **338.2231 Hearing aid dealer, salesperson, or trainee; fees.**

#### **Sec. 31.**

Fees for a person licensed or seeking licensure as a hearing aid dealer, salesperson, or trainee under article 13 of the occupational code, MCL 339.1301 to 339.1309, are as follows:

- (a) Application processing fees:
  - (i) Dealer \$ 20.00
  - (ii) Salesperson 20.00
  - (iii) Trainee 10.00
- (b) Examination fees:
  - (i) Complete dealer examination 100.00
  - (ii) Dealer examination, per part 35.00
  - (iii) Complete salesperson examination 100.00
  - (iv) Salesperson examination, per part 30.00
- (c) Examination review 20.00
- (d) License fees, per year:
  - (i) Dealer 80.00
  - (ii) Salesperson 50.00
- (iii) Trainee as follows:
  - (A) If paid after September 30, 2027 20.00
  - (B) Beginning October 1, 2003 through September 30, 2027 40.00

**History:** 1979, Act 152, Eff. Jan. 1, 1980 ;-- Am. 1980, Act 295, Eff. Jan. 1, 1981 ;-- Am. 1988, Act 461, Eff. Sept. 1, 1989 ;-- Am. 2003, Act 87, Imd. Eff. July 23, 2003 ;-- Am. 2007, Act 77, Imd. Eff. Sept. 30, 2007 ;-- Am. 2012, Act 308, Imd. Eff. Oct. 1, 2012 ;-- Am. 2015, Act 75, Eff. Oct. 1, 2015 ;-- Am. 2019, Act 71, Imd. Eff. Sept. 30, 2019 ;-- Am. 2023, Act 131, Imd. Eff. Sept. 29, 2023

**Compiler's Notes:** For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws.

**338.2233 Repealed. 1995, Act 183, Imd. Eff. Oct. 23, 1995.**

**Compiler's Notes:** The repealed section pertained to required fees for horologists and horology apprentices.

**338.2235 Repealed. 1988, Act 461, Eff. Sept. 1, 1989.**

**Compiler's Notes:** The repealed section pertained to fees for land sold or offered for sale under MCL 565.801 to 565.835.

**338.2237 Real estate broker, associate broker, salesperson, or branch office; fees; real estate education fund; real estate enforcement fund; creation.**

Sec. 37.

(1) Fees for a person licensed or seeking licensure as a real estate broker, associate broker, salesperson, or branch office or seeking other licenses or approvals issued under article 25 of the occupational code, MCL 339.2501 to 339.2518, are as follows:

(a) Application processing fees:

(i) Brokers and associate brokers as follows:

(A) If paid after September 30, 2027	\$ 20.00
(B) Beginning October 1, 2003 through September 30, 2027	35.00

(ii) Salespersons	10.00
-------------------	-------

(iii) Branch office	10.00
---------------------	-------

(b) License fees, per year:

(i) Brokers and associate brokers	36.00
-----------------------------------	-------

(ii) Salespersons	26.00
-------------------	-------

(c) Branch office fee, per year as follows:

(i) If paid after September 30, 2027	10.00
--------------------------------------	-------

(ii) Beginning October 1, 2003 through September 30, 2027	20.00
---	-------

(d) Sale of out of state property:

(i) Application to sell	20.00
-------------------------	-------

(ii) Property registration	500.00
----------------------------	--------

(iii) Renewal of approval to sell	20.00
-----------------------------------	-------

(2) The real estate education fund is created in the state treasury. All of the following apply to the real estate education fund:

(a) Fifteen dollars of each license fee received by the department under subsection (1)(b) during that 3-year license cycle must be forwarded to the state treasurer for deposit into the real estate education fund.

(b) The department shall use the money in the real estate education fund only for the operation of departmental programs related to education required of all licensees or applicants for licensure under article 25 of the occupational code, MCL 339.2501 to 339.2518.

(c) The state treasurer shall direct the investment of the fund and shall credit to the fund interest and earnings from fund investments.

(d) Money in the fund at the close of the fiscal year remains in the fund and does not lapse to the general fund.

(e) The department is the administrator of the fund for auditing purposes.

(3) The real estate enforcement fund is created in the state treasury. All of the following apply to the real estate enforcement fund:

(a) Fifteen dollars of each license fee received by the department under subsection (1)(b) during that 3-year license cycle must be forwarded to the state treasurer for deposit into the real estate enforcement fund.

(b) The department in conjunction with the attorney general shall use the money in the real estate enforcement fund only for the investigation and enforcement of actions regarding unlicensed activity and real estate fraud.

(c) The state treasurer shall direct the investment of the fund and shall credit to the fund interest and earnings from fund investments.

(d) Money in the fund at the close of the fiscal year remains in the fund and does not lapse to the general fund.

(e) The department is the administrator of the fund for auditing purposes.

**History:** 1979, Act 152, Eff. Jan. 1, 1980 ;-- Am. 1980, Act 295, Eff. Jan. 1, 1981 ;-- Am. 1981, Act 227, Imd. Eff. Jan. 7, 1982 ;-- Am. 1983, Act 145, Imd. Eff. July 18, 1983 ;-- Am. 1988, Act 461, Eff. Sept. 1, 1989 ;-- Am. 2002, Act 623, Imd. Eff. Dec. 23, 2002 ;-- Am. 2003, Act 87, Imd. Eff. July 23, 2003 ;-- Am. 2006, Act 645, Imd. Eff. Jan. 5, 2007 ;-- Am. 2007, Act 77, Imd. Eff. Sept. 30, 2007 ;-- Am. 2012, Act 308, Imd. Eff. Oct. 1, 2012 ;-- Am. 2015, Act 75, Eff. Oct. 1, 2015 ;-- Am. 2019, Act 71, Imd. Eff. Sept. 30, 2019 ;-- Am. 2023, Act 131, Imd. Eff. Sept. 29, 2023

**Compiler's Notes:** For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws.

**338.2238 State licensed real estate appraiser, certified general real estate appraiser, certified residential real estate appraiser, or limited real estate appraiser; fees; inclusion of federal fee; creation of real estate appraiser education fund.**

Sec. 38.

(1) Fees for an individual licensed or seeking licensure as a state licensed real estate appraiser, a certified general real estate appraiser, a certified residential real estate appraiser, or a limited real estate appraiser under article 26 of the occupational code, MCL 339.2601 to 339.2637, are as follows:

(a) Application processing fees:

(i) Certified general real estate appraiser as follows:

(A) If paid after September 30, 2027 \$ 25.00

(B) Beginning October 1, 2003 through September 30, 2027 35.00

(ii) Certified residential real estate appraiser as follows:

(A) If paid after September 30, 2027 25.00

(B) Beginning October 1, 2003 through September 30, 2027 35.00

(iii) State licensed real estate appraiser as follows:

(A) If paid after September 30, 2027 25.00

(B) Beginning October 1, 2003 through September 30, 2027 35.00

(iv) Limited real estate appraiser as follows:

(A) If paid after September 30, 2027 25.00

(B) Beginning October 1, 2003 through September 30, 2027 35.00

(b) Examination fees:

(i) Certified general real estate appraiser 100.00

(ii) Certified residential real estate appraiser 100.00

(iii) State licensed real estate appraiser 100.00

(c) License fee, per year:

(i) Certified general real estate appraiser 175.00

(ii) Certified residential real estate appraiser 175.00

(iii) State licensed real estate appraiser 175.00

(iv) Limited real estate appraiser 125.00

(d) Temporary permit fee 125.00

(2) The license fee includes a fee imposed by the federal government under 12 USC 3338 for certified general real estate appraisers, certified residential real estate appraisers, and state licensed real estate appraisers. The amount of the fee described in this subsection must not exceed \$50.00 per licensee, and the department shall collect and pay the fee to the federal government under section 2637 of the occupational code, MCL 339.2637.

(3) The real estate appraiser education fund is created in the state treasury. All of the following apply to the real

estate appraiser education fund:

(a) Ten dollars of each fee received under subsection (1)(c) must be forwarded to the state treasurer for deposit into the real estate appraiser education fund.

(b) The department shall use the money in the real estate appraiser education fund only for the operation of departmental programs related to the education required of all licensees or applicants for licensure under article 26 of the occupational code, MCL 339.2601 to 339.2637.

(c) The state treasurer shall direct the investment of the fund and shall credit to the fund interest and earnings from fund investments.

(d) Money in the fund at the close of the fiscal year remains in the fund and does not lapse to the general fund.

(e) The department is the administrator of the fund for auditing purposes.

**History:** Add. 1990, Act 268, Imd. Eff. Oct. 17, 1990 ;-- Am. 1999, Act 171, Imd. Eff. Nov. 10, 1999 ;-- Am. 2003, Act 87, Imd. Eff. July 23, 2003 ;-- Am. 2007, Act 77, Imd. Eff. Sept. 30, 2007 ;-- Am. 2012, Act 308, Imd. Eff. Oct. 1, 2012 ;-- Am. 2015, Act 75, Eff. Oct. 1, 2015 ;-- Am. 2019, Act 71, Imd. Eff. Sept. 30, 2019 ;-- Am. 2023, Act 131, Imd. Eff. Sept. 29, 2023

**Compiler's Notes:** For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws.

### **338.2238a Appraisal management company; licensure fees.**

Sec. 38a.

Fees for a person licensed or seeking licensure as a state licensed appraisal management company under article 26A of the occupational code, MCL 339.2661 to 339.2677, are as follows:

(a) Application processing fee \$ 500.00.

(b) License fee, per year \$ 500.00.

**History:** Add. 2012, Act 426, Eff. Apr. 1, 2014

### **338.2239 Residential builder or residential maintenance and alteration contractor, salesperson, or branch office; fees; builder enforcement fund; creation; administration; allocation; use; carryforward of unexpended balance.**

Sec. 39.

(1) Fees for a person licensed or seeking licensure as a residential builder or residential maintenance and alteration contractor, salesperson, or branch office under article 24 of the occupational code, MCL 339.2401 to 339.2412, are as follows:

(a) Application processing fee \$ 15.00

(b) Examination fees:

(i) Complete builder or maintenance and alteration contractor examination 50.00

(ii) Law and rules portion 30.00

(iii) Practice or trades portion 30.00

(iv) Salesperson examination 30.00

(c) Examination review 20.00

(d) License fee only for the first license cycle of an initial or renewal licensee following the effective date of the

amendatory act that added subsection (2),

per year 60.00

(e) License fee, per year 50.00

(2) The builder enforcement fund is created in the state treasury. All of the following apply to the builder enforcement fund:

(a) The department is the administrator of the fund for auditing purposes.

(b) A 1-time-only \$30.00 allocation from a license fee received by the department under subsection (1)(d) during a single 3-year license cycle shall be deposited into the builder enforcement fund. The department shall make the \$30.00 allocation only once per licensee.

(c) Five dollars of the \$50.00 license fee paid under subsection (1)(e) shall be deposited into the builder enforcement fund. If on December 1 of any calendar year the department determines that the balance in the builder enforcement fund is more than \$3,000,000.00, the \$5.00 allocation to the builder enforcement fund from the \$50.00 renewal fee due after January 1 of the following year shall not be made. If on any subsequent December 1 the department determines that the balance in the fund is less than \$750,000.00, the \$5.00 allocation shall resume for any renewal fee due after January 1 of the following year.

(d) The department shall utilize the builder enforcement fund only for the enforcement of article 24 of the occupational code, MCL 339.2401 to 339.2412, regarding unlicensed activity as further described in section 601(1) and (2) of the occupational code, MCL 339.601, and to reimburse the attorney general for the reasonable cost of services provided to the department and for expenses incurred in prosecutions of unlicensed activity or prosecuting attorney for expenses incurred in conducting prosecutions of unlicensed practice.

(e) The state treasurer shall direct the investment of the fund and shall credit to the fund interest and earnings from fund investments.

(f) Money in the fund at the close of the fiscal year shall remain in the fund and shall not lapse to the general fund.

**History:** 1979, Act 152, Eff. Jan. 1, 1980 ;-- Am. 1980, Act 295, Eff. Jan. 1, 1981 ;-- Am. 1988, Act 461, Eff. Sept. 1, 1989 ;-- Am. 2003, Act 87, Imd. Eff. July 23, 2003 ;-- Am. 2007, Act 77, Imd. Eff. Sept. 30, 2007 ;-- Am. 2007, Act 158, Eff. June 1, 2008 ;-- Am. 2012, Act 308, Imd. Eff. Oct. 1, 2012

**Compiler's Notes:** For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws.

### **338.2241 Repealed. 1995, Act 104, Imd. Eff. June 23, 1995.**

**Compiler's Notes:** The repealed section pertained to myomassologist fees.

### **338.2243 Practice of mortuary science, operator of funeral establishment, resident trainee, embalmer, or funeral director; fees.**

Sec. 43.

Fees for a person licensed or seeking licensure to engage in the practice of mortuary science or to operate a funeral establishment or for a person licensed or seeking licensure as a resident trainee or licensed as an embalmer or funeral director under article 18 of the occupational code, MCL 339.1801 to 339.1812, are as follows:

(a) Application processing fees:

- |  |          |
|--|----------|
| (i) Mortuary science license                               | \$ 20.00 |
| (ii) Funeral establishment license                         | 115.00   |
| (iii) Resident trainee                                     | 15.00    |
| (iv) Courtesy mortuary science license under section 1806a | 135.00   |

(b) Examination fees:

- |                          |        |
|--------------------------|--------|
| (i) Complete examination | 200.00 |
|--------------------------|--------|



(ii) National examination only	150.00
(iii) State examination only	50.00
(c) Examination review	25.00
(d) License fees, per year:	
(i) Mortuary science as follows:	
(A) If paid after September 30, 2021	77.50
(B) If paid after September 30, 2023	115.00
(C) If paid after September 30, 2025	152.50
(D) Beginning October 1, 2003 through September 30, 2021	40.00
(ii) Funeral establishment as follows:	
(A) If paid after September 30, 2021	107.50
(B) If paid after September 30, 2023	160.00
(C) If paid after September 30, 2025	212.50
(D) Beginning October 1, 2003 through September 30, 2021	55.00
(iii) Embalmer	30.00
(iv) Funeral director	30.00
(v) Resident trainee	30.00
(vi) Courtesy mortuary science license under section 1806a	135.00

**History:** 1979, Act 152, Eff. Jan. 1, 1980 ;-- Am. 1980, Act 295, Eff. Jan. 1, 1981 ;-- Am. 1988, Act 461, Eff. Sept. 1, 1989 ;-- Am. 2003, Act 87, Imd. Eff. July 23, 2003 ;-- Am. 2007, Act 77, Imd. Eff. Sept. 30, 2007 ;-- Am. 2012, Act 308, Imd. Eff. Oct. 1, 2012 ;-- Am. 2013, Act 78, Eff. Sept. 26, 2013 ;-- Am. 2015, Act 75, Eff. Oct. 1, 2015 ;-- Am. 2019, Act 71, Imd. Eff. Sept. 30, 2019 ;-- Am. 2020, Act 334, Imd. Eff. Dec. 29, 2020

**Compiler's Notes:** For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws.

### **338.2243a Operation of refrigeration facility or removal service; application; fees.**

Sec. 43a.

(1) Fees for a person licensed or seeking licensure to operate a refrigeration facility under article 18A of the occupational code, MCL 339.1851 to 339.1873, are as follows:

- (a) Application processing fee, \$225.00.
- (b) License fee, every 2 years, \$300.00.
- (c) Initial inspection fee, \$300.00.

(2) Fees for a person registered or seeking registration to operate a removal service under article 18A of the occupational code, MCL 339.1851 to 339.1873, are as follows:

- (a) Application processing fee, \$225.00.
- (b) Registration fee, every 2 years, \$300.00.
- (c) Initial inspection fee, \$300.00.
- (d) Additional vehicle inspection fee, \$50.00.

**History:** Add. 2024, Act 108, Eff. Apr. 2, 2025

### **338.2245 Repealed. 2000, Act 11, Imd. Eff. Mar. 7, 2000.**

**Compiler's Notes:** The repealed section pertained to finding a person unqualified.

**338.2247 Repealed. 2001, Act 139, Imd. Eff. Oct. 26, 2001.**

**Compiler's Notes:** The repealed section pertained to nursing home administrator licensing fees.

**338.2249 Repealed. 2004, Act 403, Eff. May 13, 2005.**

**Compiler's Notes:** The repealed section pertained to license fees for professional boxing.

**338.2251-338.2261 Repealed. 1993, Act 87, Eff. Apr. 1, 1994.**

**Compiler's Notes:** The repealed sections pertained to fees for persons engaged in manufacture, distribution, prescribing, or dispensing controlled substances, chiropractors, counselors, dentists, dental assistants, dental hygienists, persons engaged in practice of medicine or seeking approval to supervise physician's assistants, registered nurses, licensed practical nurses, trained attendants, and optometrists.

**338.2262 Repealed. 2014, Act 155, Imd. Eff. June 11, 2014.**

**Compiler's Notes:** The repealed section pertained to ocularist or ocularist apprentice registration fees.

**338.2263-338.2275 Repealed. 1993, Act 87, Eff. Apr. 1, 1994.**

**Compiler's Notes:** The repealed sections pertained to fees for pharmacists or other practices regulated under MCL 333.17701 to 333.17770, physical therapists, physician's assistants, podiatrists, psychologists, sanitarians, certified occupational therapists, certified occupational therapist assistants, veterinarians, and veterinary technicians.

**338.2277 Effective date.**

Sec. 77.

This act shall take effect January 1, 1980.

**History:** 1979, Act 152, Eff. Jan. 1, 1980

**Compiler's Notes:** For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws.

## BUILDING OFFICIALS AND INSPECTORS REGISTRATION ACT

### Act 54 of 1986

338.2301-338.2313 Repealed. 2016, Act 407, Eff. Apr. 4, 2017.

## ASBESTOS ABATEMENT CONTRACTORS LICENSING ACT

### Act 135 of 1986

AN ACT to provide for the licensing and regulation of asbestos abatement contractors; to create the asbestos abatement contractors licensing board; to prescribe certain powers and duties of the department of consumer and industry services; to establish the powers and duties of the asbestos abatement contractors licensing board; to create an asbestos abatement fund and to provide for expenditures from the fund; to provide for the promulgation of rules; to provide for certain fees; and to provide for penalties and civil fines.

**History:** 1986, Act 135, Eff. July 2, 1986 ;-- Am. 1990, Act 2, Imd. Eff. Feb. 12, 1990 ;-- Am. 1998, Act 132, Imd. Eff. June 24, 1998

### *The People of the State of Michigan enact:* Chapter I

#### **338.3101 Short title.**

Sec. 101.

This act shall be known and may be cited as the "asbestos abatement contractors licensing act".

**History:** 1986, Act 135, Eff. July 2, 1986

**Compiler's Notes:** For transfer of powers and duties of the division of occupational health in the bureau of environmental and occupational health, with the exception of dry cleaning unit, from the department of public health to the director of the department of labor, see E.R.O. No. 1996-1, compiled at MCL 330.3101 of the Michigan Compiled Laws.

#### **338.3103 Definitions.**

Sec. 103.

As used in this act:

- (a) "Administrative procedures act of 1969" means 1969 PA 306, MCL 24.201 to 24.328.
- (b) "Asbestos" means a group of naturally occurring minerals that separate into fibers, including chrysotile, amosite, crocidolite, anthophyllite, tremolite, and actinolite.
- (c) "Asbestos abatement contractor" means a business entity that is licensed under this act and that carries on the business of asbestos abatement on the premises of another business entity and not on the asbestos abatement contractor's premises.
- (d) "Asbestos abatement project" means any activity involving persons working directly with the demolition, renovation, or encapsulation of friable asbestos materials.
- (e) "Board" means the asbestos abatement contractors licensing board created in section 201.
- (f) "Business entity" means a person, partnership, firm, association, corporation, sole proprietorship, public or private agency, or other legal entity.

(g) "Construction contractor" means a business entity that, pursuant to a contract with the owner or lessee of real property, provides an improvement to that property.

(h) "Construction subcontractor" means a business entity that, pursuant to a contract with a person other than the owner or lessee of the real property, performs any part of a construction contractor's contract for an improvement to that property.

(i) "Demolition" means the razing or taking out of any load-supporting structural member and any related removing or stripping of friable asbestos materials.

(j) "Department" means the department of consumer and industry services.

(k) "Encapsulate" means the sealing of friable asbestos materials by means of the spraying of liquid sealant or any other suitable sealing method.

(l) "Friable asbestos material" means any material that contains more than 1% asbestos by weight and that can be crumbled, pulverized, or reduced to powder when dry, by hand pressure.

(m) "License" means an authorization issued by the department upon recommendation by the board for demolition, renovation, encapsulation, or removal of asbestos.

(n) "Neutral party" means a business entity that is not part of the asbestos abatement contractor's primary or secondary family and is not legally associated to any business operated by the asbestos abatement contractor.

(o) "Removal" means the taking out or stripping of asbestos from an existing structure.

(p) "Renovation" means the removal or stripping of friable asbestos materials used on any pipe, duct, boiler, tank, reactor, turbine, furnace, or structural member. Renovation does not include any of the following:

(i) An operation necessitated by a nonroutine failure of equipment.

(ii) An unplanned operation resulting from a sudden unexpected event.

(iii) An operation in which load-supporting structural members are wrecked or taken out.

(q) "Structural member" means any load-supporting member, including, but not limited to, beams and load-supporting walls, or any nonsupporting member, including, but not limited to, ceilings and nonload-supporting walls.

(r) "Working day" means any day other than a Saturday, Sunday, or state legal holiday.

**History:** 1986, Act 135, Eff. July 2, 1986 ;-- Am. 1993, Act 55, Imd. Eff. June 8, 1993 ;-- Am. 1998, Act 132, Imd. Eff. June 24, 1998

## Chapter II

### **338.3201 Asbestos abatement contractors licensing board; created; purpose; appointment, qualifications, and terms of members; vacancies; expenses.**

Sec. 201.

(1) There is created an asbestos abatement contractors licensing board in the department, which shall assist the department in administering and carrying out the provisions of this act. The board shall consist of 7 members to be appointed by the governor with the advice and consent of the senate.

(2) Of the 7 members appointed pursuant to subsection (1), 3 shall represent asbestos abatement contractors, 3 shall represent asbestos abatement laborers, and 1 shall represent the general public and be experienced in public health areas. Of the 3 members representing asbestos abatement laborers, no 2 shall belong to the same labor organization as defined in section 2 of Act No. 176 of the Public Acts of 1939, being section 423.2 of the Michigan Compiled Laws.

(3) Each member shall serve for a term of 3 years or until his or her successor is appointed and qualified. Of the members first appointed, 1 labor representative and 1 asbestos abatement contractor representative shall have a term of 1 year; 1 labor representative and 1 asbestos abatement contractor representative shall have a term of 2 years; and 1 labor representative, 1 asbestos abatement contractor representative, and 1 general public representative shall have a term of 3 years. Vacancies shall be filled for the unexpired terms in the same manner as original appointments. Members of the board shall serve without compensation, but shall be entitled to actual and necessary expenses incurred in the performance of official duties under this act.

**History:** 1986, Act 135, Eff. July 2, 1986

**Compiler's Notes:** Sec. 317 of this act provides: "The licensing provisions of this act shall take effect 3 months after the effective date of this act." For transfer of authority, powers, duties, functions, and responsibilities of the asbestos abatement contractors licensing board to the director of the Michigan state department of public health, see E.R.O. No. 1994-1, compiled at MCL 333.26322 of the Michigan Compiled Laws.

**338.3203 Duties of board; special meetings; quorum; conducting business at public meeting; notice of meeting; availability of documents to public.**

Sec. 203.

- (1) The board shall do all of the following:
  - (a) Organize and make rules governing the board's formal and informal procedures.
  - (b) Meet not less than quarterly each year.
  - (c) Keep a record of the proceedings and functions.
- (2) A special meeting of the board may be called by the chairperson and shall be called upon receipt of a written request signed by 2 or more members of the board. Four members of the board constitute a quorum to conduct business.
- (3) The business which the board may perform shall be conducted at a public meeting of the board held in compliance with the open meetings act, Act No. 267 of the Public Acts of 1976, being sections 15.261 to 15.275 of the Michigan Compiled Laws. Public notice of the time, date, and place of the meeting shall be given in the manner required by Act No. 267 of the Public Acts of 1976.
- (4) A written document prepared, used, in the possession of, or retained by the board in the performance of an official function shall be made available to the public in compliance with the freedom of information act, Act No. 442 of the Public Acts of 1976, being sections 15.231 to 15.246 of the Michigan Compiled Laws.

