

HOUSE BILL No. 5834

February 17, 2010, Introduced by Rep. Durhal and referred to the Committee on Appropriations.

A bill to amend 1980 PA 299, entitled
"Occupational code,"
by amending sections 2404, 2409, and 2411 (MCL 339.2404, 339.2409,
and 339.2411), sections 2404 and 2411 as amended by 2007 PA 157 and
section 2409 as amended by 1988 PA 463.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2404. (1) The department may require an applicant,
2 licensee, or each partner, trustee, director, officer, member, or
3 shareholder to submit evidence of good moral character, and
4 financial stability. Before the issuance of a license, an applicant
5 shall submit ~~the following:~~

6 ~~—— (a) Any amount required to be paid under the construction lien~~
7 ~~act, 1980 PA 497, MCL 570.1101 to 570.1305.~~

8 ~~—— (b) A~~ A copy of an operator's license or state personal
9 identification card, to be used by the department only for proof of

1 identity of the applicant.

2 (2) The department shall require an applicant for a license to
3 pass an examination establishing that the applicant has a fair
4 knowledge of the obligations of a residential builder or
5 residential maintenance and alteration contractor to the public and
6 the applicant's principal, and the statutes relating to the
7 applicant's licensure.

8 (3) The department, upon application, may issue a residential
9 maintenance and alteration contractor's license to an applicant
10 who, upon examination, qualifies for a license, which ~~shall~~
11 ~~authorize~~**AUTHORIZES** the licensee according to the applicant's
12 qualifications, crafts, and trades to engage in the activities of a
13 residential maintenance and alteration contractor. A license ~~shall~~
14 ~~include~~**INCLUDES** the following crafts and trades: carpentry;
15 concrete; swimming pool installation; waterproofing a basement;
16 excavation; insulation work; masonry work; painting and decorating;
17 roofing; siding and gutters; screen or storm sash installation;
18 tile and marble work; and house wrecking. The license shall specify
19 the particular craft or trade for which the licensee has qualified.
20 This subsection ~~shall~~**DOES** not prohibit a specialty contractor from
21 taking and executing a contract involving the use of 2 or more
22 crafts or trades if the performance of the work in the craft or
23 trade ~~other than in~~**THE CRAFT FOR** which the person is licensed ~~or~~
24 is incidental and supplemental to the performance of work in the
25 craft for which the specialty contractor is licensed.

26 (4) A residential builder or residential maintenance and
27 alteration contractor shall maintain a place of business in this

1 state. If a residential builder or residential maintenance and
2 alteration contractor maintains more than 1 place of business
3 within this state, a branch office license shall be issued to the
4 builder or contractor for each place of business so maintained.

5 (5) Beginning the license cycle after ~~the effective date of~~
6 ~~the amendatory act that added this subsection~~ **DECEMBER 21, 2007**,
7 the department shall issue the license of a residential builder and
8 residential maintenance and alteration contractor for a period of 3
9 years in duration. Beginning ~~the effective date of the amendatory~~
10 ~~act that added this subsection~~ **DECEMBER 21, 2007**, an applicant for
11 renewal of a residential builder or maintenance and alteration
12 contractor license shall state that he or she has a current copy of
13 the Michigan residential code and has fulfilled the appropriate
14 requirements regarding continuing competency.

15 (6) Beginning ~~the effective date of the amendatory act that~~
16 ~~added this subsection~~ **DECEMBER 21, 2007**, a licensee shall maintain
17 documentation, for at least 5 years, of activities meeting the
18 continuing competency requirements as prescribed under this
19 article.

20 Sec. 2409. ~~(1) Failure of a residential builder or residential~~
21 ~~maintenance and alteration contractor to pay within 90 days of~~
22 ~~notice of the required assessment under section 201(2) of the~~
23 ~~construction lien act, Act No. 497 of the Public Acts of 1980,~~
24 ~~being section 570.1201 of the Michigan Compiled Laws, shall result~~
25 ~~in the automatic suspension of all licenses issued under this~~
26 ~~article.~~

27 ~~—(2)—~~A licensee shall report to the department a change of name

1 or address or a change of members or addresses of the partnership,
2 association, or corporation holding a license under this article
3 within 30 days after the change occurs.

