

HOUSE BILL No. 6416

September 10, 2008, Introduced by Rep. Farrah and referred to the Committee on Regulatory Reform.

A bill to amend 1980 PA 299, entitled
"Occupational code,"
by amending section 2401 (MCL 339.2401), as amended by 1991 PA 166.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2401. As used in this article:

2 (a) "Residential builder" means a person engaged in the
3 construction of a residential structure or a combination
4 residential and commercial structure who, for a fixed sum, price,
5 fee, percentage, valuable consideration, or other compensation,
6 other than wages for personal labor only, undertakes with another
7 or offers to undertake or purports to have the capacity to
8 undertake with another for the erection, construction, replacement,

1 repair, alteration, or an addition to, subtraction from,
2 improvement, wrecking of, or demolition of, a residential structure
3 or combination residential and commercial structure; a person who
4 manufactures, assembles, constructs, deals in, or distributes a
5 residential or combination residential and commercial structure
6 which is prefabricated, preassembled, precut, packaged, or shell
7 housing; or a person who erects a residential structure or
8 combination residential and commercial structure except for the
9 person's own use and occupancy on the person's property.

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

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

23 (ii) If the rehabilitation or improvement work of residential
24 type property or a structure is contracted for, with, or hired
25 entirely to be done and performed for the owner by a person
26 licensed under this article.

27 (iii) If work is performed by a person employed by the owner to

1 perform work for which the person is licensed by the state.

2 (c) "Residential structure" means a premises used or intended
3 to be used for a residence purpose and related facilities
4 appurtenant to the premises, used or intended to be used, as an
5 adjunct of residential occupancy.

6 (d) "Salesperson" means an employee or agent, other than a
7 qualifying officer, of a licensed residential builder or
8 residential maintenance and alteration contractor, who for a
9 salary, wage, fee, percentage, commission, or other consideration,
10 sells or attempts to sell, negotiates or attempts to negotiate,
11 solicits for or attempts to solicit for, obtains or attempts to
12 obtain a contract or commitment for, or furnishes or attempts or
13 agrees to furnish, the goods and services of a residential builder
14 or residential maintenance and alteration contractor. ~~—except a~~
15 **SALESPERSON DOES NOT INCLUDE EITHER OR BOTH OF THE FOLLOWING:**

16 (i) A person working for a licensed residential builder or
17 residential maintenance and alteration contractor who makes sales
18 which are occasional and incidental to the person's principal
19 employment.

20 (ii) A PERSON WORKING FOR A RETAIL BUILDING MATERIAL SUPPLY
21 BUSINESS WHO DOES ANY OF THE FOLLOWING:

22 (A) SELLS UNINSTALLED BUILDING MATERIALS.

23 (B) SELLS BUILDING MATERIALS AND EXTENDS SERVICE TO THE
24 CUSTOMER, UPON REQUEST, BY PROVIDING A LIST, WEBSITE LISTING, OR
25 BUSINESS CARDS OF LICENSED RESIDENTIAL BUILDERS OR RESIDENTIAL
26 MAINTENANCE AND ALTERATION CONTRACTORS IN THE AREA WHO REGULARLY
27 INSTALL BUILDING MATERIALS UNDER CIRCUMSTANCES WHERE THAT PERSON

1 DOES NOT RECEIVE A COMMISSION, FEE, OR OTHER COMPENSATION FROM
2 THOSE LICENSED RESIDENTIAL BUILDERS AND RESIDENTIAL MAINTENANCE AND
3 ALTERATION CONTRACTORS.

4 (C) SELLS BUILDING MATERIALS AS PART OF A MANUFACTURER'S OR
5 VENDOR'S PROGRAM NECESSITATING INSTALLATION TO BE PERFORMED BY THAT
6 MANUFACTURER OR VENDOR FOR SAFETY, TECHNICAL, OR SPECIALIZATION
7 PURPOSES AND INCLUDES THE PRICE OF INSTALLATION IN THE RETAIL
8 PRODUCT, RESULTING IN A PASS-THROUGH TRANSACTION WHERE DIRECT
9 COMPENSATION FROM THE MANUFACTURER OR VENDOR TO THE SELLER DOES NOT
10 OCCUR.

11 (e) "Wages" means money paid or to be paid on an hourly or
12 daily basis by an owner, lessor, or occupant of a residential
13 structure or combination residential and commercial structure as
14 consideration for the performance of personal labor on the
15 structure by a person who does not perform or promise to perform
16 the labor for any other fixed sum, price, fee, percentage, valuable
17 consideration, or other compensation and who does not furnish or
18 agree to furnish the material or supplies required to be used in
19 the performance of the labor or an act defined in subdivision (a)
20 or (b).