**History:** 1986, Act 135, Eff. July 2, 1986

**Compiler's Notes:** Sec. 317 of this act provides: "The licensing provisions of this act shall take effect 3 months after the effective date of this act." For transfer of authority, powers, duties, functions, and responsibilities of the asbestos abatement contractors licensing board to the director of the Michigan state department of public health, see E.R.O. No. 1994-1, compiled at MCL 333.26322 of the Michigan Compiled Laws.

**338.3205 Additional duties of board.**

Sec. 205.

- The board shall do all of the following:
- (a) Make recommendations to the department concerning the denial, suspension, or revocation of licenses required pursuant to this act, and other enforcement matters under this act.
  - (b) Upon request by the department, advise the department on the preparation and distribution of information on asbestos.
  - (c) Advise the department on the promulgation of administrative rules pursuant to this act.

**History:** 1986, Act 135, Eff. July 2, 1986

**Compiler's Notes:** Sec. 317 of this act provides: "The licensing provisions of this act shall take effect 3 months after the effective date of this act."

**338.3207 Asbestos abatement contractor; license required; exception.**

Sec. 207.

- (1) Except as otherwise provided in subsection (2), an asbestos abatement contractor shall not engage in any activity involving the demolition, renovation, or encapsulation of friable asbestos materials without first receiving a license from the department.
- (2) The licensing requirement of subsection (1) does not apply to any of the following if engaged in an asbestos abatement project that is incidental to the primary licensed trade and involves not more than 160 square feet or 260 linear feet of friable asbestos materials:

- (a) A business entity licensed under article 7 of the skilled trades regulation act, MCL 339.5701 to 339.5739.
- (b) A business entity licensed under article 8 of the skilled trades regulation act, MCL 339.5801 to 339.5819.
- (c) A business entity licensed under article 11 of the skilled trades regulation act, MCL 339.6101 to 339.6133.
- (d) A business entity licensed as a residential builder or a residential maintenance and alteration contractor under article 24 of the occupational code, 1980 PA 299, MCL 339.2401 to 339.2412.

**History:** 1986, Act 135, Eff. July 2, 1986 ;-- Am. 1990, Act 2, Imd. Eff. Feb. 12, 1990 ;-- Am. 1993, Act 55, Imd. Eff. June 8, 1993 ;-- Am. 1998, Act 132, Imd. Eff. June 24, 1998 ;-- Am. 2016, Act 411, Eff. Apr. 4, 2017

### **338.3209 Application for or renewal of license; requirements; fee.**

Sec. 209.

- (1) To apply for or renew a license, an asbestos abatement contractor shall do all of the following:
  - (a) Submit a completed application to the department on forms provided by the department. The asbestos abatement contractor shall state on the application whether or not the asbestos abatement contractor has liability insurance.
  - (b) Pay the fee required by subsection (2).
  - (c) Submit proof of Michigan workers' disability compensation insurance.
  - (d) Submit proof that all employees and agents of an asbestos abatement contractor who are responsible for, or are involved in, an asbestos abatement project have received training and become accredited as asbestos abatement workers or asbestos abatement contractors and supervisors as required under the asbestos workers accreditation act, 1988 PA 440, MCL 338.3401 to 338.3418.
- (2) Subject to section 211, a license or renewal fee shall be paid as follows:

Number of employees to be engaged in asbestos abatement projects	License fee	License renewal fee
4 or less	\$200.00	\$100.00
5 or more	\$400.00	\$300.00

**History:** 1986, Act 135, Eff. July 2, 1986 ;-- Am. 1993, Act 55, Imd. Eff. June 8, 1993 ;-- Am. 2004, Act 261, Imd. Eff. July 23, 2004

### **338.3211 Acknowledging receipt of application; notice of deficiency; issuance of license or denial of application; time; statement in license; grounds for denial of application; failure to issue license within certain time period; report; return of fee; proceedings for denial of license; "completed application" defined.**

Sec. 211.

- (1) Within 15 working days after receiving a license application, the department shall acknowledge receipt of the application and notify the applicant in writing, or make the information electronically available, of any deficiency in the application. Receipt of the application is considered the date the application is received by any agency or department of the state of Michigan. Within 60 calendar days after receiving a completed application, including all additional information requested by the department, the department shall issue a license or deny the license application. The 60-day time period is tolled upon notification by the department of a deficiency until the date the requested information is received by the department. The determination of the completeness of an application does not operate as an approval of the application for the license and does not confer eligibility of an applicant determined otherwise ineligible for issuance of a license. The license shall contain a statement in bold print that the issuance of a license does not imply asbestos indemnification coverage.

- (2) The department shall deny a license application if the department determines that the applicant has not demonstrated the ability to comply with either of the following:

- (a) The applicable requirements and procedures established by the department and the board under this act.
- (b) Other state and federal law pertaining to the health and safety aspects of asbestos demolition, renovation, and

encapsulation.

(3) Beginning the effective date of the amendatory act that added this subsection and notwithstanding any other provision of this act, if the department fails to issue or deny a license within the time required by this section, the department shall return the license fee and shall reduce the license fee for the applicant's next renewal application, if any, by 15%. The failure to issue a license within the time required under this section does not allow the department to otherwise delay the processing of the application, and that application, upon completion, shall be placed in sequence with other completed applications received at that same time. The department shall not discriminate against an applicant in the processing of the application based upon the fact that the license fee was refunded or discounted under this subsection.

(4) Beginning October 1, 2005, the director of the department shall submit a report by December 1 of each year to the standing committees and appropriations subcommittees of the senate and house of representatives concerned with asbestos and regulatory issues. The director shall include all of the following information in the report concerning the preceding fiscal year:

(a) The number of initial and renewal applications the department received and completed within the time period described in this section.

(b) The number of applications denied.

(c) The number of applicants not issued a license within the 60-day time period and the amount of money returned to licensees under subsection (3).

(5) If the department denies a license, the department shall return to the applicant the application fee, less \$25.00 subject to subsection (3).

(6) Proceedings for the denial of a license under this act shall be in accordance with the administrative procedures act of 1969.

(7) As used in this section and section 209, "completed application" means an application complete on its face and submitted with any applicable licensing fees as well as any other information, records, approval, security, or similar item required by law or rule from a local unit of government, a federal agency, or a private entity but not from another department or agency of the state of Michigan.

**History:** 1986, Act 135, Eff. July 2, 1986 ;-- Am. 1998, Act 132, Imd. Eff. June 24, 1998 ;-- Am. 2004, Act 261, Imd. Eff. July 23, 2004

### **338.3213 Terms and conditions of license.**

Sec. 213.

In granting a license, the department may, following review by the director of the department, impose reasonable terms and conditions to ensure continuous compliance with the requirements of this act.

**History:** 1986, Act 135, Eff. July 2, 1986

**Compiler's Notes:** Sec. 317 of this act provides: "The licensing provisions of this act shall take effect 3 months after the effective date of this act."

### **338.3215 Revocation or suspension of license.**

Sec. 215.

The department may revoke or suspend a license as provided under the administrative procedures act of 1969.

**History:** 1986, Act 135, Eff. July 2, 1986

**Compiler's Notes:** Sec. 317 of this act provides: "The licensing provisions of this act shall take effect 3 months after the effective date of this act."

### **338.3217 Duration of license; conditions to renewal.**

Sec. 217.

(1) Unless the department revokes or suspends a license, the license shall remain in effect for 1 year from the date of issuance.

(2) The department shall renew a license annually if the asbestos abatement contractor satisfies the following conditions:

(a) Submits a completed application for a renewal on forms provided by the department no sooner than 90 days before the license expires and not later than 30 days before the license expires. An application for renewal that is received after the time period described in this subdivision shall be treated as an initial application and shall require payment of an initial license fee, rather than a renewal license fee.

(b) Pays to the department the license renewal fee as specified in section 209.

(c) Has complied with all applicable requirements of this act and the rules promulgated under this act.

**History:** 1986, Act 135, Eff. July 2, 1986 ;-- Am. 1998, Act 132, Imd. Eff. June 24, 1998

### **338.3219 Responsibility for removal of asbestos.**

Sec. 219.

If the contract does not provide for asbestos abatement, a construction contractor or construction subcontractor who contracts to provide an improvement to real property shall not be responsible to provide for the removal of asbestos discovered in the course of providing the improvement to the property. This section shall not apply to construction contractor and construction subcontractor contracts entered into prior to the effective date of this act.

**History:** 1986, Act 135, Eff. July 2, 1986

**Compiler's Notes:** Sec. 317 of this act provides: "The licensing provisions of this act shall take effect 3 months after the effective date of this act."

### **338.3220 Asbestos abatement project; notice; fees; asbestos abatement fund; report; emergencies.**

Sec. 220.

(1) An asbestos abatement contractor shall notify the department in writing of all of the following at least 10 days before beginning an asbestos abatement project exceeding 10 linear feet or 15 square feet, or both, of friable asbestos materials:

(a) The name and address of the owner of the building or structure.

(b) The location of the building or structure where the asbestos abatement project will be performed.

(c) The schedule for the starting and completion of the asbestos abatement project which may not exceed 1 year in length.

(d) The amount of friable asbestos materials that will be removed or encapsulated.

(2) If during the course of a project and after a written contract is executed, a business entity that is exempt from licensure under section 207(2) and whose primary licensed trade is not that of an asbestos abatement contractor discovers that the removal or encapsulation of asbestos in an amount exceeding 10 linear feet or 15 square feet, or both, is required, that business entity shall notify the department of the asbestos abatement project before asbestos removal begins. Not more than 10 days after the discovery, the business entity shall provide written notification to the department in the manner described in subsection (1)(a) to (d).

(3) An asbestos abatement contractor providing written notification to the department pursuant to subsection (1) for an asbestos abatement project shall include a fee equal to 1% of the price of the contract for the asbestos abatement project and shall make available upon the request of the department a copy of the contract for the asbestos abatement project. All fees collected pursuant to this subsection shall be deposited in the asbestos abatement fund created in subsection (5).

(4) In the case of a business entity that provides notice under subsection (2) for an asbestos abatement project



that is incidental to the business entity's primary licensed trade and where asbestos is actually removed by that business entity, the primary licensed trade contractor shall include a fee of 1% of the asbestos abatement project portion of the contract price and shall make available upon the request of the department a copy of that portion of the contract covering the asbestos abatement. All fees collected pursuant to this subsection shall be deposited in the asbestos abatement fund created in subsection (5).

(5) The asbestos abatement fund is created and shall exist in the state treasury and shall receive revenue as provided in this act and other revenue as the legislature may provide. The state treasurer shall direct the investment of the fund. All interest and earnings of the fund shall be retained by the fund. Money in the fund at the close of the fiscal year shall remain in the fund and shall not revert to the general fund.

(6) Money in the asbestos abatement fund created in subsection (5) shall be used by the department only for the asbestos-related responsibilities of the department under this act which includes, but is not limited to, the inspection of asbestos abatement projects and the education of asbestos abatement contractors. It does not include use of the fund by the department for asbestos abatement projects on state owned property.

(7) Not later than October 1 of each year, the department shall report to the legislature and the applicable committees in the house of representatives and the senate on the amount of money generated by the fees charged under this section. The report shall include the number of asbestos abatement projects inspected and the number of citations issued for violations of this act and other applicable laws, rules, and regulations.

(8) Emergency asbestos abatement projects resulting from equipment failure or malfunctions are exempt from the 10-day written advance notice imposed under this section. The written notice in emergency situations shall be provided within 48 hours after the commencement of the asbestos abatement project except that the business entity shall contact the department telephonically immediately or as soon as possible after the discovery of the emergency situation.

**History:** Add. 1990, Act 2, Imd. Eff. Feb. 12, 1990 ;-- Am. 1993, Act 55, Imd. Eff. June 8, 1993 ;-- Am. 1998, Act 132, Imd. Eff. June 24, 1998

### **338.3221 Post abatement air monitoring check; maximum level of asbestos fibers.**

Sec. 221.

(1) Except as provided by this subsection, a building or structure owner or lessee shall have a post abatement air monitoring check performed by a qualified neutral party completely independent of the asbestos abatement contractor at all asbestos abatement project sites involving a negative pressure enclosure as specified by 29 C.F.R. 1926.1101(g)(5)(i) that involve 10 or more linear feet or 15 or more square feet of friable asbestos materials. If the asbestos abatement contractor and the building or structure owner or lessee agree, the owner or lessee may have the post abatement air monitoring check required by this subsection performed by in-house personnel or by the asbestos abatement contractor.

(2) Whenever feasible, unless waived by the building or structure owner or lessee, the post abatement air monitoring check required by this section shall make use of aggressive air sampling methods as described in unit III.B.7.d. to appendix A to subpart E of part 763 of title 40 of the code of federal regulations, which is adopted in this act by reference.

(3) Upon request by the department, a post abatement air monitoring check taken pursuant to this section shall be reported to the department.

(4) After completion of the asbestos abatement project, the level of asbestos fibers per cubic centimeter of air that are more than 5 micrometers in length when sampled and analyzed according to method 7400 entitled "fibers" issued by the national institute of occupational safety and health (NIOSH) on 2/15/84 and revised on 5/15/89 which was published in the NIOSH manual of analytical methods, 3rd edition, shall not exceed 0.05 asbestos fibers at the asbestos abatement project site.

**History:** Add. 1993, Act 55, Imd. Eff. June 8, 1993 ;-- Am. 1998, Act 132, Imd. Eff. June 24, 1998

## **Chapter III**

### **338.3301 Duties of department.**

Sec. 301.

The department, with the advice of the board, shall do all of the following:

- (a) Administer this act.
- (b) Issue licenses.
- (c) Promulgate rules as may be necessary for the orderly conduct of its affairs in relation to this act and for the administration of this act pursuant to the administrative procedures act of 1969.

**History:** 1986, Act 135, Eff. July 2, 1986

**Compiler's Notes:** Sec. 317 of this act provides: "The licensing provisions of this act shall take effect 3 months after the effective date of this act." For transfer of authority, powers, duties, functions, and responsibilities of the asbestos abatement contractors licensing board to the director of the Michigan state department of public health, see E.R.O. No. 1994-1, compiled at MCL 333.26322 of the Michigan Compiled Laws.

### **338.3303 Receiving or initiating complaints of alleged violations.**

Sec. 303.

The department shall receive or initiate complaints of alleged violations of this act or rules promulgated under this act and take action with respect to alleged violations or complaints as prescribed by this act.

**History:** 1986, Act 135, Eff. July 2, 1986

**Compiler's Notes:** Sec. 317 of this act provides: "The licensing provisions of this act shall take effect 3 months after the effective date of this act."

### **338.3305 Investigation; grounds for denying, suspending, or revoking license; applicability.**

Sec. 305.

(1) The department, in its own discretion, upon a recommendation by the board, or upon the written complaint of an aggrieved party or of a state agency or political subdivision, may investigate the acts of an asbestos abatement contractor under this act. After an investigation, the department may deny, suspend, or revoke a license issued under this act if an asbestos abatement contractor is found to be not in compliance with this act or the rules promulgated under this act. In addition, the department may deny, suspend, or revoke a license for any of the following:

- (a) A willful or negligent act that causes any person to be exposed to asbestos in violation of this act, a rule promulgated under this act, or other state or federal law pertaining to the public health and safety aspects of asbestos demolition, renovation, and encapsulation.
  - (b) Falsification of records.
  - (c) Continued failure to obtain or renew a license.
  - (d) Deliberate misrepresentation of an act in applying for a license.
  - (e) Permitting any person who has not received the proper training and certification under state or federal law to come in contact with asbestos or be responsible for an asbestos abatement project.
- (2) If the license of a business entity is denied, suspended, or revoked under this act, the denial, suspension, or revocation applies to each partner, trustee, director, officer, or person exercising control of the business entity.

**History:** 1986, Act 135, Eff. July 2, 1986 ;-- Am. 1993, Act 55, Imd. Eff. June 8, 1993

**Compiler's Notes:** Sec. 317 of this act provides: "The licensing provisions of this act shall take effect 3 months after the effective date of this act."

### **338.3306 Issuance of subpoena by circuit court.**

Sec. 306.

Upon application by the attorney general or a party to a contested case, the circuit court may issue a subpoena requiring a person to appear before a hearings examiner in the contested case or before the department in an investigation and be examined with reference to a matter within the scope of that contested case or investigation and to produce books, papers, or documents pertaining to that contested case or investigation.

**History:** Add. 1993, Act 55, Imd. Eff. June 8, 1993

### **338.3307 Monetary civil penalties; issuance, contents, and delivery of citation.**

Sec. 307.

(1) The department, upon recommendation by the board, shall promulgate pursuant to the administrative procedures act of 1969, a schedule of monetary civil penalties of not more than \$10,000.00 for each violation or day that the violation continues which may be assessed for a specified violation of this act or a rule promulgated under this act. For a violation of the licensing provision in section 207, the department shall establish monetary civil penalties in substantial compliance with the United States environmental protection agency's civil penalty policy for asbestos demolition and renovation but not more than \$25,000.00 for each violation or day that the violation continues.

(2) If the department believes that a person has violated this act or a rule promulgated under this act, the department may issue a citation at that time or not later than 90 days after discovery of the alleged violation. The citation shall be written and shall state with particularity the nature of the violation, including reference to the section of this act or the rule alleged to have been violated, the civil penalty established for the violation, if any, and the right to appeal the citation pursuant to section 309. The citation shall be personally delivered or sent by registered mail to the alleged violator.

**History:** 1986, Act 135, Eff. July 2, 1986

**Compiler's Notes:** Sec. 317 of this act provides: "The licensing provisions of this act shall take effect 3 months after the effective date of this act."

### **338.3309 Petition for administrative hearing; notice; attendance of employee representative; affirming, dismissing, or modifying citation; judicial review; finality, payment, and recovery of civil penalty; conduct of administrative hearings.**

Sec. 309.

(1) Not later than 20 days after receipt of a citation issued pursuant to section 307, the alleged violator may petition the department for an administrative hearing which shall be held before the board or the board's designated representative within 30 days after receipt of the petition. The department shall notify the alleged violator's employees or employee representative that an administrative hearing will be held and the date, time, and place of the hearing. The alleged violator shall permit the attendance of an employee representative at the administrative hearing. After the administrative hearing, the director of the department may affirm, dismiss, or modify the citation.

(2) An alleged violator aggrieved by a decision of the director of the department under this section may petition the circuit court of the county in which the violation was alleged to have occurred for review. The petition shall be filed not later than 60 days following receipt of the director's final decision.

(3) A civil penalty becomes final if a petition for an administrative hearing or review is not received within the time specified in this section. A civil penalty imposed under this act shall be payable to the department for deposit with the general fund. A civil penalty may be recovered in a civil action brought in the county in which the violation occurred or the defendant resides.

(4) Administrative hearings under this section shall be conducted pursuant to the administrative procedures act of 1969.

**History:** 1986, Act 135, Eff. July 2, 1986

**Compiler's Notes:** Sec. 317 of this act provides: "The licensing provisions of this act shall take effect 3 months after the effective date of this act."

### **338.3311 Violation as misdemeanor; penalty; prosecution.**

Sec. 311.

Notwithstanding the provisions of sections 307 and 309, any asbestos abatement contractor who engages in the trade or business of asbestos abatement without a license as provided for by this act or any person who violates this act or any rules promulgated under this act and who fails to correct the violation after notice is guilty of a misdemeanor, punishable by a fine of not more than \$500.00, and upon conviction for a subsequent offense, not more than \$1,000.00, or imprisonment for not more than 6 months, or both. A violation of this act may be prosecuted by either the attorney general or the prosecuting attorney of the judicial district in which the violation was committed.

**History:** 1986, Act 135, Eff. July 2, 1986

**Compiler's Notes:** Sec. 317 of this act provides: "The licensing provisions of this act shall take effect 3 months after the effective date of this act."

### **338.3313 Application of other sanctions, penalties, or provisions not precluded.**

Sec. 313.

The application of sanctions under this act shall not preclude the application of other sanctions, penalties, or provisions of any other federal, state, or political subdivision.

**History:** 1986, Act 135, Eff. July 2, 1986

### **338.3315 Annual report.**

Sec. 315.

The department shall submit to the legislature and the governor an annual report on the status of the licensing of asbestos abatement contractors.

**History:** 1986, Act 135, Eff. July 2, 1986

### **338.3317 Effective date of licensing provisions.**

Sec. 317.

The licensing provisions of this act shall take effect 3 months after the effective date of this act.

**History:** 1986, Act 135, Eff. July 2, 1986

**338.3319 Conditional effective date.**

Sec. 319.

This act shall not take effect unless Senate Bill No. 770 of the 83rd Legislature is enacted into law.

**History:** 1986, Act 135, Eff. July 2, 1986

**Compiler's Notes:** Senate Bill No. 770, referred to in Sec. 319, was filed with the Secretary of State on July 2, 1986, and became P.A. 1986, No. 147, Imd. Eff. July 2, 1986.

**PUBLIC ENTITY ASBESTOS REMOVAL DISCLOSURE ACT**

**Act 16 of 2024**

AN ACT to prohibit certain public entities from entering into certain contracts with certain entities that remove or abate asbestos; to require certain entities to disclose certain information when bidding on certain contracts with public entities; and to impose certain duties and responsibilities on certain public entities.

**History:** 2024, Act 16, Eff. Apr. 2, 2025

*The People of the State of Michigan enact:*

**338.3351 Short title.**

Sec. 1.

This act may be cited as the "public entity asbestos removal disclosure act".

**History:** 2024, Act 16, Eff. Apr. 2, 2025

**338.3353 Definitions.**

Sec. 3.

As used in this act:

(a) "Asbestos" means a group of naturally occurring minerals that separate into fibers, including chrysotile, amosite, crocidolite, anthophyllite, tremolite, and actinolite.

(b) "Asbestos abatement contractor" means a business entity that is licensed under the asbestos abatement contractors licensing act, 1986 PA 135, MCL 338.3101 to 338.3319, and that carries on the business of asbestos abatement on the premises of another business entity and not on the asbestos abatement contractor's premises. Asbestos abatement contractor includes an individual or person with an ownership interest in a business entity described in this subdivision.

(c) "Asbestos abatement project" means any activity involving persons working directly with the demolition, renovation, or encapsulation of friable asbestos materials.

(d) "Public entity" means this state or an agency or authority of this state, school district, community college district, intermediate school district, city, village, township, county, land bank, public authority, or public airport authority.

**History:** 2024, Act 16, Eff. Apr. 2, 2025

**338.3355 Asbestos abatement project; contract with public entity; affidavit requirements.**

**Sec. 5.**

(1) A public entity shall not enter into an asbestos abatement project with an asbestos abatement contractor, or a general contractor that contracts with an asbestos abatement contractor, for the abatement of asbestos unless the asbestos abatement contractor seeking to bid on the asbestos abatement project, before entering into a contract with the public entity, files an affidavit describing any criminal convictions relating to compliance with environmental laws or regulations and any violation notices of environmental laws or regulations, or whether it has been subject to an administrative order or consent judgment within the immediately preceding 5 years. If the asbestos abatement contractor has a criminal conviction related to compliance with environmental regulations as disclosed by the asbestos abatement contractor, the public entity shall not enter into a contract for an asbestos abatement project with that asbestos abatement contractor.

(2) If an asbestos abatement contractor enters into a contract with a public entity for an asbestos abatement project, the asbestos abatement contractor shall not enter into a contract with another asbestos abatement contractor unless that asbestos abatement contractor files an affidavit as described in subsection (1).

**History:** 2024, Act 16, Eff. Apr. 2, 2025

**PUBLIC ENTITY ASBESTOS REMOVAL VERIFICATION ACT**

**Act 59 of 2024**

AN ACT to prohibit certain public entities from entering into certain contracts with certain entities that remove or abate asbestos; to require certain entities to disclose certain information when bidding on certain contracts with public entities; and to impose certain duties and responsibilities on certain public entities.

**History:** 2024, Act 59, Eff. Apr. 2, 2025

*The People of the State of Michigan enact:*

**338.3371 Short title.**

**Sec. 1.**

This act may be cited as the "public entity asbestos removal verification act".