4 Sec. 2411. (1) A complaint filed under this section or article
5 5, or both, shall be made within 18 months after the latest of the
6 following regarding a residential structure or a combination of
7 residential and commercial structure as follows:

8 (a) In the case of a maintenance and alteration contract:

9 (i) Completion.

10 (ii) Occupancy.

11 (iii) Purchase.

12 (b) In the case of a project requiring an occupancy permit:

13 (i) Issuance of the certificate of occupancy or temporary
14 certificate of occupancy.

15 (ii) Closing.

16 (2) A licensee or applicant who commits 1 or more of the
17 following ~~shall be~~ **IS** subject to the penalties set forth in article
18 6:

19 (a) Abandonment without legal excuse of a contract,
20 construction project, or operation engaged in or undertaken by the
21 licensee.

22 (b) Diversion of funds or property received for prosecution or
23 completion of a specific construction project or operation, or for
24 a specified purpose in the prosecution or completion of a
25 construction project or operation, and the funds or property
26 application or use for any other construction project or operation,
27 obligation, or purposes.

1 (c) Failure to account for or remit money coming into the
2 person's possession ~~which~~**THAT** belongs to others.

3 (d) A willful departure from or disregard of plans or
4 specifications in a material respect and prejudicial to another,
5 without consent of the owner or an authorized representative and
6 without the consent of the person entitled to have the particular
7 construction project or operation completed in accordance with the
8 plans and specifications.

9 (e) A willful violation of the building laws of ~~the~~**THIS** state
10 or of a political subdivision of ~~the~~**THIS** state.

11 (f) In a residential maintenance and alteration contract,
12 failure to furnish to a lender the purchaser's signed completion
13 certificate executed upon completion of the work to be performed
14 under the contract.

15 (g) If a licensed residential builder or licensed residential
16 maintenance and alteration contractor, failure to notify the
17 department within 10 days of a change in the control or direction
18 of the business of the licensee resulting from a change in the
19 licensee's partners, directors, officers, or trustees, or a change
20 in the control or direction of the business of the licensee
21 resulting from any other occurrence or event.

22 (h) Failure to deliver to the purchaser the entire agreement
23 of the parties including **ANY** finance ~~and any~~**OR** other charge
24 arising out of or incidental to the agreement ~~when~~**IF** the agreement
25 involves repair, alteration, or addition to, subtraction from,
26 improvement of, wrecking of, or demolition of a residential
27 structure or combination of residential and commercial structure,

1 ~~er~~-building of a garage, ~~er~~-laying of concrete on residential
2 property, or manufacture, assembly, construction, sale, or
3 distribution of a residential or combination residential and
4 commercial structure ~~which~~**THAT** is prefabricated, preassembled,
5 precut, packaged, or shell housing.

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

11 (j) Aiding or abetting an unlicensed person to evade this
12 article, or knowingly combining or conspiring with, or acting as
13 agent, partner, or associate for an unlicensed person, ~~er~~-allowing
14 one's license to be used by an unlicensed person, or acting as or
15 being an ostensible licensed residential builder or licensed
16 residential maintenance and alteration contractor for an
17 undisclosed person who does or shall control or direct, or who may
18 have the right to control or direct, directly or indirectly, the
19 operations of a licensee.

20 (k) Acceptance of a commission, bonus, or other valuable
21 consideration by a salesperson for the sale of goods or the
22 performance of service specified in the article from a person other
23 than the residential builder or residential maintenance and
24 alteration contractor under whom the person is licensed.

25 (l) Becoming insolvent, filing a bankruptcy action, becoming
26 subject to a receivership, assigning for the benefit of creditors,
27 failing to satisfy judgments or liens, or failing to pay an

obligation as it becomes due in the ordinary course of business.

(m) Workmanship not meeting the standards of the Michigan residential code as promulgated under the Stille-DeRossett-Hale single state construction code act, 1972 PA 230, MCL 125.1501 to 125.1531.