**History:** 2024, Act 59, Eff. Apr. 2, 2025

### **338.3373 Definitions.**

#### **Sec. 3.**

As used in this act:

(a) "Asbestos" means a group of naturally occurring minerals that separate into fibers, including chrysotile, amosite, crocidolite, anthophyllite, tremolite, and actinolite.

(b) "Asbestos abatement contractor" means a business entity that is licensed under the asbestos abatement contractors licensing act, 1986 PA 135, MCL 338.3101 to 338.3319, and that carries on the business of asbestos abatement on the premises of another business entity and not on the asbestos abatement contractor's premises. Asbestos abatement contractor includes an individual or person with an ownership interest in a business entity described in this subdivision.

(c) "Asbestos abatement project" means any activity involving persons working directly with the demolition, renovation, or encapsulation of friable asbestos materials.

(d) "Public entity" means this state or an agency or authority of this state, school district, community college district, intermediate school district, city, village, township, county, land bank, public authority, or public airport authority.

**History:** 2024, Act 59, Eff. Apr. 2, 2025

### **338.3375 Asbestos abatement project; contract with public entity; background investigation requirements; environmental regulation violations; public hearing.**

#### **Sec. 5.**

(1) A public entity shall not enter into an asbestos abatement project with an asbestos abatement contractor, or a general contractor that contracts with an asbestos abatement contractor, for the abatement of asbestos unless the public entity conducts a background investigation, as determined by the public entity and subject to subsection (2), of the asbestos abatement contractor seeking to bid on the asbestos abatement project.

(2) At a minimum, the background investigation required under subsection (1) must consist of the public entity consulting the department of environment, Great Lakes, and energy's webpage to determine if the asbestos abatement contractor or a general contractor that contracts with the asbestos abatement contractor has received notices of violation of environmental regulations, or has been subject to an administrative consent order or a consent judgment involving environmental regulations, and the United States Department of Labor, Occupational Safety and Health Administration's webpage to determine if the asbestos abatement contractor or a general contractor that contracts with the asbestos abatement contractor has received notices of violation of asbestos regulations.

(3) If the asbestos abatement contractor has been issued 5 or more notices of violation of environmental regulations, or has been subject to an administrative consent order or a consent judgment involving environmental regulations, within the immediately preceding 5 years, the public entity may not enter into a contract with that asbestos abatement contractor unless the public entity investigates each of the violation notices, or the administrative consent order or consent judgment, and determines that the asbestos abatement contractor is able to adhere to the proposed contract based on the public entity's observations of improvements in performance, improvements in operations to ensure compliance with environmental regulations, or other demonstrated ability to comply with environmental regulations. The public entity shall make the determination described in this subsection in writing and shall make that determination publicly available.

(4) If an asbestos abatement contractor enters into a contract with a public entity for an asbestos abatement project, the asbestos abatement contractor shall not enter into a contract with another asbestos abatement contractor unless the public entity has conducted a background investigation of that asbestos abatement contractor in the same manner as utilized by the public entity under subsection (1).

(5) Before entering into a contract for an asbestos abatement project with an asbestos abatement contractor, or a general contractor that contracts with an asbestos abatement contractor, that has been issued 5 or more notices of violation of environmental regulations, or has been subject to an administrative consent order or a consent judgment involving environmental regulations, within the immediately preceding 5 years, as determined by the background investigation required under subsection (1), the public entity shall conduct with not less than 30 days'

notice a public hearing for public input.

**History:** 2024, Act 59, Eff. Apr. 2, 2025

## **PUBLIC ASBESTOS ABATEMENT CONTRACTS**

### **Act 55 of 2024**

AN ACT to allow local governments and certain authorities to withhold payment under certain conditions to contractors on an asbestos abatement project; to provide for mandatory contract conditions on certain asbestos abatement projects; to provide for certain disclosures; and to prescribe the powers and duties of certain local officials.

**History:** 2024, Act 55, Eff. Apr. 2, 2025

*The People of the State of Michigan enact:*

#### **338.3381 Definitions.**

##### **Sec. 1.**

As used in this act:

- (a) "Asbestos" means a group of naturally occurring minerals that separate into fibers, including chrysotile, amosite, crocidolite, anthophyllite, tremolite, and actinolite.
- (b) "Asbestos abatement contractor" means a business entity that is licensed under the asbestos abatement contractors licensing act, 1986 PA 135, MCL 338.3101 to 338.3319, and that carries on the business of asbestos abatement on the premises of another and not on the asbestos abatement contractor's premises.
- (c) "Asbestos abatement project" means any activity involving persons working directly with the demolition, renovation, or encapsulation of friable asbestos materials.
- (d) "Local government" means a county, city, village, or township.

**History:** 2024, Act 55, Eff. Apr. 2, 2025

#### **338.3383 Asbestos abatement project; contract with public entity; payment withholding requirements.**

##### **Sec. 3.**

Beginning on the effective date of this act, if a local government or a land bank authority created under section 23 of the land bank fast track act, 2003 PA 258, MCL 124.773, enters into a contract with an asbestos abatement contractor or a demolition contractor that involves an asbestos abatement project, the contract must include a provision that the local government or land bank authority may withhold any payment to that asbestos abatement contractor or demolition contractor if the asbestos abatement contractor, demolition contractor, or any subcontractor of the asbestos abatement contractor or demolition contractor on that asbestos abatement project enters into, or begins negotiations to enter into, an administrative consent order or consent judgment with the department of environment, Great Lakes, and energy or another environmental regulatory agency within the time period the contract for that asbestos abatement project began that involves violations of environmental regulations



related to that project or other asbestos abatement projects. Payment may be withheld by the local government or land bank authority until the local government or land bank authority receives verification from the asbestos abatement contractor, the demolition contractor, the department of environment, Great Lakes, and energy, or another environmental regulatory agency that the violations of environmental regulations related to the administrative consent order or consent judgment, or a proposed administrative consent order or consent judgment, have been corrected.

**History:** 2024, Act 55, Eff. Apr. 2, 2025

### **338.3385 Disclosure of active administrative order or judgments; violation of environmental regulations.**

#### **Sec. 5.**

If involved in an asbestos abatement project with a local government or land bank authority, an asbestos abatement contractor, demolition contractor, or any subcontractor of the asbestos abatement contractor or demolition contractor must disclose to the local government or land bank authority if that asbestos abatement contractor, demolition contractor, or subcontractor is subject to an active administrative consent order or consent judgment, or has entered into, or is in negotiations to enter into, an administrative consent order or consent judgment, with the department of environment, Great Lakes, and energy or another environmental regulatory agency for any violations of environmental regulations.

**History:** 2024, Act 55, Eff. Apr. 2, 2025

## **ASBESTOS WORKERS ACCREDITATION ACT**

### **Act 440 of 1988**

AN ACT to provide for the accreditation of persons who perform asbestos-related work in schools, school buildings, and public and commercial buildings; to prescribe powers and duties of certain state agencies and officers; to prescribe remedies and penalties; and to assess certain fees.

**History:** 1988, Act 440, Imd. Eff. Dec. 27, 1988 ;-- Am. 1995, Act 127, Imd. Eff. June 30, 1995

*The People of the State of Michigan enact:*

### **338.3401 Short title.**

#### **Sec. 1.**

This act shall be known and may be cited as the "asbestos workers accreditation act".

**History:** 1988, Act 440, Imd. Eff. Dec. 27, 1988

**Compiler's Notes:** For transfer of powers and duties of the division of occupational health in the bureau of environmental and occupational health, with the exception of dry cleaning unit, from the department of public health to the director of the department of labor, see E.R.O. No. 1996-1, compiled at MCL 330.3101 of the Michigan Compiled Laws.

### 338.3402 Definitions.

#### Sec. 2.

As used in this act:

- (a) "ACBM" means asbestos-containing building material.
- (b) "Asbestos" means a group of naturally occurring minerals that separate into fibers, including chrysotile, amosite, crocidolite, anthophyllite asbestos, tremolite asbestos, and actinolite asbestos.
- (c) "Asbestos model accreditation plan" means the asbestos model accreditation plan issued by the environmental protection agency, appendix C to subpart E of part 763 of title 40 of the code of federal regulations.
- (d) "Asbestos-related work" means an activity or task performed by a person working with asbestos in buildings, including, but not limited to, inspection, management plan development, the design or conduct of response actions, and remedial work.
- (e) "Certificate of accreditation" or "certificate of reaccreditation" means a numbered document issued by the director as provided in section 13 to a person who possesses the necessary qualifications and who successfully completes the initial training and examination or refresher training required by this act.
- (f) "Day of training" means the equivalent of 8 hours, including breaks and lunch that do not exceed 1 hour.
- (g) "Department" means the department of consumer and industry services.
- (h) "Director" means the director of consumer and industry services or his or her authorized representative.
- (i) "Inspection" means an activity undertaken in a school building or public and commercial building to determine the presence or location or to assess the condition of friable or nonfriable ACBM or suspected ACBM, whether by visual or physical examination or by collecting samples of material. Inspection includes reinspection of known or assumed ACBM that has been previously identified. Inspection does not include any of the following:
  - (i) Periodic surveillance of the type described in 40 C.F.R. 763.92(b) conducted solely for the purpose of recording or reporting a change in the condition of known or assumed ACBM.
  - (ii) An inspection performed by employees or agents of federal, state, or local government solely for the purpose of determining compliance with applicable statutes or regulations.
  - (iii) A visual inspection of the type described in 40 C.F.R. 763.90(i) performed solely for the purpose of determining completion of response actions.
  - (iv) A limited scope inspection associated with a remodeling, renovation, operation, or maintenance activity in a public and commercial building that involves not more than 2 homogeneous areas as defined in 40 C.F.R. 763.83 and not more than 6 bulk samples collected in a randomly distributed manner.
- (j) "Interior space" means an enclosed portion of a public and commercial building, including, but not limited to, an exterior hallway, connecting structure, portico, or mechanical system used to condition an enclosed space.
- (k) "Person" means an individual, partnership, association, corporation, public or private agency, or other legal entity. Person does not include a homeowner performing asbestos-related work within his or her own home.
- (l) "Public and commercial building" means the interior space of a building that is not a school building, a residential apartment building of fewer than 10 units, or a detached single family home. Public and commercial building includes, but is not limited to, all of the following:
  - (i) Industrial and office buildings.
  - (ii) Residential apartment buildings and condominiums of 10 or more dwelling units.
  - (iii) Government-owned buildings.
  - (iv) Colleges and universities.
  - (v) Museums.
  - (vi) Airports.
  - (vii) Hospitals.
  - (viii) Churches.
  - (ix) Preschools.
  - (x) Stores.
  - (xi) Warehouses.
  - (xii) Factories.
- (m) "School" means a private or public elementary or secondary institution of learning including grades kindergarten through 12.
- (n) "School building" means 1 or more of the following at a school:
  - (i) A structure suitable for use as a classroom, including a school laboratory, library, eating facility, or food preparation facility.
  - (ii) A gymnasium or other facility that is specially designed for athletic or recreational activities or for an academic course in physical education.
  - (iii) A facility used for the instruction or housing of students for the purpose of administration of educational or

research programs.

(iv) A maintenance, storage, or utility facility, including a hallway essential to the operation of a facility or structure identified in subparagraph (i), (ii), or (iii).

(v) A portico or covered exterior hallway or walkway.

(vi) An exterior portion of a mechanical system.

(o) "Year of experience in asbestos-related work" means a year of work in which at least 25% of the individual's working time was spent on asbestos-related work, or an equivalent amount of work over more than 1 year's time if it was conducted after January 1, 1983.

**History:** 1988, Act 440, Imd. Eff. Dec. 27, 1988 ;-- Am. 1995, Act 127, Imd. Eff. June 30, 1995 ;-- Am. 1998, Act 133, Imd. Eff. June 24, 1998

### **338.3403 Asbestos-related work in school or public and commercial buildings requiring certificate of accreditation and annual reaccreditation; applicability of section to certain asbestos work.**

#### **Sec. 3.**

(1) A person shall not perform the following asbestos-related work in a school building or a public and commercial building in this state unless that person receives a certificate of accreditation and maintains annual reaccreditation through training, examination, and continuing education under this act:

(a) Inspect for asbestos-containing materials in a school building or a public and commercial building, except for a person who is certified by the American board of industrial hygiene as a certified industrial hygienist under standards acceptable to the department.

(b) Prepare an asbestos management plan for a school building.

(c) Design a response action beyond the scope of a small-scale, short-duration operation, maintenance and repair activity, or a response action to a major fiber release episode, as those terms are defined in the asbestos model accreditation plan.

(d) Conduct a response action beyond the scope of a small-scale, short-duration operation, maintenance and repair activity, or an activity that involves a major fiber release episode, as those terms are defined in the asbestos model accreditation plan.

(2) This section does not apply to class II asbestos work that only involves the removal or disturbance of 1 generic category of building material, class III asbestos work, or class IV asbestos work that is not performed in a regulated area, as those terms are defined in the occupational safety and health administration's standards for occupational exposure to asbestos in the construction industry, 59 F.R. 1926.1101, p. 41132 (August 10, 1994).

**History:** 1988, Act 440, Imd. Eff. Dec. 27, 1988 ;-- Am. 1995, Act 127, Imd. Eff. June 30, 1995

### **338.3404 Completion of initial training required for accreditation; length of initial training course; refresher training course required for reaccreditation.**

#### **Sec. 4.**

(1) A person who seeks accreditation to perform asbestos-related work in a school building or a public and commercial building in this state is required to complete initial training under this act. This initial training shall provide education in asbestos-containing materials inspection, management plan development, and response action technology.

(2) The length of the initial training course required for accreditation under this act shall vary by discipline as follows:

(a) An asbestos inspector shall complete a 3-day training course and successfully pass an examination.

(b) An asbestos management planner shall complete the inspector training course as prescribed by subdivision (a) plus an additional 2 days of training devoted to management planning and shall successfully pass an examination on each course of training.

(c) An asbestos abatement project designer shall complete not less than 3 days of training and successfully pass an examination.

(d) An asbestos abatement contractor or supervisor shall complete a 5-day training course and successfully pass an examination.

(e) An asbestos abatement worker shall complete a 4-day training course and successfully pass an examination.

(3) A person who seeks reaccreditation under this act to perform asbestos-related work in a school building or a public and commercial building in this state shall complete a 1-day annual refresher training course, except that an asbestos inspector is only required to complete a 1/2-day annual refresher training course.

**History:** 1988, Act 440, Imd. Eff. Dec. 27, 1988 ;-- Am. 1995, Act 127, Imd. Eff. June 30, 1995

### **338.3405 Certificate of accreditation; certificate of reaccreditation.**

#### **Sec. 5.**

(1) A person who meets the requirements of this act and who completes the initial training and passes the examination required under section 4 shall receive a certificate of accreditation from the director in accordance with section 13. The certificate of accreditation shall authorize the person to perform asbestos-related work in a school building or a public and commercial building in this state for a period of 1 year after its issuance.

(2) A person who completes the refresher training course required under section 4 shall receive an annual certificate of reaccreditation from the director in accordance with section 13. The certificate of reaccreditation shall authorize the person to perform asbestos-related work in a school building or a public and commercial building in this state for a period of 1 year after its issuance.

**History:** 1988, Act 440, Imd. Eff. Dec. 27, 1988 ;-- Am. 1995, Act 127, Imd. Eff. June 30, 1995

### **338.3406 Providing initial training courses, examinations, and refresher training courses; denial, revocation, or suspension of approval.**

#### **Sec. 6.**

(1) The initial training courses, examinations, refresher training courses, and certificates of successful course completion required under this act shall be provided by the department or a person approved by the department to sponsor the training and examinations and issue the certificates of successful course completion of a training course in accordance with the initial training, examinations, continuing education components, and the certificate issuance requirements of the asbestos model accreditation plan.

(2) The department may deny, revoke, or suspend approval of a person approved under this section for 1 or more of the following reasons:

(a) Misrepresentation of the extent of department approval of a training course.

(b) Failure to submit required information or notifications in a timely manner.

(c) Failure to maintain records required by law.

(d) Falsification of accreditation records, instructor qualifications, or other accreditation information.

(e) Failure to adhere to the training standards and requirements of this act or of the asbestos model accreditation plan.

**History:** 1988, Act 440, Imd. Eff. Dec. 27, 1988 ;-- Am. 1995, Act 127, Imd. Eff. June 30, 1995

### **338.3407 Accreditation as asbestos inspector, management planner, or project designer; minimum experience.**

#### **Sec. 7.**

The following minimum experience is required of a person seeking accreditation as an asbestos inspector, management planner, or project designer:

(a) An asbestos inspector shall possess either of the following:

(i) Not less than 1 year of experience in asbestos-related work or in general building inspections related to environmental and health concerns.

(ii) Not less than 5 years of supervisory experience in school building or public and commercial building operations and maintenance.

(b) Both an asbestos management planner and an asbestos abatement project designer shall possess either of the following:

(i) Not less than 2 years of experience in asbestos-related work.

(ii) Not less than 5 years of supervisory experience in school building or public and commercial building operations and maintenance.

**History:** 1988, Act 440, Imd. Eff. Dec. 27, 1988 ;-- Am. 1995, Act 127, Imd. Eff. June 30, 1995

### **338.3408 Complaints of alleged violations; actions.**

Sec. 8.

The department shall receive or initiate complaints of alleged violations of this act and shall take appropriate actions with respect to those alleged violations or complaints.

**History:** 1988, Act 440, Imd. Eff. Dec. 27, 1988

### **338.3409 Investigations; grounds for denial, suspension, or revocation of certificate of accreditation or reaccreditation.**

Sec. 9.

(1) The department, on its own initiative or upon the written complaint of an aggrieved party, a state agency, or political subdivision, may investigate the acts of a person accredited under this act. The department may deny, suspend, or revoke a certificate of accreditation or reaccreditation under this act under the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws, if a person is found not to be in compliance with this act or other applicable state or federal laws.

(2) The department may deny, suspend, or revoke a certificate of accreditation or reaccreditation for 1 or more of the following reasons:

(a) A willful or negligent action in violation of this act or other state or federal laws pertaining to the public health and safety aspects of asbestos-related work in a school building or a public and commercial building.

(b) Falsification of records.

(c) Failure to obtain or renew a certificate of accreditation.

(d) Deliberate misrepresentation in applying for accreditation or reaccreditation.

(e) Permitting a person who has not received the proper training or accreditation under this act to be responsible for asbestos-related work in a school building or a public and commercial building.

(f) Permitting the duplication or use of one's own accreditation certificate by another person.

(g) Obtaining accreditation from a training provider that does not have approval to offer training for that particular discipline from either the environmental protection agency or a state that has an approval program as stringent as this act.

**History:** 1988, Act 440, Imd. Eff. Dec. 27, 1988 ;-- Am. 1995, Act 127, Imd. Eff. June 30, 1995

### **338.3410 Reciprocal agreements with other states.**

Sec. 10.

(1) The department shall seek to obtain written reciprocal agreements with other states that have accreditation and reaccreditation requirements that equal or exceed the requirements of this act for a person who performs asbestos-related work in a school building or a public and commercial building.

(2) Following the department's execution of a written reciprocal agreement with another state, a person who has been properly accredited by that state shall not be required to receive the initial training or take the examination to receive a certificate of accreditation required by this act to perform asbestos-related work in a school building or a public and commercial building in this state. That person shall submit a certificate of successful completion of training from the other state and the fee as required by section 14.

(3) For a person described in subsection (2), reaccreditation under sections 4 and 5 may only be obtained by submitting a copy of the certificate of successful completion of a refresher training course from another state and the fee as required by section 14.

**History:** 1988, Act 440, Imd. Eff. Dec. 27, 1988 ;-- Am. 1995, Act 127, Imd. Eff. June 30, 1995

### **338.3411 Sponsorship of training course or refresher training course; application for approval; requirements; fee; information; determination as to approval or denial; qualifications of instructors; receipt of completed application; issuance of license within certain period of time; report; application completed defined.**

Sec. 11.

(1) A person desiring to sponsor a training course or refresher training course for those disciplines required to be accredited under this act may apply for department approval on forms supplied by the department. The department shall approve a training course or a refresher training course that meets the requirements for the course as prescribed by section 6.

(2) An applicant desiring to sponsor a training course shall submit for each course all of the following information and fees to the department:

(a) The course sponsor's name, address, and telephone number.

(b) A list of any states that currently approve the training course, including information as to whether the training course has been approved by the United States environmental protection agency.

(c) The course curriculum.

(d) A letter from the training course sponsor clearly indicating compliance of the course with the requirements of this act for all of the following:

(i) The length of training in days.

(ii) The amount and type of hands-on training.

(iii) The length, format, and passing score of the examination.

(iv) The topics covered in the course.

(e) A copy of all course materials, including student manuals, instructor notebooks, handouts, and all other materials that the department may request.

(f) A detailed statement about the development of the examination used in the course.

(g) The names and qualifications of course instructors.

(h) A description and example of the certificate of successful course completion issued to students who attend the course and pass the examination that satisfies the requirements of the asbestos model accreditation plan.

(i) An initial application fee of \$400.00 and, after the initial year, an annual renewal fee of \$200.00. If the application is for renewal, the application and annual fee shall be submitted not earlier than 90 days before the course expires but not later than 30 days before the course expires. An application for renewal that is submitted later than the time period specified in this subdivision shall be treated by the director as an initial application for course renewal and shall require payment of the initial application fee, rather than the renewal fee.

(3) An applicant desiring to sponsor a refresher training course in a discipline required to be accredited under this act shall supply all of the following information to the department:

(a) The length of training.

(b) The topics covered in the course.

(c) A copy of all course materials.

(d) The names and qualifications of course instructors.

(e) A description and an example of the certificate of successful completion of the training course that satisfies the requirements of the asbestos model accreditation plan.

(4) Within 60 calendar days after receipt of the appropriate fee and a completed application from a person desiring to sponsor training courses as specified in this section, the department shall make a determination as to the approval or denial of the application and shall notify the applicant in writing of its determination. Receipt of the application is considered the date the application is received by any agency or department of the state of Michigan.

(5) The instructor of a course offered under this section shall have academic credentials or field experience, or both, in asbestos abatement.

(6) Beginning the effective date of the amendatory act that added this subsection, the department shall issue an initial or renewal license within the time period prescribed by subsection (4). If the application is considered incomplete by the department, the department shall notify the applicant in writing, or make the information electronically available, within 15 days after receipt of the incomplete application, describing the deficiency and requesting the additional information. The 60-day period described in subsection (4) is tolled upon notification by the department of a deficiency until the date the requested information is received by the department. The determination of the completeness of an application does not operate as an approval of the application for the license and does not confer eligibility of an applicant determined otherwise ineligible for issuance of a license.

(7) If the department fails to issue or deny a license within the time required by subsection (4), the department shall return the license fee and shall reduce the license fee for the applicant's next renewal application, if any, by 15%. The failure to issue a license within the time required under this section does not allow the department to otherwise delay the processing of the application, and that application, upon completion, shall be placed in sequence with other completed applications received at that same time. The department shall not discriminate against an applicant in the processing of the application based upon the fact that the license fee was refunded or discounted under this subsection.

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

(a) The number of initial and renewal applications the department received and completed within the 60-day time period described in subsection (4).

(b) The number of applications denied.

(c) The number of applicants not issued a license within the 60-day time period and the amount of money returned to licensees and registrants under subsection (7).

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

**History:** 1988, Act 440, Imd. Eff. Dec. 27, 1988 ;-- Am. 1995, Act 127, Imd. Eff. June 30, 1995 ;-- Am. 1998, Act 133, Imd. Eff. June 24, 1998 ;-- Am. 2004, Act 262, Imd. Eff. July 23, 2004

### **338.3412 Training course; notice of scheduled courses; inspection; effect of noncompliance; record keeping.**

#### **Sec. 12.**

(1) A training course sponsor shall submit to the department a notice of scheduled courses not less than 7 calendar days before the start of those courses, indicating starting and ending dates and times, location, and instructors. A training course sponsor shall also advise the department of cancellation of a course no less than 1 day before the indicated start date of that course.

(2) A training course sponsor shall permit department representatives, as part of a training course inspection, to attend, evaluate, and monitor a training course without charge to the department. The department shall not provide advance notice of a training course inspection. The department may revoke or suspend approval of a training course if the inspection of a field site, conducted under a training course inspection, indicates that a training course is not in compliance with the requirements of section 6.

(3) A training course sponsor shall satisfy the record-keeping requirements for a training provider described in unit I.F. of the asbestos model accreditation plan.

**History:** 1988, Act 440, Imd. Eff. Dec. 27, 1988 ;-- Am. 1995, Act 127, Imd. Eff. June 30, 1995



**338.3413 Numbered certificate of successful course completion; issuance; contents; issuance of numbered certificate of accreditation or certificate of reaccreditation; list of persons issued certificates.**

Sec. 13.

(1) The training course sponsor shall issue a numbered certificate of successful initial or refresher course completion to a student who meets the requirements of this act and who successfully completes the training and passes the training course's examination required under this act. The numbered certificate of successful course completion shall include the name of the student, the social security number of the student, the course completed, the dates of the course and the examination, a statement certifying that the student passed the examination, an expiration date that is 1 year after the date on which the person successfully completed the course and examination, and the name, address, and telephone number of the training course sponsor that issued the certificate.

(2) Upon the department's receipt of the fee required under section 14 and a copy of a certificate of successful course completion under subsection (1) or of a copy of a certificate of successful refresher course completion, the director shall issue a numbered certificate of accreditation or certificate of reaccreditation to the student. The numbered certificate of accreditation or certificate of reaccreditation shall include the name of the student, the course completed, and the annual expiration date for accreditation or reaccreditation.

(3) Within 10 calendar days after issuing certificates of successful course completion, the sponsor of an approved training course shall supply the department with a list of those persons to whom the certificates of successful completion were issued. The list shall be maintained by the department and shall include each person's name, social security number, and home address, the discipline for which the certificate was issued, and the date of the certificate.

**History:** 1988, Act 440, Imd. Eff. Dec. 27, 1988 ;-- Am. 1995, Act 127, Imd. Eff. June 30, 1995 ;-- Am. 1998, Act 133, Imd. Eff. June 24, 1998

**338.3414 Submission of application and annual fee; fee schedule; failure to submit annual fee; disposition of fees.**

Sec. 14.

(1) A person desiring accreditation or reaccreditation from the director under section 13 shall submit to the department an application for accreditation or reaccreditation on forms provided by the department. The applicant shall include, with the application, payment of the annual fee designated in subsection (3), subject to any refund or discount prescribed under section 11(7).

(2) If the application is for reaccreditation, the application and annual fee shall be submitted not earlier than 90 days before the accreditation expires but not later than 30 days before the accreditation expires. An application for reaccreditation that is submitted later than the time period specified in this subsection shall be treated by the director as an initial application for accreditation, and shall require payment of the accreditation fee, rather than the reaccreditation fee.

(3) The fee schedule for accreditation or reaccreditation is as follows:

	Accreditation	Reaccreditation
(a) Asbestos inspectors	\$150.00	\$75.00
(b) Asbestos management planners	\$150.00	\$75.00
(c) Asbestos abatement project designers	\$150.00	\$75.00
(d) Asbestos abatement contractors and supervisors	\$50.00	\$25.00
(e) Asbestos abatement workers	\$50.00	\$25.00

(4) Failure to submit the annual fee as part of the application for accreditation constitutes just cause for the director to deny issuance to a person of a certificate of accreditation or reaccreditation under section 13.

(5) All fees collected by the department under subsection (1) shall be deposited in the asbestos abatement fund created in section 220 of the asbestos abatement contractors licensing act, 1986 PA 135, MCL 338.3220.



**History:** 1988, Act 440, Imd. Eff. Dec. 27, 1988 ;-- Am. 1995, Act 127, Imd. Eff. June 30, 1995 ;-- Am. 1998, Act 133, Imd. Eff. June 24, 1998 ;-- Am. 2004, Act 262, Imd. Eff. July 23, 2004

### **338.3415 Failure to have certificate of accreditation or reaccreditation at job site.**

Sec. 15.

A person who is accredited under this act to perform asbestos-related work in a school building or a public and commercial building shall have in his or her possession the initial and current certificate of accreditation or reaccreditation at the location where he or she is conducting asbestos-related work. A person's failure to have in his or her possession the certificate of accreditation or reaccreditation at the job site where he or she is working may result in the suspension or revocation of that person's certificate of accreditation.

**History:** 1988, Act 440, Imd. Eff. Dec. 27, 1988 ;-- Am. 1995, Act 127, Imd. Eff. June 30, 1995

### **338.3415a Disclosure of inspector's financial interest or relationship; performance of asbestos-related work as condition of conducting inspection prohibited; right of contractor to conduct inspection; "person" defined.**

Sec. 15a.

(1) An asbestos inspector who has conducted an inspection under this act shall disclose orally and in writing to the person requesting the inspection the inspector's financial interest in or financial relationship to a person who engages in the business of performing asbestos-related work.

(2) A person who engages in asbestos-related work shall not require that the inspector who performs an inspection under this act also perform the asbestos-related work recommended in the inspector's report as a condition of conducting the inspection.

(3) After an inspection is conducted under this act and a report is prepared that indicates the need for asbestos-related work to be done, a person who contracts to do that asbestos-related work may conduct his or her own inspection either prior to performing the asbestos-related work or after performing that work in order to determine whether the work was successful, or both.

(4) For purposes of this section, "person" means an individual, partnership, association, corporation, public or private agency, or other legal entity.

**History:** Add. 1995, Act 127, Imd. Eff. June 30, 1995

### **338.3416 Repealed. 1995, Act 127, Imd. Eff. June 30, 1995.**

**Compiler's Notes:** The repealed section pertained to interim accreditation.

### **338.3417 Violation; civil penalties.**

Sec. 17.

A person who violates this act shall be subject to civil penalties for each violation or each day that a violation continues in accordance with the following schedule:

- (a) For a first violation \$ 2,000.00
- (b) For second violation \$ 5,000.00
- (c) For a third or subsequent violation \$ 10,000.00

**History:** 1988, Act 440, Imd. Eff. Dec. 27, 1988

### **338.3418 Appropriation.**

Sec. 18.

The legislature shall annually appropriate to the department an amount sufficient to administer and enforce this act.

**History:** 1988, Act 440, Imd. Eff. Dec. 27, 1988

## **REGULATED OCCUPATION SUPPORT ENFORCEMENT ACT**

### **Act 236 of 1996**

AN ACT to provide for the suspension of certain occupational licenses under certain circumstances; to require social security numbers on applications for occupational licenses as required by federal law; and to prescribe the powers and duties of certain state agencies and departments.

**History:** 1996, Act 236, Eff. Jan. 1, 1997 ;-- Am. 1998, Act 331, Imd. Eff. Aug. 10, 1998

*The People of the State of Michigan enact:*

### **338.3431 Short title.**

Sec. 1.

This act shall be known and may be cited as the "regulated occupation support enforcement act".

**History:** 1996, Act 236, Eff. Jan. 1, 1997

### **338.3432 Definitions.**

Sec. 2.

As used in this act:

(a) "License" means a certificate, registration, or license issued by an occupational regulatory agency that allows an individual to engage in a regulated occupation or that allows an individual to use a specific title in the practice of an occupation, profession, or vocation.

(b) "Occupational regulatory agency" means a department, bureau, or agency of this state that has regulatory authority over a regulated occupation.

(c) "Office of the friend of the court" means an agency created by section 3 of the friend of the court act, Act No. 294 of the Public Acts of 1982, being section 552.503 of the Michigan Compiled Laws.

(d) "Regulated occupation" means an occupation, profession, or vocation that requires a license as a predicate for the practice of the occupation, profession, or vocation or that provides for the use of a specific title in the practice of the occupation, profession, or vocation.

**History:** 1996, Act 236, Eff. Jan. 1, 1997

### **338.3433 Suspension order issued pursuant to support and parenting time enforcement act; compliance.**

#### **Sec. 3.**

An occupational regulatory agency shall comply with a suspension order issued as provided in the support and parenting time enforcement act, Act No. 295 of the Public Acts of 1982, being sections 552.601 to 552.650 of the Michigan Compiled Laws, within 7 business days after receipt of the suspension order.

**History:** 1996, Act 236, Eff. Jan. 1, 1997

### **338.3434 Rescission of suspension order; procedure to reinstate license.**

#### **Sec. 4.**

An order rescinding a suspension order issued under the support and parenting time enforcement act, Act No. 295 of the Public Acts of 1982, being sections 552.601 to 552.650 of the Michigan Compiled Laws, is effective upon its entry by the court and payment by the licensee of the customary reinstatement fee, if any, charged by the occupational regulatory agency. The occupational regulatory agency shall reinstate the license of a licensee whose suspension order is rescinded within 7 business days after receipt of the rescission order and payment of the appropriate reinstatement fee. An occupational regulatory agency shall send a notice of the license reinstatement to the licensee upon reinstatement.

**History:** 1996, Act 236, Eff. Jan. 1, 1997

### **338.3434a Social security number; inclusion on license application form; disclosure prohibited; violation; penalty; exception.**

#### **Sec. 4a.**

(1) In order to facilitate the enforcement and administration of this act and as required to comply with federal law, an occupational regulatory agency shall require each applicant for a license or renewal of a license to include his or her social security number on the application form. An occupational regulatory agency shall not issue or renew a license unless the applicant's social security number is on file with the occupational regulatory agency as required to comply with federal law. An occupational regulatory agency shall not display a licensee's social security number on the licensee's occupational license.

(2) A person shall not intentionally disclose, in a manner not authorized by law or rule, a social security number collected as required by this section. A violation of this subsection is a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than \$500.00, or both. A second or subsequent violation of this subsection is a felony punishable by imprisonment for not more than 4 years or a fine of not more than \$2,000.00, or both.

(3) A requirement under this section to include a social security number on an application does not apply to an applicant who demonstrates he or she is exempt under law from obtaining a social security number or to an

applicant who for religious convictions is exempt under law from disclosure of his or her social security number under these circumstances. The occupational regulatory agency shall inform the applicant of this possible exemption.

**History:** Add. 1998, Act 331, Imd. Eff. Aug. 10, 1998

**Compiler's Notes:** Enacting section 2 of 1998 PA 331 provides:“Enacting section 2. The family independence agency shall request from the federal government an exemption from the provisions regarding the recording of social security numbers added by this 1998 amendatory act, which are intended to be used for the collection of child support, as required by federal law in order for this state to receive certain federal funds. Upon the granting of the exemption, those provisions referred to by this enacting section shall not be utilized or enforced by the state or a local governmental entity.”

### **338.3435 Effective date.**

#### **Sec. 5.**

This act shall take effect January 1, 1997.

**History:** 1996, Act 236, Eff. Jan. 1, 1997

### **338.3436 Conditional effective date.**

#### **Sec. 6.**

This act shall not take effect unless all of the following bills of the 88th Legislature are enacted into law:

- (a) Senate Bill No. 881.
- (b) House Bill No. 5384.
- (c) House Bill No. 5386.
- (d) House Bill No. 5387.
- (e) House Bill No. 5388.
- (f) House Bill No. 5389.

**History:** 1996, Act 236, Eff. Jan. 1, 1997

## **MICHIGAN IMMIGRATION CLERICAL ASSISTANT ACT**

### **Act 161 of 2004**

AN ACT to regulate certain transactions involved in immigration matters and the providing of services in those matters; to set standards and security requirements involving certain immigration matters and persons engaged in immigration matters; and to provide for remedies and penalties.

**History:** 2004, Act 161, Eff. Oct. 1, 2004 ;-- Am. 2014, Act 174, Imd. Eff. June 17, 2014

*The People of the State of Michigan enact:*

### **338.3451 Short title.**

#### **Sec. 1.**

This act shall be known and may be cited as the "Michigan immigration clerical assistant act".

**History:** 2004, Act 161, Eff. Oct. 1, 2004

### **338.3453 Definitions.**

#### **Sec. 3.**

As used in this act:

- (a) "Business relationship" means a relationship with any of the following:
  - (i) An individual who serves as a designated school official or principal designated school official as defined by the United States citizenship and immigration services, but only when acting within the scope of authority in that capacity on behalf of the designated educational institution.
  - (ii) An individual who serves as a responsible officer or alternate responsible officer as defined by the United States department of state, but only when acting within the scope of authority in that capacity on behalf of the designated exchange visitor program.
  - (iii) An individual who is regularly employed by an employer other than a sole proprietorship in a position that requires that employee to process immigration matters on behalf of and as a representative of the employer relative to employment by an employee or prospective employee only with the employer and who receives no compensation, directly or indirectly, from those employees or prospective employees.
  - (iv) An individual who is employed by a federal or state elected official involved in the processing of a visa application or petition on behalf of or as a representative of a constituent.
- (b) "Compensation" means money, donations, property, promise of payment, or anything else of value required in exchange for a person's services.
- (c) "Consumer" means an individual who utilizes or seeks to utilize the services of an immigration clerical assistant.
- (d) "Immigration clerical assistant" means any individual who provides or offers to provide services, for compensation, relating to any immigration matter.
- (e) "Immigration matter" means any matter affecting the immigrant status, nonimmigrant status, or citizenship status of any individual and includes, but is not limited to, federal or state administrative or court proceedings or the filing of accompanying documents in those proceedings, or both.
- (f) "Services" means any action taken on behalf of any consumer for the benefit of that consumer or another individual regarding the immigrant status, nonimmigrant status, or citizenship status of any consumer or other individual, and includes, but is not limited to, the following:
  - (i) Transcribing responses onto government agency forms on behalf of a consumer relating to an immigration matter.
  - (ii) Translating information from a government agency form to a language other than English and translating responses on behalf of a consumer relating to an immigration matter.
  - (iii) Drafting or completing an application or other paper on behalf of a consumer in an immigration matter.
  - (iv) Giving advice to a consumer in an immigration matter.
- (g) "Solicit" means any contact with a specific consumer by an immigration clerical assistant or his or her agent, representative, or employee about providing services, for compensation, regarding an immigration matter. Solicit does not include letters or advertising distributed generally to persons that are not known to need the services of an immigration clerical assistant.

**History:** 2004, Act 161, Eff. Oct. 1, 2004 ;-- Am. 2014, Act 174, Imd. Eff. June 17, 2014

### **338.3454 Repealed. 2014, Act 174, Imd. Eff. June 17, 2014.**

**Compiler's Notes:** The repealed section pertained to list of individuals providing immigration services.

### **338.3455 Exemptions.**

#### **Sec. 5.**

The following are exempt from this act:

- (a) An attorney at law licensed to practice law in any state or territory of the United States and his or her legal and other support staff working under his or her direct supervision.
- (b) A law student or law school graduate not yet admitted to the bar who is supervised by an attorney licensed to practice law in any state or territory of the United States.
- (c) A reputable individual who has a personal, family, or business relationship with the individual subject to the immigration matter and is engaged in an immigration matter for that individual without compensation.
- (d) A nonprofit religious, charitable, social service, or similar organization recognized by the board of immigration appeals, and any individual representing such an organization who has been accredited by the board of immigration appeals.
- (e) Any individual representing or acting on behalf of an organization who performs only the following services:
  - (i) Translating documents from a language other than English into English in an immigration matter.
  - (ii) Properly notarizing signatures on documents in an immigration matter.
  - (iii) Referring the consumer to an attorney in an immigration matter.
  - (iv) Taking or arranging for the taking of photographs or fingerprints in an immigration matter.
  - (v) Arranging for the performance of medical testing and assisting with the obtaining of such medical examination results in an immigration matter.
  - (vi) Conducting English language and civics courses for consumers in an immigration matter.
  - (vii) Conducting educational or experiential evaluations, or combinations of educational and experiential evaluations, for consumers in an immigration matter.
- (f) A nonprofit religious, charitable, social service, or similar organization that provides the services listed under subdivision (e) without compensation.
- (g) A translation business that meets the following criteria:
  - (i) Was an active member of the American translators association on September 1, 2001, and abides by and is subject to its code of ethical practices.
  - (ii) Is incorporated.
  - (iii) Keeps commercial offices in the state of Michigan.
  - (iv) Derives 90% of its income from the translation business.
  - (v) Has sales exceeding \$100,000.00 per year in the translation business.
  - (vi) Was engaged in the translation business on September 1, 2001.

**History:** 2004, Act 161, Eff. Oct. 1, 2004

### **338.3457 Repealed. 2014, Act 174, Imd. Eff. June 17, 2014.**

**Compiler's Notes:** The repealed section pertained to immigration clerical assistant placement on list.

### **338.3459 Repealed. 2014, Act 174, Imd. Eff. June 17, 2014.**

**Compiler's Notes:** The repealed section pertained to creation of immigration clerical assistant list.

### **338.3461 Charge for services.**

Sec. 11.

An immigration clerical assistant may charge the following for services:

- (a) Not more than \$20.00 per page for translation of supporting documentation.
- (b) Not more than \$10.00 per page to complete a government agency form.
- (c) The amount allowed under law for notarial acts.
- (d) A reasonable and fair fee for other services that include, but are not limited to, photocopying, mailing, and telephone calls.

**History:** 2004, Act 161, Eff. Oct. 1, 2004

**338.3463 Contract requirements.**

Sec. 13.

(1) An immigration clerical assistant shall enter into a written contract with a consumer before any service is rendered and before accepting any compensation.

(2) A contract described in subsection (1) shall be written in English and shall include a written translation into the primary language understood by the consumer if the consumer is not a native speaker of English. The contract shall embody all the terms and conditions of the agreement to provide services, including, but not limited to, the following:

- (a) The name and address of the immigration clerical assistant.
- (b) The date and time of the transaction.
- (c) A description of the services to be provided and the itemized cost of each service.

(3) An immigration clerical assistant shall not orally amend or supplement a written contract described in subsection (1) and shall not make any statement that contradicts or is inconsistent with the terms of the written contract. A copy of the executed contract shall be provided to the consumer at the time of execution.

(4) A consumer has 72 hours from the execution of a contract described in subsection (1) to rescind the transaction. A notice of the consumer's right to rescind shall be included in the contract in English and shall be translated with substantially similar meaning into the primary language understood by the consumer in substantially the following form:

"You, the consumer, may cancel this transaction at any time prior to 72 hours following the date and time that this contract is signed by you. You may cancel this transaction, without any penalty or obligation, by writing "CANCEL" across your signature and returning a copy to the immigration clerical assistant or his/her authorized representative."

(5) If a transaction is rescinded under subsection (4), the immigration clerical assistant shall promptly return to the person entitled to receive it any deposit, down payment, or other compensation received from or on behalf of the consumer and shall return to the consumer, or the individual upon whose behalf the consumer is acting, all original documents, including notices, letters, approvals, denials, receipts, or other correspondence received on behalf of the consumer in any immigration matter.

(6) A contract described in subsection (1) shall state in a prominent place, in type not smaller than 12-point font, a notice in English that is translated with substantially similar meaning into the primary language understood by the consumer, as follows:

"NOTICE: An immigration clerical assistant is NOT an attorney and is not authorized to provide legal services or offer legal advice of any kind."

**History:** 2004, Act 161, Eff. Oct. 1, 2004 ;-- Am. 2014, Act 174, Imd. Eff. June 17, 2014

**338.3465 Repealed. 2014, Act 174, Imd. Eff. June 17, 2014.**

**Compiler's Notes:** The repealed section pertained to corporate surety or cash bond.

### **338.3467 Prohibited conduct.**

#### **Sec. 17.**

(1) An immigration clerical assistant shall not do any of the following:

(a) Offer or give legal advice including, but not limited to, selecting the type of application or form to be submitted to a government agency, recommending a procedure to be followed in seeking a benefit under the immigration and nationality act, chapter 477, 66 Stat. 163, and altering or deleting language on standard immigration forms.

(b) Engage in the unauthorized practice of law as determined by a court of competent jurisdiction.

(c) Represent that services he or she offers or provides are legal advice or legal services.

(d) Falsely represent that services he or she offers or provides are necessary.

(e) Falsely represent that services he or she offers or provides are in response to a request by or on behalf of a consumer.

(f) Represent that the life, safety, or welfare of the consumer and his or her family would be adversely affected if the services of an immigration clerical assistant are not provided.

(g) Fail to reveal a material fact regarding an immigration matter or regarding services that could not be reasonably known to the consumer, the omission of which tends to mislead or deceive the consumer.

(h) Take advantage of a consumer's inability to protect his or her interests if the immigration clerical assistant knows or should reasonably know of a consumer's disability, illiteracy, or inability to understand the language of any documentation or government form.

(i) Regarding services not described in section 11, charge a consumer a price for services that is not reasonable under the circumstances.

(j) Make a false or fraudulent representation of fact or statement material to the services provided.

(k) Fail to reveal facts material to the services provided in light of representations of fact made in a positive manner.

(l) Engage in any method, act, or practice that is unfair or deceptive.

(m) Act as an intermediary between the consumer and the federal government in an immigration matter.

(n) Make any representation orally or in writing that he or she guarantees or promises a specific immigration benefit or result.

(o) Represent or imply that he or she will be able to obtain any special influence over, or treatment from, any government entity with respect to an immigration matter.

(p) Use a term implying that he or she is approved, certified, or licensed by the state of Michigan or the federal government.

(2) An immigration clerical assistant shall not, in any document, advertisement, stationery, letterhead, business card, or other comparable written material describing the role of the immigration clerical assistant, literally translate from English into another language terms or titles including, but not limited to, notary public, notary, licensed, attorney, lawyer, or any other term that implies that the person is an attorney. As used in this subsection, "literally translate" means the translation of a word or phrase without regard to the true meaning of the word or phrase in the language that is being translated.

**History:** 2004, Act 161, Eff. Oct. 1, 2004 ;-- Am. 2014, Act 174, Imd. Eff. June 17, 2014

### **338.3469 Delivery of documents and forms.**

#### **Sec. 19.**

(1) An immigration clerical assistant shall deliver to each consumer a copy of each document or form completed on behalf of a consumer. Each document and form executed or completed shall include the name, residential and business address denoting a specific location other than a post office box, telephone number, facsimile number, and e-mail or website address of the immigration clerical assistant.

(2) An immigration clerical assistant shall retain copies of all documents and forms completed or executed on behalf of a consumer, or the individual upon whose behalf the consumer is acting, for not less than 3 years.

(3) An immigration clerical assistant shall return all original documents of the consumer, or the individual upon whose behalf the consumer is acting, and not keep them in his or her possession.



(4) An immigration clerical assistant shall promptly deliver to each consumer, or the individual upon whose behalf the consumer is acting, all original documents, including notices, letters, approvals, denials, receipts, or other correspondence received on behalf of the consumer, or the individual upon whose behalf the consumer is acting, in any immigration matter. As used in this subsection, "promptly" means either of the following:

(a) In the case of correspondence from the agency of the federal government that requires a response within 30 days after receipt, within 7 days.

(b) In all other cases, within 14 days.

**History:** 2004, Act 161, Eff. Oct. 1, 2004

### **338.3471 Violations; penalties; exemption.**

Sec. 21.

(1) A person that violates this act is guilty of the following:

(a) In the case of a first conviction, a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$1,000.00, or both.

(b) In the case of a second or subsequent conviction, a felony punishable by imprisonment for not more than 2 years or a fine of not more than \$10,000.00, or both.

(2) A person that is injured by a violation of this act by an immigration clerical assistant may bring an action in a court of competent jurisdiction for equitable relief or damages, or both. In an action for damages, the court shall award a prevailing plaintiff the amount of actual damages, or, if the court finds that the violation was willful, 3 times the plaintiff's actual damages. The court shall also grant a prevailing plaintiff reasonable attorney fees and costs.

(3) A person that, on information and belief, claims a violation of this act has been committed by an immigration clerical assistant may bring an action in a court of competent jurisdiction for equitable relief on behalf of the general public. The court shall award a prevailing plaintiff reasonable attorney fees and costs.

(4) The remedies and penalties in this act are cumulative and use of 1 remedy under this act does not bar the use of any remedy allowed under the Michigan consumer protection act, 1976 PA 331, MCL 445.901 to 445.922, or the use of any other remedy allowed under law.

(5) An immigration clerical assistant that is acting on behalf of a tax-exempt nonprofit organization under section 501(c)(3) of the internal revenue code of 1986 that complies with the service charge requirements of section 11, or an employee or volunteer of such an organization, is exempt from this section.

**History:** 2004, Act 161, Eff. Oct. 1, 2004 ;-- Am. 2014, Act 174, Imd. Eff. June 17, 2014

## **EXECUTIVE REORGANIZATION ORDER**

### **E.R.O. No. 1991-9**

### **338.3501 Transfer of occupational and health-related functions, boards, and commissions from department of licensing and regulation to department of commerce; transfer of department of insurance and office of the commissioner of insurance from the department of licensing and regulation to the department of commerce.**

WHEREAS, Article V, Section 2, of the Constitution of the State of Michigan of 1963, empowers the Governor to make changes in the organization of the Executive Branch or in the assignment of functions among its units which he considers necessary for efficient administration; and

WHEREAS, the Department of Licensing and Regulation was created by Act No. 380 of the Public Acts of 1965, as amended, being Section 16.101 et seq. of the Michigan Compiled Laws; and

WHEREAS, various occupational functions, boards, and commissions have been assigned or transferred to the Department of Licensing and Regulation; and

WHEREAS, the Department of Insurance and the Office of the Commissioner of Insurance have been transferred to the Department of Licensing and Regulation; and

WHEREAS, various health-related functions, boards, and commissions have been assigned to the Department of Licensing and Regulation; and

WHEREAS, it is necessary in the interests of efficient administration and effectiveness of government to effect changes in the organization of the Executive Branch of government.

NOW, THEREFORE, I, John Engler, Governor of the State of Michigan, pursuant to the powers vested in me by the Constitution of the State of Michigan of 1963, and the laws of the State of Michigan, do hereby order the following:

(1) Occupational Functions, Boards and Commissions:

(a) All the statutory authority, powers, duties, functions, and responsibilities, including the functions of budgeting, procurement, and management-related functions of the Department of Licensing and Regulation identified in the Occupational Code, Act No. 299 of the Public Acts of 1980, being Section 339.101 et seq. of the Michigan Compiled Laws, including the boards (as defined therein), are hereby transferred from the Department of Licensing and Regulation to the Department of Commerce by a Type II transfer, as defined by Section 3 of Act No. 380 of the Public Acts of 1965, as amended, being Section 16.103 of the Michigan Compiled Laws; except that the boards (as defined therein), shall retain all of their statutory authority, powers, duties, functions, and responsibilities.

(b) All the statutory authority, powers, duties, functions, and responsibilities, including the functions of budgeting, procurement, and management-related functions of the Department of Licensing and Regulation identified in:

(i) State License Fee Act, Act No. 152 of the Public Acts of 1979, as amended, being Section 338.2201 et seq. of the Michigan Compiled Laws;

(ii) Construction Lien Act (recovery fund provisions only), Act No. 497 of the Public Acts of 1980, as amended, being Sections 570.1201 to 570.1207 of the Michigan Compiled Laws;

(iii) Building Contract Fund, Act No. 259 of the Public Acts of 1931, as amended, being Section 570.151 et seq. of the Michigan Compiled Laws;

(iv) Cemetery Regulation Act, Act No. 251 of the Public Acts of 1968, as amended, being Section 456.521 et seq. of the Michigan Compiled Laws;

(v) Ski Area Safety Act of 1962, Act No. 199 of the Public Acts of 1962, as amended, being Section 408.321 et seq. of the Michigan Compiled Laws;

(vi) Carnival-Amusement Safety Act of 1966, Act No. 225 of the Public Acts of 1966, as amended, being Section 408.651 et seq. of the Michigan Compiled Laws;

(vii) Forensic Polygraph Examiners Act, Act No. 295 of the Public Acts of 1972, as amended, being Section 338.1701 et seq. of the Michigan Compiled Laws; and

(viii) Prepaid Funeral Contract Funding Act, Act No. 255 of the Public Acts of 1986, being Section 328.211 et seq. of the Michigan Compiled Laws

are hereby transferred from the Department of Licensing and Regulation to the Department of Commerce by a Type II transfer, as defined by Section 3 of Act No. 380 of the Public Acts of 1965, as amended, being Section 16.103 of the Michigan Compiled Laws.

(c) The Director of the Department of Commerce, as head of the Department of Commerce, shall provide executive direction and supervision for the implementation of the transfer.

(d) All records, personnel, property, and unexpended balances of appropriations, allocations, and other funds used, held, employed, available, or to be made available to the Department of Licensing and Regulation for the activities transferred by this Order are hereby transferred to the Department of Commerce.

(e) The Department of Commerce shall make such internal organizational changes as may be administratively necessary to complete the realignment of responsibilities prescribed by this Section of this Order.

(f) The heads of the Department of Licensing and Regulation and the Department of Commerce shall immediately initiate coordination between their departments to facilitate the transfer and develop a memorandum of record identifying any pending settlements, issues of compliance with applicable federal and State laws and regulations, or other obligations to be resolved by the Department of Licensing and Regulation.

(g) All rules, orders, contracts, and agreements relating to the assigned functions lawfully adopted prior to the effective date of this Order shall continue to be effective until revised, amended, or repealed.

(h) Any suit, action, or other proceeding lawfully commenced by, against, or before any entity affected by this Order shall not abate by reason of the taking of effect of this Order. Any suit, action, or other proceeding may be maintained by, against, or before the appropriate successor of any entity affected by this Order.

(2) Department of Insurance, Office of the Commissioner of Insurance:

(a) The Department of Insurance and the Office of the Commissioner of Insurance created by Sections 200 and 202 of Act No. 218 of the Public Acts of 1956, being Sections 500.200 and 500.202 of the Michigan Compiled Laws, as modified by Section 329 of Act 380 of the Public Acts of 1965, being Section 16.329 of the Michigan Compiled Laws, and by Executive Order No. 1980-1A (E.R.O. No. 1980-1), and the authority, powers, duties, functions, and responsibilities of the Department of Insurance and the Office of the Commissioner of Insurance (including, without limitation, the authority, powers, duties, functions, and responsibilities under Act No. 218 of the Public Acts of 1956, as amended, being Section 500.110 et seq. of the Michigan Compiled Laws; Act No. 66 of the Public Acts of 1933, being Section 550.1 et seq. of the Michigan Compiled Laws; Act No. 233 of the Public Acts of 1984, as amended, being Section 550.51 et seq. of the Michigan Compiled Laws; Act No. 266 of the Public Acts of 1895, as amended, being Section 550.101 et seq. of the Michigan Compiled Laws; Act No. 143 of the Public Acts of 1935, being Section 550.231 et seq. of the Michigan Compiled Laws; Act No. 64 of the Public Acts of 1984, being Section 550.251 et seq. of the Michigan Compiled Laws; Act No. 125 of the Public Acts of 1963, as amended, being Section 550.351 et seq. of the Michigan Compiled Laws; Act No. 173 of the Public Acts of 1958, as amended, being Section 550.601 et seq. of the Michigan Compiled Laws; Act No. 388 of the Public Acts of 1913, as amended, being Section 550.701 et seq. of the Michigan Compiled Laws; Act No. 218 of the Public Acts of 1984, being section 550.901 et seq. of the Michigan Compiled Laws; Act No. 252 of the Public Acts of 1986, being Section 550.1001 et seq. of the Michigan Compiled Laws; Act No. 350 of the Public Acts of 1980, as amended, being Section 550.1101 et seq. of the Michigan Compiled Laws; and Sections 333.21001 to 333.21099 of Act No. 368 of the Public Acts of 1978, being Sections 333.21001 to 333.21099 of the Michigan Compiled Laws), are hereby transferred from the Department of Licensing and Regulation to the Department of Commerce by a Type I transfer, as defined by Section 3 of Act No. 380 of the Public Acts of 1965, as amended, being Section 16.103 of the Michigan Compiled Laws.

(b) The Director of the Department of Commerce, as head of the Department of Commerce, shall provide executive direction and supervision for the implementation of the transfer. The Department of Insurance and the Commissioner of Insurance shall exercise their prescribed statutory powers, duties, and functions of rule making, licensing, and registration, including the prescription of rules, rates, regulations, standards, and adjudications independently of the Director of the Department of Commerce. The budgeting, procurement, and related management functions of the Department of Insurance and the Commissioner of Insurance shall be performed under the direction and supervision of the Director of the Department of Commerce as the head of the Department of Commerce.

(c) All records, personnel, property, and unexpended balances of appropriations, allocations, and other funds used, held, employed, available, or to be made available to the Department of Licensing and Regulation for the activities transferred by this Order are hereby transferred to the Department of Commerce.

(d) The Department of Commerce shall make such internal organizational changes as may be administratively necessary to complete the realignment of responsibilities prescribed by this Section of this Order.

(e) The heads of the Department of Licensing and Regulation and the Department of Commerce shall immediately initiate coordination between their departments to facilitate the transfer and develop a memorandum of record identifying any pending settlements, issues of compliance with applicable federal and State laws and regulations, or other obligations to be resolved by the Department of Licensing and Regulation.

(f) All rules, orders, contracts, and agreements relating to the assigned functions lawfully adopted prior to the effective date of this Order shall continue to be effective until revised, amended, or repealed.

(g) Any suit, action, or other proceeding lawfully commenced by, against, or before any entity affected by this Order shall not abate by reason of the taking effect of this Order. Any suit, action, or other proceeding may be maintained by, against, or before the appropriate successor of any entity affected by this Order.

(3) Health-Related Functions, Boards, and Commissions:

(a) All statutory authority, powers, duties, functions, and responsibilities, including the functions of budgeting, procurement, and management-related functions of the Department of Licensing and Regulation identified in Article 15 of Act No. 368 of the Public Acts of 1978, as amended, being Sections 333.16101 to 333.18838 of the Michigan Compiled Laws, Sections 7101 to 7545 of Act No. 368 of the Public Acts of 1978, as amended, being Sections 333.7101 to 333.7545 of the Michigan Compiled Laws, and Act No. 152 of the Public Acts of 1979, being Section 338.2201 et seq. of the Michigan Compiled Laws, including the council, boards, and task forces (as defined therein), are hereby transferred to the Department of Commerce by a Type II transfer, as defined in Section 3 of Act No. 380 of the Public Acts of 1965, being Section 16.103 of the Michigan Compiled Laws; except that the councils, boards, and task forces (as defined therein) shall retain all of their statutory authority, powers, duties, functions, and responsibilities.

(b) The Director of the Department of Commerce, as head of the Department of Commerce, shall provide executive direction and supervision for the implementation of the transfer.

(c) All records, personnel, property, and unexpended balances of appropriations, allocations, and other funds used, held, employed, available, or to be made available to the Department of Licensing and Regulation for the activities transferred by this Order are hereby transferred to Department of Commerce.

(d) The Department of Commerce shall make such internal organizational changes as may be administratively

necessary to complete the realignment of responsibilities prescribed by this Section of this Order.

(e) The heads of the Department of Licensing and Regulation and the Department of Commerce shall immediately initiate coordination between their departments to facilitate the transfer and develop a memorandum of record identifying any pending settlements, issues of compliance with applicable federal and State laws and regulations, or other obligations to be resolved by the Department of Licensing and Regulation.

(f) All rules, orders, contracts, and agreements relating to the assigned functions lawfully adopted prior to the effective date of this Order shall continue to be effective until revised, amended, or repealed.

(g) Any suit, action or other proceeding lawfully commenced by, against, or before any entity affected by this Order shall not abate by reason of the taking effect of this Order. Any suit, action, or other proceeding may be maintained by, against, or before the appropriate successor of any entity affected by this Order.

In fulfillment of the requirement of Article V, Section 2, of the Constitution of the State of Michigan of 1963, the provisions of this Executive Order shall become effective September 1, 1991, at 12:01 a.m.

**History:** 1991, E.R.O. No. 1991-9, Eff. Sept. 1, 1991

**Compiler's Notes:** For transfer of powers and duties of the bureau of health services from the department of consumer and industry services to the director of the department of community health by Type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011. For abolishment of the state board of forensic polygraph examiners and transfer of its powers and duties to the department of labor and economic growth, see E.R.O. No. 2007-18, compiled at MCL 445.2024.

## STATE PLUMBING ACT

### Act 733 of 2002

338.3511-338.3569 Repealed. 2016, Act 407, Eff. Apr. 4, 2017.

## MICHIGAN UNARMED COMBAT REGULATORY ACT

### Act 403 of 2004

AN ACT to regulate the conduct of certain unarmed combat events and contests; to create the Michigan unarmed combat commission and establish its powers and duties; to provide for the powers and duties of certain state agencies and departments; to license and regulate promoters, contestants, and other persons engaged in the business of boxing and mixed martial arts; to confer immunity under certain circumstances; to provide for the conducting of certain tests; to assess fees; to establish the Michigan unarmed combat fund and provide for the use of the money in the fund; to authorize the promulgation of rules; to provide for penalties and remedies; and to repeal acts and parts of acts.

**History:** 2004, Act 403, Eff. Feb. 20, 2005 ;-- Am. 2015, Act 183, Eff. Feb. 10, 2016

*The People of the State of Michigan enact:*

### 338.3601 Short title.

#### Sec. 1.

This act shall be known and may be cited as the "Michigan unarmed combat regulatory act".

**History:** 2004, Act 403, Eff. Feb. 20, 2005 ;-- Am. 2007, Act 196, Eff. Mar. 27, 2008

**Compiler's Notes:** For creation of the Michigan unarmed combat commission within the department of licensing and regulatory affairs as type I agency, and the transfer of powers and duties of the department of licensing and regulatory affairs to the Michigan unarmed combat commission, see E.R.O. No. 2019-2, compiled at MCL 333.27001. For the transfer of powers and duties of the director of the department of

## CHAPTER 1

### 338.3610 Definitions; A to M.

#### Sec. 10.

As used in this act:

- (a) "Amateur" means any of following:
  - (i) An individual who is not competing and has never competed for a prize or who is not competing and has not competed with or against a professional for a prize.
  - (ii) For a boxing contest, an individual who is required to register with USA Boxing, or any other amateur boxing organization recognized by the department to participate.
- (b) "Boxer" means an individual who is licensed to engage in boxing.
- (c) "Boxing" means the sport of attack and defense with fists, using padded gloves, in a square ring.
- (d) "Chemical dependency" means that term as defined in section 16106a of the public health code, 1978 PA 368, MCL 333.16106a.
- (e) "Commission" means the Michigan unarmed combat commission created in section 20.
- (f) "Complainant" means a person that files a complaint with the department alleging that a person has violated this act or a rule promulgated or an order issued under this act. If a complaint is made by the department, complainant means 1 or more employees of the department who act as the complainant.
- (g) "Contest" means an individual bout between 2 boxers, 2 mixed martial artists, or 2 individuals engaged in other unarmed combat that is subject to this act.
- (h) "Contestant" means an individual who competes in an unarmed combat contest or event.
- (i) "Department" means the department of licensing and regulatory affairs.
- (j) "Director" means the director of the department or his or her designee.
- (k) "Emergency medical technician" means that term as defined in section 20904 of the public health code, 1978 PA 368, MCL 333.20904.
- (l) "Employee of the department" means an individual who is employed by the department, or a person that is under contract to the department, whose duty it is to enforce the provisions of this act or rules promulgated or orders issued under this act.
- (m) "Event" means a program of unarmed combat that is planned for a specific date and time by a promoter and is subject to the approval of the department under this act.
- (n) "Fund" means the Michigan unarmed combat fund created in section 22.
- (o) "Good moral character" means good moral character as determined and defined under 1974 PA 381, MCL 338.41 to 338.47.
- (p) "Impaired" means the inability or immediately impending inability of an individual to safely participate in a contest or event due to his or her substance abuse, chemical dependency, or use of drugs or alcohol that does not constitute substance abuse or chemical dependency.
- (q) "Matchmaker" means an individual who is responsible for arranging individual contests of unarmed combat.
- (r) "Medical clearance" means a determination by a physician, made with reasonable medical certainty, that a contestant does not have a medical condition that would prevent him or her from being able to participate in an event or contest.
- (s) "Mixed martial artist" means an individual who is licensed to compete in a mixed martial arts event or contest.
- (t) "Mixed martial arts" means a form of combat, either amateur or professional, that involves the use of a combination of techniques from different disciplines of the martial arts, including grappling, kicking, and striking, subject to the limitations contained in this act and rules promulgated under this act.

**History:** 2004, Act 403, Eff. Feb. 20, 2005 ;-- Am. 2007, Act 196, Eff. Mar. 27, 2008 ;-- Am. 2015, Act 183, Eff. Feb. 10, 2016

**Compiler's Notes:** For creation of the Michigan unarmed combat commission within the department of licensing and regulatory affairs as type I agency, and the transfer of powers and duties of the department of licensing and regulatory affairs to the Michigan unarmed combat commission, see E.R.O. No. 2019-2, compiled at MCL 333.27001. For the transfer of powers and duties of the director of the department of licensing and regulatory affairs under the Michigan unarmed combat regulatory act, 2004 PA 403, to the chairperson of the Michigan unarmed combat commission, see E.R.O. No. 2019-2, compiled at MCL 333.27001.



### **338.3611 Definitions; P to U.**

#### **Sec. 11.**

As used in this act:

- (a) "Participant" means a referee, judge, matchmaker, timekeeper, contestant, or promoter.
- (b) "Person" means any of the following:
  - (i) An individual, corporation, limited liability company, partnership, association, or other legal entity.
  - (ii) A department, board, commission, agency, or authority of the United States, this state, or a political subdivision of this state or a public school, community college, or university.
  - (iii) A training center or a school or other educational institution.
  - (iv) A combination of persons described in subparagraphs (i) to (iii).
- (c) "Physician" means that term as defined in section 17001 or 17501 of the public health code, 1978 PA 368, MCL 333.17001 and 333.17501.
- (d) "Prize" means currency or any other valuable compensation or reward offered or given to a contestant. The term does not include a watch, medal, article of jewelry, trophy, or ornament that is suitably inscribed to show that it is given for participation in a contest and costs \$200.00 or less.
- (e) "Professional" means an individual who is competing or has competed in unarmed combat for a prize.
- (f) "Promoter" means a person that produces or stages, in whole or in part, an unarmed combat contest or event.
- (g) "Purse" means a prize or any other remuneration offered to contestants to compete in a contest or event. The term includes a professional's share of any payment received for radio, television, motion picture rights, or other media.
- (h) "Respondent" means a licensee or other person against which a complaint is filed under this act.
- (i) "Rule" means a rule promulgated under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.
- (j) "Settlement" means an agreement, stipulation, consent order, waiver, default, or other method of settlement of a complaint that is agreed to by the parties and the department.
- (k) "Substance abuse" means that term as defined in section 16106a of the public health code, 1978 PA 368, MCL 333.16106a.
- (l) "Training center" means an institution that is formed or operated principally to provide instruction in boxing, mixed martial arts, or other sports.
- (m) "Unarmed combat" means any of the following:
  - (i) Professional boxing.
  - (ii) Professional or amateur mixed martial arts.
  - (iii) Any other form of competition in which a blow is usually struck or another fighting technique is applied that may reasonably be expected to inflict injury.

**History:** 2004, Act 403, Eff. Feb. 20, 2005 ;-- Am. 2005, Act 49, Imd. Eff. June 23, 2005 ;-- Am. 2007, Act 196, Eff. Mar. 27, 2008 ;-- Am. 2015, Act 183, Eff. Feb. 10, 2016

### **338.3612 Applicability of act; exceptions.**

#### **Sec. 12.**

- (1) This act does not apply to any of the following:
  - (a) Professional or amateur wrestling.
  - (b) An event that is conducted by or participated in exclusively by an agency of the United States government or by a school, college, or university or an organization that is composed exclusively of those entities if each contestant is an amateur.
  - (c) An event that is sponsored by or under the supervision of the United States Olympic Committee in which all of the contestants are amateur boxers.
  - (d) An amateur boxing event that is sponsored by or under the supervision of USA Boxing or any of the following organizations affiliated with USA Boxing:
    - (i) Golden Gloves Association of America Inc.
    - (ii) National Association of Police Athletic League.

- (iii) National Collegiate Boxing Association.
- (iv) Native American Sports Council.
- (v) Silver Gloves Association.
- (2) Boxing elimination contests regulated under section 50 are not subject to the other provisions of this act.

**History:** 2004, Act 403, Eff. Feb. 20, 2005 ;-- Am. 2007, Act 196, Eff. Mar. 27, 2008 ;-- Am. 2015, Act 183, Eff. Feb. 10, 2016

## CHAPTER 2

### **338.3620 Michigan unarmed combat commission; creation; membership; appointment; qualifications; terms; quorum; approval of proposed action; promotion or sponsorship of contest or event prohibited; meetings; disclosure of records; meetings subject to open meetings act.**

Sec. 20.

(1) The Michigan unarmed combat commission is created in the department. The commission shall consist of 11 voting members, appointed by the governor with the advice and consent of the senate, as follows:

- (a) Four members who have experience, knowledge, or background in boxing.
- (b) Four members who have experience, knowledge, or background in mixed martial arts.
- (c) Three members who are members of the general public.

(2) The department shall provide the budgeting, procurement, human resources, information technology, and related management functions of the commission.

(3) Except as otherwise provided in this subsection, members of the commission shall serve a term of 4 years. However, of the initial members appointed under this act, the governor shall appoint 2 of the members to terms of 4 years, 2 of the members to terms of 2 years, and 3 of the members to terms of 1 year. Members appointed by the governor serve at the pleasure of the governor.

(4) Subject to subsections (5) and (6), 7 members of the commission constitute a quorum of the commission under this act. Subject to subsections (5) and (6), approval by at least 4 of the members, or by a majority of those members who have not participated in an investigation or administrative hearing regarding a matter before the commission, is necessary for action by the commission.

(5) All of the following apply if a proposed action of the commission is designated by the director as related only to boxing:

(a) The proposed action shall only be considered by the commission members described in subsection (1)(a) and (c).

(b) The quorum requirement for consideration of the proposed action is 4 members who are eligible to consider the action under subdivision (a), 2 of whom are members described in subsection (1)(a).

(c) Approval by at least 3 of the members who are eligible to consider the action under subdivision (a) is required for the commission to take that action.

(6) All of the following apply if a proposed action of the commission is designated by the director as related only to mixed martial arts:

(a) The proposed action shall only be considered by the commission members described in subsection (1)(b) and (c).

(b) The quorum requirement for consideration of the proposed action is 4 members who are eligible to consider the action under subdivision (a), 2 of whom are members described in subsection (1)(b).

(c) Approval by at least 3 of the members who are eligible to consider the action under subdivision (a) is required for the commission to take that action.

(7) While serving as a member of the commission, an individual shall not promote or sponsor any contest or event of any unarmed combat, or a combination of those contests or events, or have any financial interest in the promotion or sponsorship of those contests or events. The commission shall meet not less than 4 times per year. The chair in his or her discretion may cancel 1 or more of these meetings if he or she determines that there is no business to conduct at a meeting. If requested by the chair, the department may schedule additional interim meetings.

(8) Except as otherwise provided in sections 33(9) and 61a, the records of the commission are subject to disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

(9) Meetings of the commission are subject to the open meetings act, 1976 PA 267, MCL 15.261 to 15.275.

**History:** 2004, Act 403, Eff. Feb. 20, 2005 ;-- Am. 2007, Act 196, Eff. Mar. 27, 2008 ;-- Am. 2012, Act 546, Imd. Eff. Jan. 2, 2013 ;-- Am.

2015, Act 183, Eff. Feb. 10, 2016 ;-- Am. 2017, Act 146, Eff. Jan. 31, 2018

**Compiler's Notes:** For creation of the Michigan unarmed combat commission within the department of licensing and regulatory affairs as type I agency, and the transfer of powers and duties of the department of licensing and regulatory affairs to the Michigan unarmed combat commission, see E.R.O. No. 2019-2, compiled at MCL 333.27001. For the transfer of powers and duties of the director of the department of licensing and regulatory affairs under the Michigan unarmed combat regulatory act, 2004 PA 403, to the chairperson of the Michigan unarmed combat commission, see E.R.O. No. 2019-2, compiled at MCL 333.27001.

### **338.3621 Appointment of individual with financial interest; prohibition.**

Sec. 21.

An individual who has a material financial interest in a club, corporation, or other organization is not eligible for appointment to the commission if the primary purpose of that organization is to conduct unarmed combat contests or events.

**History:** 2004, Act 403, Eff. Feb. 20, 2005 ;-- Am. 2007, Act 196, Eff. Mar. 27, 2008 ;-- Am. 2015, Act 183, Eff. Feb. 10, 2016

### **338.3622 Chairperson; rules; Michigan unarmed combat fund; creation; compensation; affiliation with other commissions or athletic authorities; duties of commission and department.**

Sec. 22.

(1) The commission shall elect 1 of its members as the chair of the commission.

(2) The director shall review the rules of the Association of Boxing Commissions before he or she promulgates rules for the administration of this act and may adopt by reference any of the rules of the Association of Boxing Commissions that are not inconsistent with this act.

(3) The director shall consult with the commission before he or she promulgates rules for the administration of this act. The commission may request that the department promulgate a rule under section 38 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.238. Notwithstanding the time limit provided for in section 38 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.238, the department shall respond in writing to any request from the commission under this subsection within 30 calendar days after the request. The response shall include a reason and explanation for agreeing to or denying the request.

(4) The director shall promulgate rules to establish all of the following and may establish any additional rules the director considers are necessary to administer and enforce this act:

(a) Number and qualifications of ring officials required at any event or contest.

(b) Powers, duties, and compensation of ring officials.

(c) Qualifications, activities, and responsibilities of licensees.

(d) License fees not otherwise provided under this act.

(e) Any necessary standards designed to accommodate federally imposed mandates that do not directly conflict with this act.

(f) A list of enhancers and prohibited substances, the presence of which in a contestant is grounds for suspension or revocation of the license or other sanctions.

(g) Standards to protect the health and safety of contestants participating in contests and events.

(5) The Michigan unarmed combat fund is created in the state treasury. All of the following apply to the fund:

(a) The director is the administrator of the fund, including for auditing purposes.

(b) The department shall use the money in the fund, on appropriation, only for the costs of administration and enforcement of this act and for any costs associated with the administration of this act, including, but not limited to, reimbursing the department of attorney general for the reasonable costs of services provided to the department under this act.

(c) The state treasurer shall direct the investment of the fund. The state treasurer shall credit to the fund interest and earnings from fund investments.

(d) Money in the fund at the close of the fiscal year shall remain in the fund and shall not lapse to the general fund.

(e) The department shall deposit into the fund all money received from the regulatory and enforcement fee, license fees, event fees, and administrative fines imposed under this act, and from any other source.



(6) Annually, the legislature shall fix the per diem compensation of the members of the commission. Travel or other expenses incurred by a commission member in the performance of an official function shall be payable by the department under the standardized travel regulations of the department of technology, management, and budget.

(7) The department and commission may affiliate with any other state or national boxing, mixed martial arts, or unarmed combat commission or athletic authority. The commission, with the approval of the director, may enter into any appropriate reciprocity agreements.

(8) The commission and department are vested with management, control, and jurisdiction over all professional boxing, professional or amateur mixed martial arts, or unarmed combat contests or events conducted in this state. Except for a contest or event that is exempt under this act, a person shall not conduct a contest or event in this state except in compliance with this act.

**History:** 2004, Act 403, Eff. Feb. 20, 2005 ;-- Am. 2007, Act 196, Eff. Mar. 27, 2008 ;-- Am. 2010, Act 100, Imd. Eff. June 22, 2010 ;-- Am. 2015, Act 183, Eff. Feb. 10, 2016

**Compiler's Notes:** For creation of the Michigan unarmed combat commission within the department of licensing and regulatory affairs as type I agency, and the transfer of powers and duties of the department of licensing and regulatory affairs to the Michigan unarmed combat commission, see E.R.O. No. 2019-2, compiled at MCL 333.27001. For the transfer of powers and duties of the director of the department of licensing and regulatory affairs under the Michigan unarmed combat regulatory act, 2004 PA 403, to the chairperson of the Michigan unarmed combat commission, see E.R.O. No. 2019-2, compiled at MCL 333.27001.

## CHAPTER 3

### 338.3630 Promoter's license.

Sec. 30.

(1) A person shall not conduct a contest or event that is regulated under this act without a promoter's license under this act, or engage in or attempt to engage in any other activity regulated under this act without the applicable license issued by the department under this act, unless the person is exempt from licensure under this act.

(2) An annual license issued under this act expires on August 31.

**History:** 2004, Act 403, Eff. Feb. 20, 2005 ;-- Am. 2015, Act 183, Eff. Feb. 10, 2016 ;-- Am. 2017, Act 146, Eff. Jan. 31, 2018

### 338.3631 Application for licensure.

Sec. 31.

By filing an application for a license, an applicant does both of the following:

(a) Certifies the applicant's general suitability, character, integrity, and ability to participate, engage in, or be associated with boxing or mixed martial arts contests or events. The burden of proof is on the applicant to establish to the satisfaction of the commission and the department that the applicant is qualified to receive a license.

(b) Accepts the risk of adverse public notice, embarrassment, criticism, financial loss, or other action with respect to the application and expressly waives any claim for damages as a result of any adverse public notice, embarrassment, criticism, financial loss, or other action. Any written or oral statement made by any member of the commission or any witness testifying under oath that is relevant to the application and investigation of the applicant is immune from civil liability for libel, slander, or any other tort.

**History:** 2004, Act 403, Eff. Feb. 20, 2005 ;-- Am. 2005, Act 49, Imd. Eff. June 23, 2005 ;-- Am. 2007, Act 196, Eff. Mar. 27, 2008 ;-- Am. 2015, Act 183, Eff. Feb. 10, 2016

### 338.3632 Repealed. 2015, Act 183, Eff. Feb. 10, 2016.

**338.3633 Promoter's license; application; good moral character; bond; fees; submission of contract; deposit of money; delivery and disclosure of contract; drug tests; inspector; requirements.**

Sec. 33.

(1) An application for a promoter's license must be in writing and shall include the legal name, street address, and telephone number of the applicant.

(2) An applicant for a promoter's license must demonstrate good moral character. If an applicant for a promoter's license is denied a license because of a lack of good moral character, the applicant may petition the commission for a review of the decision under section 46.

(3) Before the department grants an approval for a contest or event, the promoter must submit a bond to the department that meets all of the following:

- (a) Is in an amount fixed by the department but not less than \$20,000.00 or more than \$50,000.00.
- (b) Is executed by the promoter as principal.
- (c) Is issued by a corporation that is qualified under the laws of this state as a surety.
- (d) Is payable to the state of Michigan.
- (e) Is purchased at least 5 days before the contest.
- (f) Is conditioned on the faithful distribution of all money owed by the promoter as a result of the event.
- (g) Is for the benefit of any person that is damaged by the promoter's nonpayment of any liabilities associated with the event.
- (h) Allows any affected person to bring an action on the bond.
- (i) Remains in effect until all complaints properly filed with the department for nonpayment of obligations covered by the bond are fully adjudicated. A complaint is not properly filed if it is not filed within 30 business days following the event covered by the bond.

(4) A promoter must apply for and obtain an annual license from the department in order to present a program of contests or events regulated under this act. The annual license fee is \$300.00. The department shall request, and the applicant shall provide, any information that the department determines is necessary to ascertain the financial stability of the applicant. Section 61a applies to any information provided by an applicant under this subsection.

(5) A promoter that conducts an event in this state shall pay an event fee of \$500.00.

(6) To assure the integrity of the sports of boxing and mixed martial arts, the public interest, and the welfare and safety of contestants, each promoter that conducts an event in this state shall pay a regulatory and enforcement fee for that event in an amount equal to 3% of the total gross receipts from any contracts for the sale, lease, or other exploitation of broadcasting, television, and motion picture rights or other media for the event, or \$25,000.00, whichever is less, if either of the following is met:

- (a) The event is located in a venue with a seating capacity of more than 5,000.
- (b) The promoter proposes to televise or broadcast the event over any medium for viewing by spectators who are not present in the venue.

(7) For purposes of subsection (6), at least 10 days before the event, the promoter shall submit any contract that is subject to the regulatory and enforcement fee to the department, stating the amount of the probable total gross receipts from the sale, lease, or other exploitation of broadcasting, television, motion picture rights, or other media for the event. However, this subsection does not apply to a promoter that agrees to pay a regulatory and enforcement fee under subsection (6) of \$25,000.00, and the department receives that payment from the promoter at least 3 business days before the event.

(8) The department shall deposit the money received from the proceeds of the regulatory and enforcement fee into the fund created in section 22 and use those proceeds for the purposes described in that section.

(9) Within 1 business day before a contest or event, the promoter shall deliver to the department a copy of all of the executed contracts between the promoter and the professionals who are participating in that contest or event. The copies of the contracts are exempt from disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, except that the department may disclose statistical information on the number, types, and amounts of contracts if information regarding identifiable individuals or categories is not revealed.

(10) The commission or department may require that a promoter ensure that a contestant is available for drug testing before or after a contest to detect the presence of controlled substances, alcohol, enhancers, stimulants, performance enhancing drugs, or other drugs or substances prohibited by rules promulgated by the department, or derivatives or metabolites of controlled substances, alcohol, enhancers, stimulants, performance enhancing drugs, or other drugs or substances prohibited by rules promulgated by the department. A contestant shall submit to a

urinalysis or chemical test before or after a contest if the commission, the department, a designated representative of the commission or department, or an inspector described in subsection (11) directs him or her to do so. If a contestant fails or refuses to submit to a urinalysis or chemical test under this subsection, or the results of the urinalysis or chemical test confirm or demonstrate that the contestant has violated this act, he or she is subject to disciplinary action by the commission under this act. In addition to any other disciplinary action by the commission, if the contestant won the contest or the contest was a draw, the commission may change the result of that contest to a no decision. The department may promulgate rules to define the terms "stimulants" or "performance enhancing drugs".

(11) A promoter shall not conduct a professional boxing, professional mixed martial arts, or amateur mixed martial arts event in this state unless at least 1 inspector is present at the event. All of the following apply to an inspector:

(a) An inspector shall not have any relationship or business interest with a licensee involved in an event for which he or she is the inspector.

(b) An inspector shall collect and submit all contestant drug tests as required by the department to ensure the chain of custody of those tests.

(c) An inspector shall weigh in each contestant.

(d) An inspector shall tabulate the scores of each contest.

(e) An inspector shall approve each contestant's hand wraps before a contest.

(f) An inspector shall monitor the actions of each individual who assists a contestant during the contest.

(g) An inspector must be an individual who meets any of the following:

(i) Is licensed or certified, or was previously licensed or certified, by the commission on law enforcement standards under the Michigan commission on law enforcement standards act, 1965 PA 203, MCL 28.601 to 28.615.

(ii) Is licensed by the department as a private security guard or security guard agency.

(iii) Is employed by a security guard agency that is licensed by the department.

(iv) Was previously approved as an inspector by the department.

(v) Is approved by the department.

(h) The department may promulgate rules under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, to establish additional duties of inspectors.

(i) An inspector shall receive reasonable compensation, and reimbursement of his or her actual and necessary travel expenses, for attending an event.

(j) The promoter of an event is responsible for payment of an inspector for that event under subdivision (i).

**History:** 2004, Act 403, Eff. Feb. 20, 2005 ;-- Am. 2005, Act 49, Imd. Eff. June 23, 2005 ;-- Am. 2007, Act 196, Eff. Mar. 27, 2008 ;-- Am. 2012, Act 546, Imd. Eff. Jan. 2, 2013 ;-- Am. 2015, Act 183, Eff. Feb. 10, 2016 ;-- Am. 2016, Act 300, Eff. Jan. 2, 2017 ;-- Am. 2017, Act 146, Eff. Jan. 31, 2018

### **338.3633a Contestant license.**

#### **Sec. 33a.**

(1) Before an individual participates in a contest, he or she shall obtain a contestant license from the department. To obtain a contestant license, an applicant must submit all of the following to the department:

(a) An application that includes his or her name, address, and date of birth. The department may prescribe the form and the contents of the application form.

(b) With the application described in subdivision (a), a nonrefundable application processing fee in the amount of \$45.00 and an annual license fee of \$45.00.

(c) If he or she is applying for a license as a professional contestant in boxing, the identification number of his or her federal identification card described in section 33d(1).

(d) If he or she is applying for a license as a professional contestant in mixed martial arts, the identification number of his or her national identification card described in section 33d(2).

(2) Except as otherwise provided in this act, the department shall issue a contestant license under this section to an individual who meets the contestant licensing requirements under this act and rules promulgated under this act. The department shall assign a license number to each license issued under this subsection.

(3) In any notice, report, or other communication with the department or commission that identifies or refers to a specific contestant, including, but not limited to, the report of the results of each contest under section 54a(2)(aa), a promoter shall include the license number of the contestant assigned under subsection (2).

(4) An individual shall not receive a contestant license under this section unless he or she passes a physical

examination that is performed by a physician and submits the results of that examination to the department on a form prescribed by the department.

(5) An individual shall not receive a contestant license under this section unless he or she is at least 18 years of age.

**History:** Add. 2015, Act 183, Eff. Feb. 10, 2016 ;-- Am. 2017, Act 146, Eff. Jan. 31, 2018

### **338.3633b Participant license.**

Sec. 33b.

(1) An individual shall not participate in a contest or event as a referee, judge, matchmaker, or timekeeper without a participant license from the department under this section. To obtain a participant license, an applicant must submit all of the following to the department:

(a) An application. The department may prescribe the form and the contents of the application form.

(b) With the application described in subdivision (a), a nonrefundable application processing fee in the amount of \$30.00 and 1 of the following annual license fees, as applicable:

(i) Referee license, \$150.00.

(ii) Judge license, \$70.00.

(iii) Matchmaker license, \$150.00.

(iv) Timekeeper license, \$70.00.

(2) An applicant for a referee, judge, matchmaker, or timekeeper participant license must demonstrate to the satisfaction of the department that he or she meets all of the following to receive a license under this section:

(a) Has good moral character.

(b) Is at least 18 years of age.

(c) Any other requirement established by rule.

**History:** Add. 2015, Act 183, Eff. Feb. 10, 2016

### **338.3633c Failure to renew promoter, contestant, or participant license; late renewal fee.**

Sec. 33c.

(1) A person that fails to renew a promoter license that is required under this act on or before its expiration date shall not conduct a contest or event or advertise, operate, or use the title "promoter" after the license expires.

(2) An individual who fails to renew a contestant license that is required under this act on or before its expiration date shall not participate in a contest or event or use the title "contestant" after his or her license expires.

(3) An individual who fails to renew a participant license that is required under this act on or before its expiration date shall not participate in an event or contest or use the title "referee", "boxing referee", "mixed martial arts referee", "judge", "boxing judge", "mixed martial arts judge", "matchmaker", "timekeeper", "boxing timekeeper", or "mixed martial arts timekeeper" after his or her license expires.

(4) A person that does not renew a license issued under this act on or before its expiration date may renew the license within 60 days after the expiration date by paying the required license fee and paying a late renewal fee in the amount of \$30.00. After that 60-day period, the person may only obtain a license under this act by complying with the requirements of this chapter for obtaining a new license, paying the required license fee, and paying a late renewal fee in the amount of \$30.00.

**History:** Add. 2015, Act 183, Eff. Feb. 10, 2016

### **338.3633d License as professional contestant; federal or national identification card.**

Sec 33d.

(1) An individual shall not receive a license as a professional contestant in boxing if he or she does not possess a federal identification card. If the individual does not have a federal identification card, and he or she is a resident of this state or is not a resident of any state of the United States, he or she shall submit a separate request to the department for a federal identification card. If the individual is a resident of another state, he or she must apply to that state for a federal identification card.

(2) An individual shall not receive a license as a professional contestant in mixed martial arts if he or she does not possess a national identification card. If the individual does not have a national identification card, he or she shall submit a separate request to the department for a national identification card.

(3) To obtain a federal or national identification card from the department, an applicant must do all of the following:

(a) Submit an application that includes his or her name, address, date of birth, and any other information required by the department. The department may prescribe the form and the contents of the application form.

(b) With the application described in subdivision (a), a nonrefundable application processing fee in the amount of \$20.00.

(4) The department shall transmit the information about an applicant described in subsection (3) to a federal or national recordkeeper designated by the department and, when approved by that recordkeeper, shall issue a federal or national identification card that includes an identification number assigned by that recordkeeper.

**History:** Add. 2015, Act 183, Eff. Feb. 10, 2016

### **338.3634 Rules; determination of applicant's financial stability; presence of applicant at commission meeting.**

Sec. 34.

(1) The director, in consultation with the commission, may promulgate rules for the application and approval process for promoters. Until the rules are promulgated, the applicant shall comply with the standards described in subsection (2).

(2) The rules regarding the application process described in subsection (1) shall include at least the following:

(a) An initial application processing fee in an amount sufficient to cover the costs of processing a promoter's license, but not less than \$250.00.

(b) A requirement that the applicant provide background information concerning the applicant, if the applicant is an individual, or concerning the principal officers or members of, and each individual who has at least a 10% ownership interest in the applicant if the applicant is not an individual, with emphasis on his or her business experience.

(c) Information from the applicant concerning past and present civil lawsuits, judgments, and filings under the bankruptcy code that are not more than 7 years old.

(d) Any other relevant and material information considered necessary by the director after consultation with the commission.

(3) The department may consult with the commission on issues related to the determination of an applicant's financial stability and shall refer the application to the commission if clear and convincing grounds for approval of the financial stability aspect of the application do not exist.

(4) As part of the approval process for promoters, the commission may require that the applicant or a representative of the applicant is present at the commission meeting at which the application is considered.

**History:** 2004, Act 403, Eff. Feb. 20, 2005 ;-- Am. 2005, Act 49, Imd. Eff. June 23, 2005 ;-- Am. 2007, Act 196, Eff. Mar. 27, 2008 ;-- Am. 2015, Act 183, Eff. Feb. 10, 2016

### **338.3635 Rules.**

Sec. 35.

The director, after consultation with the commission, may promulgate rules to set standards for unarmed combat events and participants, to establish training requirements for promoters, contestants, and participants regulated under this act, or to establish license fees or training requirements for other individuals who are engaged in activities regulated by this act not otherwise provided for in this act.

**History:** 2004, Act 403, Eff. Feb. 20, 2005 ;-- Am. 2007, Act 196, Eff. Mar. 27, 2008 ;-- Am. 2015, Act 183, Eff. Feb. 10, 2016

**Compiler's Notes:** For creation of the Michigan unarmed combat commission within the department of licensing and regulatory affairs as type I agency, and the transfer of powers and duties of the department of licensing and regulatory affairs to the Michigan unarmed combat commission, see E.R.O. No. 2019-2, compiled at MCL 333.27001. For the transfer of powers and duties of the director of the department of licensing and regulatory affairs under the Michigan unarmed combat regulatory act, 2004 PA 403, to the chairperson of the Michigan unarmed combat commission, see E.R.O. No. 2019-2, compiled at MCL 333.27001.

## CHAPTER 4

### 338.3640 Complaint; filing.

Sec. 40.

A complaint that alleges that a person has violated this act or a rule promulgated or an order issued under this act shall be submitted to the department. The department of attorney general, the department, the commission, or any other person may file a complaint.

**History:** 2004, Act 403, Eff. Feb. 20, 2005 ;-- Am. 2015, Act 183, Eff. Feb. 10, 2016

**Compiler's Notes:** For creation of the Michigan unarmed combat commission within the department of licensing and regulatory affairs as type I agency, and the transfer of powers and duties of the department of licensing and regulatory affairs to the Michigan unarmed combat commission, see E.R.O. No. 2019-2, compiled at MCL 333.27001. For the transfer of powers and duties of the director of the department of licensing and regulatory affairs under the Michigan unarmed combat regulatory act, 2004 PA 403, to the chairperson of the Michigan unarmed combat commission, see E.R.O. No. 2019-2, compiled at MCL 333.27001.

### 338.3641 Complaint; investigation; procedures.

Sec. 41.

(1) When it receives a complaint under section 40, the department shall immediately begin an investigation of the allegations of the complaint and shall open a correspondence file. The department shall make a written acknowledgment of the complaint within 15 days after it receives a complaint to the person that made the complaint. If a complaint is made by the department, the director shall designate 1 or more employees of the department to act as the person that made the complaint.

(2) The department shall conduct an investigation required under subsection (1). As part of that investigation, the department may request that the attorney general petition a court of competent jurisdiction to issue a subpoena requiring a person to appear before the department and be examined with reference to a matter within the scope of the investigation and to produce books, papers, or documents pertaining to the investigation.

(3) After conducting an investigation under subsection (1), if the department does not find that a violation of this act or a rule promulgated or an order issued under this act occurred, the department shall close the complaint. The department shall notify the complainant and respondent of its reasons for closing the complaint, and the complainant or respondent may then provide additional information to reopen the complaint.

(4) If the department investigation under subsection (1) reveals evidence of a violation of this act or a rule promulgated or an order issued under this act, the department or the department of attorney general shall prepare the appropriate action against the respondent, which may be any of the following:

- (a) A formal complaint.
- (b) A cease and desist order.
- (c) A notice of summary suspension, subject to sections 42 and 48(5).
- (5) At any time during its investigation or after a formal complaint is issued, the department may bring together

the complainant and the respondent for an informal conference. At the informal conference, the department shall attempt to resolve issues raised in the complaint and may attempt to aid the parties in reaching a settlement.

**History:** 2004, Act 403, Eff. Feb. 20, 2005 ;-- Am. 2015, Act 183, Eff. Feb. 10, 2016

### **338.3642 Summary suspension.**

Sec. 42.

(1) After it conducts an investigation, the department may issue an order summarily suspending a license based on an affidavit by an individual who is familiar with the facts set forth in the affidavit, or, if appropriate, based on an affidavit made on information and belief, that an imminent threat to the integrity of the sport, the public interest, or the welfare and safety of a contestant exists.

(2) A person whose license is summarily suspended under this section may petition the department to dissolve the order. If it receives a petition to dissolve a summary suspension order under this subsection, the department may deny the request to dissolve the order, grant the request to dissolve the order, or immediately schedule a hearing to decide whether to grant or deny the request to dissolve the order.

(3) At a hearing described in subsection (2), an administrative law hearings examiner shall dissolve the summary suspension order, unless sufficient evidence is presented that an imminent threat to the integrity of the sport, the public interest, or the welfare and safety of a contestant exists that requires emergency action and continuation of the department's summary suspension order.

(4) The record created at a hearing described in subsection (2) to dissolve a summary suspension order shall become part of the record on the complaint at any subsequent hearing in a contested case on the complaint.

(5) A summary suspension of a contestant under section 48(5) for refusal or failure to submit to a drug test or for the presence of controlled substances, alcohol, enhancers, stimulants, performance enhancing drugs, or other drugs or substances prohibited by rules promulgated by the department, or derivatives or metabolites of controlled substances, alcohol, enhancers, stimulants, performance enhancing drugs, or other drugs or substances prohibited by rules promulgated by the department, shall proceed under this section.

**History:** 2004, Act 403, Eff. Feb. 20, 2005 ;-- Am. 2015, Act 183, Eff. Feb. 10, 2016

### **338.3643 Cease and desist order.**

Sec. 43.

(1) After an investigation has been conducted, the director may order a person to cease and desist from a violation of this act or a rule promulgated or an order issued under this act.

(2) A person ordered to cease and desist may request a hearing before the department if a written request for a hearing is filed within 30 days after the effective date of the order.

(3) Upon a violation of a cease and desist order issued under this act, the department of attorney general may apply to a court of competent jurisdiction to restrain and enjoin, temporarily or permanently, or both, a person from further violating a cease and desist order.

**History:** 2004, Act 403, Eff. Feb. 20, 2005

### **338.3644 Formal complaint.**

Sec. 44.



(1) A summary suspension order, cease and desist order, or injunctive relief issued or granted in relation to a license is in addition to and not in place of an informal conference; criminal prosecution; or proceeding to deny, revoke, or suspend a license; or any other action authorized under this act.

(2) After an investigation is conducted and a formal complaint is prepared, the department shall serve the formal complaint on the respondent and the complainant. At the same time, the department shall serve the respondent with a notice describing the compliance conference and hearing process and offering the respondent a choice of 1 of the following opportunities:

(a) An opportunity to meet with the department to negotiate a settlement of the matter.

(b) If the respondent is a licensee or registrant under this act, an opportunity to demonstrate compliance before a contested case hearing is held.

(c) An opportunity to proceed to a contested case hearing.

(3) A respondent upon which service of a formal complaint is made under this section may select, within 15 days after the receipt of notice, 1 of the options described in subsection (2). If a respondent does not select 1 of those options within the time period described in this section, then the department shall proceed to a contested case hearing as described in subsection (2)(c).

(4) An informal conference may be attended by a member of the commission, at the discretion of that commission, and may result in the agreement of the parties and the department to a settlement. A settlement may include the revocation or suspension of a license; censure; probation; restitution; or a penalty under section 48. The commission may reject a settlement and require a contested case hearing.

(5) An employee of the department may represent the department in any contested case hearing.

(6) This chapter does not prevent a person against which a complaint is filed from showing compliance with this act or a rule promulgated or an order promulgated or issued under this act.

(7) If an informal conference is not held or does not result in a settlement, the department shall allow the respondent an administrative hearing. A member of the commission may attend a hearing under this section.

(8) The department or the department of the attorney general may petition a court of competent jurisdiction to issue a subpoena that requires the person subpoenaed to appear or testify or produce relevant documentary material for examination at a proceeding.

**History:** 2004, Act 403, Eff. Feb. 20, 2005 ;-- Am. 2015, Act 183, Eff. Feb. 10, 2016

### **338.3645 Hearing report; determination by commission; basis; penalties; final determination.**

#### **Sec. 45.**

(1) At the conclusion of a hearing conducted under section 44(7), the administrative law hearings examiner shall submit a determination of findings of fact and conclusions of law to the department and the department of the attorney general and the commission, in a hearing report. The submitted hearing report may recommend the penalties to be assessed under section 48.

(2) A copy of a hearing report shall be submitted to the person that made the complaint and to the person against which the complaint was filed.

(3) Within 60 days after it receives an administrative law hearings examiner's hearing report, the commission shall meet and make a determination of the penalties to be assessed under section 48. The commission's determination shall be made on the basis of the administrative law hearings examiner's report. A transcript of a hearing or a portion of the transcript shall be made available to the commission on request. If a transcript or a portion of the transcript is requested, the commission's determination of the penalty or penalties to be assessed under section 48 shall be made at a meeting within 60 days after the commission receives the transcript or portion of the transcript.

(4) If the parties and the department agree to a settlement, and that settlement requires imposition of a penalty under section 48 but does not specify that penalty, the commission shall make a determination of the penalties within 60 days after it receives the settlement. The commission shall make its determination of the appropriate penalty based on the terms of the settlement.

(5) If the commission does not determine the appropriate penalty or penalties to be assessed within the time limits prescribed in subsection (3) or (4), the director may determine the appropriate penalty and issue a final order.

(6) A member of the commission who has participated in an investigation or administrative hearing on a complaint filed with the department or who has attended an informal conference shall not participate in making a final determination in a proceeding on that complaint.



**338.3646 Issuance of license or renewal; petition to review.**

Sec. 46.

(1) A person seeking a license or renewal under this act may petition the department and the commission for a review if that person does not receive a license or renewal.

(2) A petition submitted under subsection (1) shall be in writing and shall set forth the reasons the petitioner feels the licensure or renewal should be issued.

(3) In considering a petition submitted under subsection (1), the department and the commission may administer an alternative form of testing to the petitioner or conduct a personal interview with the petitioner, or both.

(4) The department may issue a license or renewal if, based on a review of the qualifications of the person who submitted a petition under subsection (1), the department and the commission determine that the person could perform the licensed activity with competence.

(5) Notwithstanding any other provision of this act, if a written grievance was lodged before the effective date of this act against a person licensed under an act repealed by this act, the proceedings on that grievance shall be conducted in the manner prescribed in the repealed act.

**History:** 2004, Act 403, Eff. Feb. 20, 2005

**338.3647 Action against license; rules; seat provided to commission member.**

Sec. 47.

(1) The department shall initiate an action under this chapter against an applicant or take any other allowable action against the license of any contestant, promoter, or participant if the department determines that the applicant or licensee does any of the following:

(a) Engages in fraud, deceit, or dishonesty in obtaining a license.

(b) Engages in fraud, deceit, or dishonesty in performing the duties of a promoter, if applicable, or otherwise practicing that person's licensed occupation.

(c) If the licensee or applicant pays a fee under this act with a check, money order, or similar instrument or with a credit card or debit card and that payment is dishonored or otherwise refused when presented by the department for payment, fails to pay that fee and reimburse the department for any charges incurred by the department in connection with that dishonored or refused payment. If a payment is dishonored or refused, the license is immediately suspended and remains suspended until the fee and the related charges are paid. As used in this subdivision, "dishonored" means that term as described in section 3502 of the uniform commercial code, 1962 PA 174, MCL 440.3502.

(d) Enters into a contract for a contest or event in bad faith.

(e) Participates in any sham or fake contest or event.

(f) Participates in a contest or event under a collusive understanding or agreement in which the contestant competes or terminates the contest or event in a manner that is not based on honest competition or the honest exhibition of the skill of the contestant.

(g) Is determined to have failed to give his or her best efforts, failed to compete honestly, or failed to give an honest exhibition of his or her skills in a contest.

(h) Is determined to have performed an act or engaged in conduct that is detrimental to a contest or event, including, but not limited to, any foul or unsportsmanlike conduct in connection with a contest or event.

(i) Gambles on the outcome of a contest or event in which he or she is a contestant, matchmaker, ring official, or second.

(j) Assaults another licensee, outside of or while not involved in a contest, a commission member, or a department employee.

(k) Engages in false advertising.

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

(m) Fails to provide a requested document or records to the department.

- (n) Violates or fails to comply with a settlement with or final order issued by the department or commission.
  - (o) Fails to pay any obligation that is related to the normal course of promoting an event, including, but not limited to, venue rent or judge, physician, referee, or timekeeper fees.
  - (p) Enters into a contract for a contest or event in bad faith.
  - (q) Gambles on the outcome of a contest or event of which the person is a promoter.
  - (r) Fails to file current address information with the department within 30 days after a change occurs.
  - (s) Tampers with or coerces a contestant.
  - (t) Aids or abets another person to act as a promoter, contestant, or participant or conduct an event without a license under this act.
  - (u) Violates any other provision of this act or a rule promulgated under this act for which a penalty or remedy is not otherwise prescribed.
- (2) The department, in consultation with the commission, shall promulgate rules to provide for both of the following:
- (a) The timing of drug tests for contestants.
  - (b) For purposes of section 48(5), specific summary suspension procedures for contestants who fail to submit to a drug test or who test positive for controlled substances, alcohol, enhancers, stimulants, performance enhancing drugs, or other drugs or substances prohibited by rules promulgated by the department, or derivatives or metabolites of controlled substances, alcohol, enhancers, stimulants, performance enhancing drugs, or other drugs or substances prohibited by rules promulgated by the department. The rules shall include all of the following:
    - (i) A procedure to allow the department to place the licensee on the national suspension list maintained by the designated recordkeeper authorized by the Association of Boxing Commissions.
    - (ii) An expedited appeal process for the summary suspension.
    - (iii) A relicensing procedure following summary suspension.
- (3) Each promoter shall furnish each member of the commission present at a contest or event a seat in the area immediately adjacent to the contest or event. An additional seat shall be provided in the venue.

**History:** 2004, Act 403, Eff. Feb. 20, 2005 ;-- Am. 2005, Act 49, Imd. Eff. June 23, 2005 ;-- Am. 2007, Act 196, Eff. Mar. 27, 2008 ;-- Am. 2015, Act 183, Eff. Feb. 10, 2016 ;-- Am. 2017, Act 146, Eff. Jan. 31, 2018

### **338.3648 Reinstatement; disciplinary action; administrative fine; costs; grounds for summary suspension.**

Sec. 48.

- (1) If it receives an application for reinstatement and the payment of any administrative fine assessed by the commission under this section, the commission may reinstate a revoked license or lift a suspension.
- (2) All of the following apply if disciplinary action is taken against a person under this act:
  - (a) If the disciplinary action does not relate to a contest or event, the commission may, in lieu of suspending or revoking a license, assess an administrative fine in an amount that does not exceed \$10,000.00.
  - (b) If disciplinary action is taken against a person under this act that relates to the preparation for a professional contest or event, the occurrence of a professional contest or event, or any other action taken in conjunction with a professional contest or event, the commission may assess an administrative fine in an amount that does not exceed 100% of the share of the purse to which the holder of the license is entitled for the contest or event.
  - (c) If disciplinary action is taken against a person under this act that relates to the preparation for an amateur contest or event, the occurrence of an amateur contest or event, or any other action taken in conjunction with an amateur contest or event, the commission may assess an administrative fine in an amount that does not exceed \$10,000.00.
  - (d) If disciplinary action is taken against a person, other than a contestant, that relates to the preparation for a contest or event, the occurrence of a contest or event, or any other action taken in conjunction with a contest or event, the commission may assess an administrative fine in an amount that does not exceed \$100,000.00.
- (3) The commission may assess an administrative fine under subsection (2) in addition to, or in lieu of, taking any other disciplinary action against the person.
- (4) If an administrative fine is assessed under this section, the commission may recover the costs of the proceeding, including investigative costs and attorney fees. The department or the attorney general may bring an action in a court of competent jurisdiction to recover any administrative fines, investigative and other allowable costs, and attorney fees. The filing of an action to recover fines and costs does not bar the imposition of other penalties or remedies under this act.
- (5) Either of the following is grounds for summary suspension of the individual's license under section 42:

(a) A test resulting in a finding of the presence of controlled substances, alcohol, enhancers, stimulants, performance enhancing drugs, or other drugs or substances prohibited by rules promulgated by the department, or derivatives or metabolites of controlled substances, alcohol, enhancers, stimulants, performance enhancing drugs, or other drugs or substances prohibited by rules promulgated by the department.

(b) The refusal or failure of a contestant to submit to the drug testing ordered by an authorized person.

**History:** 2004, Act 403, Eff. Feb. 20, 2005 ;-- Am. 2005, Act 49, Imd. Eff. June 23, 2005 ;-- Am. 2007, Act 196, Eff. Mar. 27, 2008 ;-- Am. 2015, Act 183, Eff. Feb. 10, 2016 ;-- Am. 2017, Act 146, Eff. Jan. 31, 2018

### **338.3649 Violation of act, rule, or order; actions by department; reimbursement for expenses; injunctive action; other remedies.**

Sec. 49.

(1) If a person that holds a license under this act violates this act or a rule or order promulgated or issued under this act, the department may take 1 or more of the following actions:

- (a) Suspend the person's license.
- (b) Deny the renewal of the person's license.
- (c) Revoke the person's license.
- (d) Assess an administrative fine.
- (e) Censure the licensee.

(2) If the department finds that a person that is subject to subsection (1) has violated this act or a rule promulgated under this act, that person is responsible for the department's expenses that are related to the investigation and any disciplinary proceeding for that violation and shall reimburse the department for those expenses. For purposes of this subsection, the department's expenses include, but are not limited to, salaries and benefits of personnel, travel and any other expenses of those personnel, and any other expenses incurred by the department in conducting the investigation and any disciplinary proceeding.

(3) The department may bring an injunctive action in a court of competent jurisdiction to restrain or prevent a person from violating this act. If successful in obtaining injunctive relief, the department is entitled to its costs and reasonable attorney fees.

(4) The penalties and remedies under this section and section 49a are independent and cumulative. The imposition of a remedy or penalty against a person under this section or section 49a does not bar the pursuit of any lawful remedy by that person or the pursuit of a lawful remedy by any other person against that person.

**History:** Add. 2015, Act 183, Eff. Feb. 10, 2016

### **338.3649a Violation as misdemeanor; violation as felony; penalty; costs.**

Sec. 49a.

(1) A person that engages in or attempts to engage in an activity for which a license is required under this act, or uses a title designated in this act, without the appropriate license issued by the department under this act is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$1,000.00, or both.

(2) A person that knowingly allows a professional in mixed martial arts or boxing to participate as a contestant in an amateur mixed martial arts contest with an amateur is guilty of a felony punishable by imprisonment for not more than 3 years or a fine of \$10,000.00 per incident, or both.

(3) If a court finds in an action under this section or section 49(2) that a person has violated this act or a rule promulgated under this act, that person shall be assessed costs related to the investigation of the violation and costs related to the prosecution of the action. The costs related to the investigation and prosecution include, but are not limited to, salaries and benefits of personnel, costs related to the time spent by the attorney general's office and other personnel working on the action, and any other expenses incurred by the department for the action.

**History:** Add. 2015, Act 183, Eff. Feb. 10, 2016

## CHAPTER 5

### 338.3650 Boxing elimination contests.

Sec. 50.

(1) Boxing elimination contests in which all of the following apply are exempt from this act:

(a) The contestants compete for prizes only in elimination contests and are not also professional boxers competing in 4 or more rounds of nonelimination boxing.

(b) Each bout is scheduled to consist of 3 or fewer 1-minute rounds, with contests conducted on no more than 2 consecutive calendar days.

(c) Competing contestants are prohibited from boxing for more than 12 minutes on each contest day.

(d) The contestants participating in the elimination contest are insured by the promoter for all medical and hospital expenses to be paid to the contestants to cover injuries sustained in the contest.

(e) A physician is in attendance at ringside and the physician has authority to stop the contest for medical reasons.

(f) All contestants pass a physical examination given by a physician, a licensed physician's assistant, or a certified nurse practitioner before the contest.

(g) A preliminary breath test is administered to each contestant which indicates a blood alcohol content of .02% or less.

(h) The promoter conducts the elimination contest in compliance with the following:

(i) A contestant who has lost by a technical knockout is not permitted to compete again for a period of 30 calendar days or until the contestant has submitted to the promoter the results of a physical examination equivalent to that required of professional boxers.

(ii) The ringside physician examines a contestant who has been knocked out in an elimination contest or whose fight has been stopped by the referee because he or she received hard blows to the head that made him or her defenseless or incapable of continuing immediately after the knockout or stoppage. The ringside physician may recommend post-fight neurological examinations, which may include computerized axial tomography (CAT) scans or magnetic resonance imaging (MRI), to be performed on the contestant immediately after the contestant leaves the location of the contest. The promoter shall not permit the contestant to compete until a physician has certified that the contestant is fit to compete. If the physician recommended further neurological examinations, the promoter shall not permit the contestant to compete until the promoter receives copies of examination reports demonstrating that the contestant is fit to compete.

(iii) The promoter requires that a contestant who has sustained a severe injury or knockout in an elimination contest be examined by a physician. The promoter shall not permit the contestant to compete until the physician has certified that the contestant has fully recovered.

(iv) The promoter does not permit a contestant to compete in an elimination contest for a period of not less than 60 days if he or she has been knocked out or has received excessive hard blows to the head that required the fight to be stopped.

(v) A contestant who has been knocked out twice in a period of 3 months or who has had excessive head blows causing a fight to be stopped is not permitted by a promoter to participate in an elimination contest for a period of not less than 120 days from the second knockout or stoppage.

(vi) A contestant who has been knocked out or had excessive hard blows to the head causing a fight to be stopped 3 times consecutively in a period of 12 months is not permitted by a promoter to participate in an elimination contest for a period of 1 year from the third knockout.

(vii) Before resuming competition after any of the periods of rest prescribed in subparagraphs (iv), (v), and (vi), a promoter requires the contestant to produce a certification by a physician stating that the contestant is fit to take part in an elimination contest.

(2) As part of the physical examination given before the boxing elimination contest, the physician, licensed physician's assistant, certified nurse practitioner, or other trained person shall administer a preliminary breath test in compliance with standards imposed in rules promulgated by the department of state police regarding equipment calibration and methods of administration. The promoter shall keep a log of preliminary breath test results of contestants on file at its place of business for at least 3 years after the date of administration of the test. These results shall be made available to law enforcement officials upon request.

**History:** 2004, Act 403, Eff. Feb. 20, 2005

**338.3651 Repealed. 2015, Act 183, Eff. Feb. 10, 2016**

**Compiler's Notes:** The repealed section pertained participant license.

**338.3652 Repealed. 2015, Act 183, Eff. Feb. 10, 2016.**

**Compiler's Notes:** The repealed section pertained to examination or training program.

**338.3653 Repealed. 2015, Act 183, Eff. Feb. 10, 2016.**

**Compiler's Notes:** The repealed section pertained to licensure as professional referee, judge, or timekeeper.

**338.3654 Repealed. 2015, Act 183, Eff. Feb. 10, 2016.**

**Compiler's Notes:** The repealed section pertained to experience standards for licensure as professional judge.

**338.3654a Unarmed combat event, amateur mixed martial arts, professional mixed martial arts, or professional boxing event presented by licensed promoter; requirements.**

Sec. 54a.

(1) A licensed promoter that presents an unarmed combat event in this state must comply with all of the following:

(a) At least 30 days before the event, submit a request for approval of the event to the department, on a form prescribed by the department. The request shall include the names the promoter is required to provide under subdivisions (d), (e), (f), and (g).

(b) Within the 5-day period preceding a professional boxing or professional mixed martial arts event, submit the fight records of each contestant to the department. "Fight records" means that term as defined by the department by rule.

(c) Pay all obligations that are related to the normal course of promoting an unarmed combat event, including, but not limited to, venue rent and judge, physician, referee, and timekeeper fees.

(d) Arrange for a physician to attend the event for purposes of subsection (2)(k), and arrange for an alternate physician to attend the event if the original physician is unable to attend the event. The promoter shall include the name of the physician and the alternate physician described in this subdivision in the request submitted under subdivision (a).

(e) Arrange for an ambulance that is staffed by emergency medical technicians to be on the premises to attend the event for purposes of subsection (2)(j), and arrange for an alternate ambulance that is staffed by emergency medical technicians to be on the premises to attend the event if the original ambulance and emergency medical technicians are unable to attend the event. The promoter shall include the name of the ambulance provider and the alternate ambulance provider described in this subdivision in the request submitted under subdivision (a).

(f) Arrange for a referee, judges, and a timekeeper to attend the event for purposes of subsection (2)(l). The

promoter shall include the names of the referee, judges, and timekeeper described in this subdivision in the request submitted under subdivision (a).

(g) Arrange for an inspector who meets the requirements of section 33(11) to attend the event for purposes of subsection(2)(l). The promoter shall include the name of the inspector, and any other information about the inspector that is required by the department, in the request submitted under subdivision (a).

(h) Maintain records of the event for at least 1 year after the date of the scheduled event and make those records available to the department or law enforcement officials on request.

(2) A licensed promoter that is presenting an amateur mixed martial arts, professional mixed martial arts, or professional boxing event in this state shall ensure that all of the following are met in the conduct of the event:

(a) Except as provided in subdivision (b), each individual mixed martial arts contest consists of not more than 3 rounds, of not more than 5 minutes' duration, with at least a 1-minute rest period between each round; and the length of each individual boxing contest is determined by the department but does not exceed 10 rounds, of not more than 5 minutes' duration, with at least a 1-minute rest period between each round.

(b) Each individual national or international championship mixed martial arts contest consists of not more than 5 rounds, of not more than 5 minutes' duration, with at least a 1-minute rest period between each round; and the length of each individual national or international championship boxing contest is determined by the department but does not exceed 12 rounds, of not more than 5 minutes' duration, with at least a 1-minute rest period between each round.

(c) Each mixed martial arts contestant wears gloves, supplied by the promoter, that weigh at least 4 ounces and not more than 8 ounces; and each boxing contestant wears gloves that each weigh at least 8 ounces and not more than 16 ounces.

(d) The referee examines the gloves worn by each contestant before and during a contest. If the referee finds that a glove is misplaced, lumpy, broken, roughed, or otherwise unfit, the contestant must change the glove before the start of the contest.

(e) Before a contestant participates in a contest, he or she is weighed and placed in the appropriate weight class. The department by rule shall establish weight classes for contestants.

(f) An individual does not compete as a contestant unless he or she submits to the department a medical certification of negative results for hepatitis B and C and HIV tests that were performed on the contestant in the 180-day period that precedes the scheduled contest or event.

(g) An individual does not compete as a contestant unless he or she submits to the department the results of an ophthalmologic exam that was performed by a licensed optometrist or ophthalmologist within the 12-month period that precedes the contest or event that indicate that the contestant is medically cleared to fight. The individual shall submit the results on a form prescribed by the department.

(h) A female individual does not compete as a contestant unless she submits to the department the results of a pregnancy test that was performed on her in the 7-day period that precedes the contest or event and the results of the pregnancy test are negative.

(i) An individual is not allowed to compete as a contestant without proper medical clearance.

(j) The event does not take place or continue without an ambulance that is staffed by at least 2 emergency medical technicians on the premises of the event.

(k) The event does not take place or continue without a physician at the event.

(l) The event does not take place or continue without an inspector and a trained and competent referee, judge, and timekeeper.

(m) An individual is not allowed to compete as a contestant if there is any reason to suspect that he or she is impaired or has used or uses performance enhancing drugs.

(n) A professional is not allowed to compete as a contestant in an amateur contest.

(o) If an individual lost a contest by a technical knockout in the 30-day period preceding the event, he or she is not allowed to compete as a contestant unless he or she submits the results of a physical examination to the department that indicate that he or she is fit to compete.

(p) The physician at the event determines the status of a contestant who is knocked out or whose contest is stopped by the referee. The physician may make recommendations concerning either of the following:

(i) The contestant's status, including, but not limited to, a recommendation to the department that the contestant not compete for a period of time specified by the physician.

(ii) The need for additional testing or examination of the contestant, including, but not limited to, a postfight neurological examination, which may include performing computerized axial tomography (CAT) scans or magnetic resonance imaging (MRI) on the contestant immediately after the contestant leaves the event venue.

(q) If a physician recommended that the contestant not compete for a period of time under subdivision (p)(i), that contestant does not compete in another contest during that time period.

(r) If a physician recommended further neurological examination of a contestant under subdivision (p)(ii), that contestant does not compete in another contest until those examinations are conducted, the promoter and department receive copies of the examination reports, and the reports demonstrate that the contestant is fit to compete.



- (s) A contestant who sustains a severe injury or knockout in a contest is examined by a physician and is not permitted to compete in another contest until a physician certifies that the contestant is fully recovered.
- (t) An individual who meets all of the following does not compete as a contestant:
  - (i) He or she participated in multiple contests before the event.
  - (ii) In any 90-day period, he or she was knocked out in 2 contests or 2 of his or her contests were stopped and a physician recommended neurological testing under subdivision (p) after any of those contests.
  - (iii) The second knockout or stoppage described in subparagraph (ii) occurred in the 120-day period preceding the event.
- (u) An individual who meets all of the following does not compete as a contestant:
  - (i) He or she participated in multiple contests before the event.
  - (ii) In any 12-month period, he or she was knocked out in 3 consecutive contests or 3 consecutive contests were stopped and a physician recommended neurological testing under subdivision (p) after any of those contests.
  - (iii) The third knockout or stoppage described in subparagraph (ii) occurred in the 1-year period preceding the event.
- (v) If an individual was not allowed to compete as a contestant in an earlier event because he or she met the requirement of subdivision (s), (t), or (u) at the time of that earlier event, he or she does not compete as a contestant unless he or she provides the promoter with proper medical clearance.
- (w) Each contestant is at least 18 years of age.
- (x) A contestant does not compete in more than 1 contest at an event.
- (y) All of the contestants in a contest are the same gender.
- (z) An individual does not participate as a contestant if he or she participated in another contest in the 7-day period preceding the event.
- (aa) The results of each contest are reported to the department, on a form prescribed by the department, within 48 hours after the conclusion of the event. The report shall include any physician recommendations under subdivision (p). Within 2 business days after it receives those results, the department shall enter those results in each national contest results database selected by the department.
- (bb) In a professional event, that tickets sold by contestants are not a factor in determining the amount of the purse.
- (cc) If a mixed martial arts contest is a cage fight, the referee conducts a safety inspection of the cage before the contest.

**History:** Add. 2015, Act 183, Eff. Feb. 10, 2016 ;-- Am. 2017, Act 146, Eff. Jan. 31, 2018

### **338.3655 Medical and hospital expenses.**

Sec. 55.

- (1) A promoter shall insure each contestant who competes in a contest for at least \$50,000.00 for medical and hospital expenses related to injuries sustained in the contest or event, payable to the contestant, and for at least \$50,000.00 if the contestant dies as a result of injuries received in a contest or event, with the proceeds payable to the contestant's estate.
- (2) A promoter shall pay the policy premium and deductible regarding any medical or hospital expenses for a contestant's injuries.

**History:** 2004, Act 403, Eff. Feb. 20, 2005 ;-- Am. 2007, Act 196, Eff. Mar. 27, 2008 ;-- Am. 2015, Act 183, Eff. Feb. 10, 2016

### **338.3656 Repealed. 2015, Act 183, Eff. Feb. 10, 2016.**

**Compiler's Notes:** The repealed section pertained to number of rounds, weight of gloves, and certification of physical condition.

### **338.3657 Duties of physician.**

Sec. 57.

(1) A licensed physician shall attend each contest. The physician shall observe the physical condition of the contestants and advise the referee or judges with regard to the health of those contestants. The physician shall examine each contestant before he or she enters the ring.

(2) The physician described in subsection (1) shall file with the commission the report of the physical examination of each contestant within 24 hours after the contest or event ends.

(3) If, in the opinion of a physician described in subsection (1), the health or safety of a contestant requires the termination of the contest in which he or she is competing, the physician shall notify the referee and the referee shall terminate the contest.

**History:** 2004, Act 403, Eff. Feb. 20, 2005 ;-- Am. 2007, Act 196, Eff. Mar. 27, 2008 ;-- Am. 2015, Act 183, Eff. Feb. 10, 2016

### **338.3658 Loss of consciousness; physical examination required; cost.**

Sec. 58.

(1) If a contestant loses consciousness during or as a result of a contest in which he or she competes, he or she is not eligible to participate in another contest in this state until he or she is examined by a physician appointed by the commission and that physician certifies the contestant's fitness to participate in that contest.

(2) The contestant shall pay the cost of the examination conducted under subsection (1).

**History:** 2004, Act 403, Eff. Feb. 20, 2005 ;-- Am. 2007, Act 196, Eff. Mar. 27, 2008 ;-- Am. 2015, Act 183, Eff. Feb. 10, 2016

## **CHAPTER 6**

### **338.3660 Repealed. 2015, Act 183, Eff. Feb. 10, 2016.**

**Compiler's Notes:** The repealed section pertained to repeal of sections.

### **338.3661 Repealed. 2015, Act 183, Eff. Feb. 10, 2016.**

**Compiler's Notes:** The repealed section pertained to authorization of rules under MCL 339.801 to 339.814.

### **338.3661a Trade secret or commercial, financial, or proprietary information; definition.**

Sec. 61a.

A record or portion of a record, material, information, or other data received, prepared, used, or retained by the department or commission under this act that includes a trade secret or commercial, financial, or proprietary information of a licensee or license applicant, and that the licensee or applicant requests in writing be treated as confidential by the department or commission, is not subject to the freedom of information act, 1976 PA 442, MCL



15.231 to 15.246. As used in this section, "trade secret or commercial, financial, or proprietary information" means information that has not been publicly disseminated or that is unavailable from other sources, the release of which might cause the licensee or applicant significant competitive harm.

**History:** Add. 2012, Act 546, Imd. Eff. Jan. 2, 2013

**338.3662 Repealed. 2015, Act 183, Eff. Feb. 10, 2016.**

**Compiler's Notes:** The repealed section pertained to effective date of act.

**338.3663 Repealed. 2015, Act 183, Eff. Feb. 10, 2016.**

**Compiler's Notes:** The repealed section pertained to conditional effective date.

## **ON-LINE CONTINUING EDUCATION ACT**

### **Act 70 of 2005**

AN ACT to provide for occupational regulatory agencies to allow the use of on-line or other electronic continuing education and continuing competency programs under certain circumstances; to provide for certain powers and duties for certain state regulatory agencies; and to provide for the promulgation of rules.

**History:** 2005, Act 70, Eff. July 1, 2007

*The People of the State of Michigan enact:*

**338.3701 Short title.**

Sec. 1.

This act shall be known and may be cited as the "on-line continuing education act".

**History:** 2005, Act 70, Eff. July 1, 2007

**338.3702 Definitions.**

Sec. 2.

As used in this act:

(a) "Continuing education" means instructional courses designed to bring participants up to date on a particular area of knowledge or skills.

(b) "License" means a certificate, registration, accreditation, or license issued by an occupational regulatory

agency that allows an individual to engage in a regulated occupation or that allows an individual to use a specific title or professional designation in the practice of an occupation, profession, or vocation.

(c) "Occupational regulatory agency" means a department, bureau, or agency of this state that has regulatory authority over a regulated occupation.

(d) "Regulated occupation" means an occupation, profession, or vocation that requires a license as a predicate for the practice of the occupation, profession, or vocation or that provides for the use of a specific title or professional designation in the practice of the occupation, profession, or vocation.

**History:** 2005, Act 70, Eff. July 1, 2007

### **338.3703 Continuing education as license renewal requirement; credit earned through on-line or electronic media.**

#### **Sec. 3.**

(1) Except as otherwise provided for in a specific act, or as otherwise required by a rule promulgated before the effective date of this act, concerning a regulated occupation, the occupational regulatory agency requiring a program of continuing education as part of a program of continuing professional competency for renewal of a license shall, to the extent practicable, allow at least 1/2 of the required credit hours of continuing education to be earned through an on-line or electronic media meeting standards acceptable to the occupational regulatory agency.

(2) If the occupational regulatory agency does not allow at least 1/2 of the required credit hours of continuing education to be earned through an on-line or electronic media, the director shall notify the legislative committee of the senate and house of representatives having jurisdiction over licensing matters. The notification shall be in writing and shall explain why on-line or electronic media is not practicable.

(3) This act does not apply to continuing education or training programs offered as part of a licensure, registration, certification, or accreditation program that must be approved by an agency of the federal government.

**History:** 2005, Act 70, Eff. July 1, 2007

### **338.3704 Rules.**

#### **Sec. 4.**

Except as otherwise provided by law, an occupational regulatory agency may promulgate rules or amend existing rules under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, to implement this act.

**History:** 2005, Act 70, Eff. July 1, 2007

### **338.3705 Effective date.**

#### **Sec. 5.**

This act takes effect July 1, 2007.

**History:** 2005, Act 70, Eff. July 1, 2007

# MICHIGAN PROFESSIONAL EMPLOYER ORGANIZATION REGULATORY ACT

## Act 370 of 2010

AN ACT to license and regulate professional employer organizations; to define certain relationships and allocate certain rights and duties between those relationships; to provide for certain powers and duties for state agencies; to impose certain fees and provide for certain security devices; and to provide for penalties and remedies.

**History:** 2010, Act 370, Eff. July 1, 2011

*The People of the State of Michigan enact:*

### 338.3721 Short title.

#### Sec. 1.

This act shall be known and may be cited as the "Michigan professional employer organization regulatory act".

**History:** 2010, Act 370, Eff. July 1, 2011

### 338.3723 Definitions.

#### Sec. 3.

As used in this act:

- (a) "Client" means any person who enters into a professional employer agreement with a PEO.
- (b) "Coemployer" means either a PEO or a client.
- (c) "Coemployment relationship" means a relationship that is intended to be an ongoing relationship rather than a temporary or project-specific one, wherein the rights, duties, and obligations of an employer arising out of an employment relationship have been allocated between coemployers pursuant to a professional employer agreement.
- (d) "Covered employee" means an individual having a coemployment relationship with a PEO and a client who has received written notice of coemployment with the PEO and the individual has created a coemployment relationship pursuant to a professional employer agreement. Covered employee includes individuals who are officers, directors, shareholders, partners, and managers of the client to the extent the PEO and the client have expressly agreed in the professional employer agreement that those individuals are considered covered employees and those individuals act as operational managers or perform day-to-day operational services for the client.
- (e) "Department" means the department of energy, labor, and economic growth.
- (f) "Director" means the director of the department.
- (g) "Licensee" means a PEO licensed under this act.
- (h) "PEO group" means 2 or more PEOs that are majority owned or commonly controlled by the same entity, parent, or controlling person.
- (i) "Person" means any individual, partnership, corporation, limited liability company, association, or any other legal entity.
- (j) "Professional employer agreement" means a written contract by and between a client and a PEO that provides for the following:
  - (i) Coemployment of covered employees.
  - (ii) The allocation of employer rights and obligations between the client and the PEO with respect to the covered employees.
  - (iii) Assumption of responsibilities by the PEO and the client as required by this act.
- (k) "PEO" or "professional employer organization" means any person engaged in the business of providing professional employer services regardless of its use of a descriptive term other than "professional employer organization" or "PEO". PEO does not include any of the following:
  - (i) An arrangement in which a person, whose principal business activity is not entering into professional employer agreements and does not hold itself out as a PEO, shares employees with a commonly owned company within the

meaning of section 414(b) and (c) of the internal revenue code of 1986, 26 USC 414.

(ii) A provider of temporary help services as defined by section 29 of the Michigan employment security act, 1936 (Ex Sess) PA 1, MCL 421.29.

(iii) Independent contractor arrangements by which a person assumes responsibility for the product produced or service performed by that person or his or her agents and retains and exercises primary direction and control over the work performed by the individuals whose services are supplied under such arrangements.

(l) "Professional employer service" means the service of entering into a coemployment relationship in which all or a majority of the employees providing services to a client or to a division or work unit of the client are covered employees.

**History:** 2010, Act 370, Eff. July 1, 2011

### **338.3725 Professional employer agreement; effect.**

#### **Sec. 5.**

(1) Neither this act nor a professional employer agreement shall affect, modify, or amend any collective bargaining agreement, or the rights or obligations of any client, PEO, or covered employee under any state or federal act.

(2) Neither this act nor any professional employer agreement shall do any of the following:

(a) Diminish, abolish, or remove rights of covered employees owed to a client or obligations of that client to a covered employee regarding rights or obligations existing prior to the effective date of the professional employer agreement.

(b) Affect, modify, or amend any contractual relationship or restrictive covenant between a covered employee and any client in effect at the time a professional employer agreement becomes effective or that is entered into subsequently between a client and a covered employee.

(3) Neither this act nor any professional employer agreement shall affect, modify, or amend any state, local, or federal licensing, registration, certification, or other regulatory requirement applicable to any client or covered employee. A PEO is not considered to be engaged in any occupation, trade, profession, or other activity that is subject to licensing, registration, or certification requirements, or is otherwise regulated by a governmental entity solely by entering into and maintaining a coemployment relationship with a covered employee who is subject to those requirements or regulations.

(4) Unless otherwise provided by law and with respect to a bid, contract, purchase order, or agreement entered into with the state or a political subdivision of the state, a client company's status or certification as a small, minority-owned, disadvantaged, or woman-owned business enterprise or as a historically underutilized business is not affected due to the client company's execution of an agreement with a PEO or to the use of the services of a PEO.

**History:** 2010, Act 370, Eff. July 1, 2011

### **338.3727 Provider of professional employer services; license; fee; application; prohibitions relating to person convicted of certain felony; filing by PEO operating on effective date of act; renewal application; combined or consolidated audited financial statement; electronic filings.**

#### **Sec. 7.**

(1) Except as otherwise provided in this act, beginning September 1, 2012, a person shall not provide, advertise, or otherwise hold itself out as providing professional employer services in this state, unless licensed or exempt from licensure under this act.

(2) An applicant for licensure shall submit to the department the application fee imposed in section 13 and a completed application that provides the following information:

(a) The name or names under which the PEO conducts business.

(b) The address of the principal place of business of the PEO and the address of each office it maintains in this

state.

(c) The PEO's taxpayer or employer identification number.

(d) A list by jurisdiction of each name under which the PEO has operated in the preceding 5 years, including any alternative names, names of predecessors, and, if known, successor business entities.

(e) A statement of ownership that includes the name and evidence of the business experience of any person, individually or acting in concert with 1 or more other persons, that directly or indirectly owns or controls 10% or more of the equity interests of the PEO.

(f) A statement of management that includes the name and evidence of the business experience of any individual who serves as president or chief executive officer or otherwise has the authority to act as senior executive officer of the PEO.

(g) A financial statement describing the financial condition of the PEO or PEO group, prepared in accordance with generally accepted accounting principles and audited by an independent certified public accountant licensed to practice in the jurisdiction in which that accountant is located and is without qualification as to the going concern status of the PEO. A PEO group may submit combined or consolidated audited financial statements to meet the requirements of this subsection. A PEO that has not had sufficient operating history to have audited financials based on at least 12 months of operating history must meet the financial capacity requirements described in section 15 and present financial statements reviewed by a licensed certified public accountant.

(h) A financial audit of the applicant. At the time of application for an initial license, the applicant shall submit its most recent audit, which may not be older than 13 months. Thereafter, a PEO or PEO group shall file on an annual basis, within 270 days after the end of the PEO or PEO group's fiscal year, a succeeding audit. An applicant may apply to the department for an extension, except that any request must include a letter from the auditors stating the reasons for the delay and the anticipated audit completion date.

(i) A certification that the PEO has made an election under section 13m of the Michigan employment security act, 1936 (Ex Sess) PA 1, MCL 421.13m.

(3) Beginning September 1, 2012, a person that has been convicted of a felony related to the operation of a PEO shall not own or control, directly or indirectly, a PEO doing business in this state.

(4) Each PEO operating in this state on the effective date of this act shall file its completed application and submit the license fee by July 1, 2012.

(5) Before a license expires, the licensee may renew its license by submitting a renewal application to the department that includes any changes in the information provided in the licensee's prior application.

(6) PEOs in a PEO group may satisfy the reporting and financial requirements of this section on a combined or consolidated basis if each member of the PEO group guarantees the obligations under this act of each other member of the PEO group. If a PEO group submits a combined or consolidated audited financial statement, including entities that are not PEOs or that are not in the PEO group, the controlling entity of the PEO group under the consolidated or combined statement must guarantee the obligations of the PEOs in the PEO group. The department shall determine whether the requirements of this subsection are satisfied.

(7) The department shall, to the extent practical, accept electronic filing of applications, documents, reports, and other filings required under this act. The department may accept electronic filings and other assurance by an independent and qualified assurance organization that provides satisfactory assurance of compliance acceptable to the department consistent with, or in lieu of, the requirements of this section, sections 9 and 15, and other requirements of this act. The department shall allow a PEO to authorize an assurance organization, approved by the director, to act on the PEO's behalf in complying with the licensure requirements of this act including, but not limited to, electronic filings of information and payment of license fees. Use of an approved assurance organization by a PEO is optional. This subsection does not limit or change the department's authority to license, to rescind, revoke, or deny a license, or to investigate or enforce any provision of this act.

**History:** 2010, Act 370, Eff. July 1, 2011 ;-- Am. 2011, Act 125, Eff. Jan. 1, 2012

### **338.3729 Limited license.**

#### **Sec. 9.**

(1) Beginning September 1, 2012, the department may issue a limited PEO license. A PEO seeking limited licensure under this section shall submit to the department a properly executed and completed application on a form provided by the department and include with the application the license fee for limited licensure established by the department.

(2) A PEO is eligible for a limited license if it meets all of the following conditions:

- (a) Is domiciled outside this state and is licensed or otherwise regulated as a PEO in another state.
- (b) Does not maintain an office in this state or does not directly solicit clients located or domiciled in this state.
- (c) Does not have more than 50 covered employees employed or domiciled in this state on any given day.
- (3) A limited license is valid for 1 year and may be renewed.
- (4) Section 15 does not apply to an applicant for a limited license.

**History:** 2010, Act 370, Eff. July 1, 2011 ;-- Am. 2011, Act 125, Eff. Jan. 1, 2012

### **338.3731 List of licensed PEOs; availability to public.**

#### **Sec. 11.**

The department shall maintain a list of PEOs licensed under this act. The list shall be readily available to the public by electronic or other means.

**History:** 2010, Act 370, Eff. July 1, 2011

### **338.3733 License fees; adjustment; "Detroit consumer price index" defined.**

#### **Sec. 13.**

(1) The department may charge an application fee for an initial license under this act. The amount of the fee shall be determined by the department and shall not exceed \$1,500.00 for an individual license or \$1,500.00 for a PEO group license.

(2) Except for an initial license, the term of a license issued under this act is 1 year, beginning on September 1 and expiring on August 31 of the next calendar year.

(3) The department shall issue an initial license under this act for a term from the effective date of that initial license, as determined by the department, to the next August 31 after that effective date or, at the option of the department, to the second August 31 after the effective date. If the effective date of the license is not September 1, the department shall adjust the amount of the annual license fee under subsection (4) for that initial term on a pro rata basis to reflect the length of the initial term, as determined by the department.

(4) Subject to subsection (3), the annual license fee is \$1,500.00 for an individual license and \$1,500.00 for a PEO group license.

(5) The department may adjust the license fees under this section every 2 years by an amount determined by the state treasurer to reflect the cumulative annual percentage change in the Detroit consumer price index in the preceding 2-year period and rounded to the nearest dollar. As used in this subsection, "Detroit consumer price index" means the most comprehensive index of consumer prices available for the Detroit area by the bureau of labor statistics of the United States department of labor.

**History:** 2010, Act 370, Eff. July 1, 2011 ;-- Am. 2011, Act 125, Eff. Jan. 1, 2012

### **338.3735 Working capital; requirements.**

#### **Sec. 15.**

Unless otherwise exempt under this act, beginning September 1, 2012, each PEO or collectively each PEO group shall submit to the department evidence of and maintain either of the following:

(a) A minimum of \$100,000.00 in working capital, as defined by generally accepted accounting principles, as reflected in the financial statements submitted to the department with the initial license application and each annual

renewal application. A PEO or PEO group with less than \$100,000.00 in working capital at renewal has 180 days to eliminate the deficiency in a manner acceptable to the department. During that 180-day period, the PEO or PEO group shall submit quarterly financial statements to the department accompanied by an attestation of the chief executive officer that all wages, taxes, worker's compensation premiums, and employee benefits have been paid by the PEO or members of the PEO group.

(b) A bond, irrevocable letter of credit, or securities with a minimum market value of \$100,000.00, acceptable to the department. The bond shall be held by a depository designated by the department to secure payment by the PEO of all taxes, wages, benefits, or other entitlements due to, or regarding, covered employees, if the PEO or PEO group does not make those payments when due. For any PEO or PEO group whose annual financial statements do not indicate positive working capital, the PEO shall provide a bond in the amount of \$100,000.00 plus an amount sufficient to cover the deficit in working capital.

**History:** 2010, Act 370, Eff. July 1, 2011 ;-- Am. 2011, Act 125, Eff. Jan. 1, 2012

### **338.3737 Professional employer agreement; provisions; written notice to covered employee affected by agreement.**

#### **Sec. 17.**

(1) Each professional employer agreement executed on or after September 1, 2012 shall include the following provisions:

(a) The responsibility of the PEO to pay wages to covered employees; to withhold, collect, report and remit payroll-related and unemployment taxes; and, to the extent the PEO has assumed responsibility in the professional employer agreement, to make payments for employee benefits for covered employees. For purposes of this subdivision, wages do not include any obligation between a client and a covered employee for payments beyond, or in addition to, the covered employee's salary, draw, or regular rate of pay, including bonuses, commissions, severance pay, deferred compensation, profit sharing, or vacation, sick, or other paid time off pay, unless the PEO has expressly agreed to assume liability for those payments in the professional employer agreement.

(b) The hiring, disciplining, and termination by the PEO of a covered employee, as necessary to fulfill the PEO's responsibilities under this act and the professional employer agreement. The client may also hire, discipline, and terminate a covered employee.

(c) The responsibility of the client and the PEO to comply with the worker's disability compensation act of 1969, 1969 PA 317, MCL 418.101 to 418.941.

(2) Each professional employer agreement executed on or after September 1, 2012 shall require that the PEO provide written notice to each covered employee affected by the agreement regarding the general nature of the coemployment relationship between and among the PEO, the client, and that covered employee.

**History:** 2010, Act 370, Eff. July 1, 2011 ;-- Am. 2011, Act 125, Eff. Jan. 1, 2012

### **338.3739 Professional employer agreement; liabilities or obligations; tax or assessment.**

#### **Sec. 19.**

(1) Except to the extent otherwise expressly provided for by the professional employer agreement, the following apply:

(a) A client is solely responsible for the quality, adequacy, or safety of the goods or services produced or sold in the client's business.

(b) A client is solely responsible for directing, supervising, training, and controlling the work of the covered employees with respect to the business activities of the client and is solely responsible for the acts, errors, or omissions of the covered employees regarding those activities.

(c) A client is not liable for the acts, errors, or omissions of a PEO or of any covered employee of the client and a PEO when the covered employee is acting under the express direction and control of the PEO.

(d) A PEO is not liable for the acts, errors, or omissions of a client or of any covered employee of the client



when the covered employee is acting under the express direction and control of the client.

(2) This section does not limit any contractual liability or obligation specifically provided in the written professional employer agreement.

(3) A covered employee is not, solely as the result of being a covered employee of a PEO, an employee of the PEO for purposes of general liability insurance, fidelity bonds, surety bonds, employer's liability not covered by worker's compensation, or liquor liability insurance carried by the PEO unless covered employees are included by specific reference in the professional employer agreement and applicable prearranged employment contract, insurance contract, or bond.

(4) A PEO is not considered engaged in the sale of insurance or in acting as a third party administrator by offering, marketing, selling, administering, or providing professional employer services that include services and employee benefit plans for covered employees.

(5) A client and a PEO are each considered an employer for purposes of sponsoring retirement and welfare benefit plans for its covered employees. A fully insured welfare benefit plan offered to the covered employees of a single PEO shall be treated, for purposes of state law, as a single employer welfare benefit plan.

(6) For purposes of this state or any political subdivision of this state and except as otherwise specifically provided for PEO arrangement by law, covered employees whose services are subject to sales tax are considered the employees of the client for purposes of collecting and levying sales tax on the services performed by the covered employee. This act does not relieve a client of any sales tax liability with respect to its goods or services.

(7) Except as otherwise specifically provided for PEO arrangement by law, a tax or assessment imposed upon professional employer services or any business license or other fee that is based upon gross receipts shall allow a deduction from the gross income or receipts of the business derived from performing professional employer services that is equal to that portion of the fee charged to a client that represents the actual cost of wages and salaries, benefits, worker's compensation insurance, payroll taxes, withholding, or other assessments paid to, or on behalf of, a covered employee by the professional employer organization under a professional employer agreement.

(8) Except as otherwise specifically provided for PEO arrangement by law, a tax assessed, assessment, or mandated expenditure on a per capita or per employee basis shall be assessed against the client for covered employees and against the professional employer organization for its employees who are not covered employees co-employed with a client. Benefits or monetary consideration that meet the requirements of mandates imposed on a client and that are received by covered employees through the PEO, either through payroll or through benefit plans sponsored by the PEO, shall be credited against the client's obligation to fulfill those mandates.

(9) Except as otherwise specifically provided for PEO arrangement by law and in the case of a tax or an assessment imposed or calculated upon the basis of total payroll, the professional employer organization is eligible to apply any small business allowance or exemption available to the client for the covered employees for the purpose of computing the tax.

**History:** 2010, Act 370, Eff. July 1, 2011

### **338.3741 Prohibited conduct; opportunity for hearing; penalties.**

Sec. 21.

(1) Beginning September 1, 2012, a person that commits 1 or more of the following is subject to the penalties described in subsection (2):

- (a) Practices fraud or deceit in obtaining or renewing a license.
- (b) Aids or abets another person in the unlicensed practice of an occupation.
- (c) Engages in activities regulated under this section without obtaining a license under this act or demonstrating that the person is exempt from licensure under this act.
- (d) If the person is a licensee or an officer of a licensee, is convicted of a crime relating to the operation of a PEO.

(e) Engages in false advertising.

(2) After notice and opportunity for hearing under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, the department shall do 1 or more of the following if it determines that a person violated this act, a rule adopted under this act, or an order issued under this act:

- (a) Place a limitation on a license.
- (b) Suspend a license.
- (c) Deny a license or renewal of a license.
- (d) Revoke a license.

- (e) Impose an administrative fine to be paid to the department, not to exceed \$5,000.00.
- (f) Censure the person or license.
- (g) Place the licensee on probation.
- (h) Require restitution to be made, based on proofs submitted to and findings made by the hearing examiner after a contested case.

**History:** 2010, Act 370, Eff. July 1, 2011 ;-- Am. 2011, Act 125, Eff. Jan. 1, 2012

### **338.3743 Violation of act as misdemeanor; penalty.**

Sec. 23.

Beginning September 1, 2012, a person that knowingly and willfully violates this act, or that aids and abets, directly or indirectly, a violation of this act, is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$10,000.00, or both.

**History:** 2010, Act 370, Eff. July 1, 2011 ;-- Am. 2011, Act 125, Eff. Jan. 1, 2012

### **338.3745 Rules.**

Sec. 25.

The department shall promulgate consistent and necessary rules under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, as considered necessary to implement this act.

**History:** 2010, Act 370, Eff. July 1, 2011

### **338.3747 Effective date.**

Sec. 27.

This act takes effect January 1, 2012.

**History:** 2010, Act 370, Eff. July 1, 2011 ;-- Am. 2011, Act 125, Eff. Jan. 1, 2012