~~(3) The department shall suspend or revoke the license of a person licensed under this article whose failure to pay a lien claimant results in a payment being made from the homeowner construction lien recovery fund pursuant to the construction lien act, 1980 PA 497, MCL 570.1101 to 570.1305, regardless of whether the person was performing services as a licensee under this article; under the electrical administrative act, 1956 PA 217, MCL 338.881 to 338.892; or under the state plumbing act, 2002 PA 733, MCL 338.3511 to 338.3569. The department shall not renew a license or issue a new license until the licensee has repaid in full to the fund the amount paid out plus the costs of litigation and interest at the rate set by section 6013 of the revised judicature act of 1961, 1961 PA 236, MCL 600.6013.~~

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

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

1 (a) A complaint submitted by an owner shall describe in
2 writing to the department the factual basis for the allegation. The
3 homeowner shall send a copy of the initial complaint to the
4 licensee concurrent with the submission of the complaint to the
5 department.

6 (b) The department shall presume the innocence of the licensee
7 throughout the proceeding until the administrative law hearing
8 examiner finds otherwise in a determination of findings of fact and
9 conclusions of law under article 5. The licensee has the burden of
10 refuting evidence submitted by a person during the administrative
11 hearing. The licensee also has the burden of proof regarding the
12 reason deficiencies were not corrected.

13 (c) Upon receipt of a building inspection report issued to the
14 department by a state or local building enforcement official
15 authorized to do so under the Stille-DeRossett-Hale single state
16 construction code act, 1972 PA 230, MCL 125.1501 to 125.1531, which
17 report verifies or confirms the substance of the complaint, the
18 department shall send by certified mail a copy of the verified
19 complaint to the licensee. ~~Failure of~~ **IF** the department ~~to~~ **DOES NOT**
20 send a copy of the verified complaint within 30 days ~~of~~ **AFTER**
21 receipt of the building inspection report, ~~prevents~~ the department
22 ~~from assessing~~ **SHALL NOT ASSESS** a fine against the licensee under
23 article 6, but ~~does not prevent~~ the department ~~from pursuing~~ **MAY**
24 **PURSUE** restitution, license suspension, or other remedies provided
25 under this act.

26 (d) A licensee may contractually provide for an alternative
27 dispute resolution procedure to resolve complaints filed with the

1 department. The procedure shall be conducted by a neutral third
2 party for determining the rights and responsibilities of the
3 parties and shall be initiated by the licensee, who shall provide
4 notice of the initiation of the procedure to the complainant by
5 certified mail not less than 30 days before the commencement of
6 that procedure. The procedure shall be conducted at a location
7 mutually agreed to by the parties.

8 (e) The department shall not initiate a proceeding against a
9 licensee under this subsection ~~in the case of a~~ **IF THE** licensee ~~who~~
10 **HAS** contractually ~~provides~~ **PROVIDED** for an alternative dispute
11 resolution procedure that has not been utilized and completed
12 unless it is determined that the licensee has not complied with a
13 decision or order issued as a result of that alternative dispute
14 resolution procedure, that alternative dispute resolution procedure
15 was not fully completed within 90 days after the filing of the
16 complaint with the department, or an alternative dispute resolution
17 procedure meeting the requirements of subdivision (d) is not
18 available to the complainant.

19 (f) The complainant shall demonstrate that notice has been
20 provided to the licensee describing reasonable times and dates that
21 the residential structure was accessible for any needed repairs and
22 proof acceptable to the department that the repairs were not made
23 within 60 days after the sending of the notice. This subdivision
24 does not apply ~~where~~ **IF** the department determines a necessity to
25 safeguard the structure or to protect the occupant's health and
26 safety and, in such case, the department may utilize any remedy
27 available under section ~~504(3)(a) through (d)~~ **504(3)**.

1 (g) ~~In the case where~~ **IF** the owner and licensee have agreed
2 contractually on mutually acceptable performance guidelines
3 relating to workmanship, the department shall consider those
4 guidelines in its evaluation of a complaint. The guidelines shall
5 be consistent with the Stille-DeRossett-Hale single state
6 construction code act, 1972 PA 230, MCL 125.1501 to 125.1531.

7 (5) ~~(6) In any case where~~ **IF** the licensee or respondent fails
8 to appear ~~,~~ **OR** participate ~~,~~ **IN** or defend any action, the board
9 shall issue an order granting by default the relief requested,
10 based upon proofs submitted to and findings made ~~,~~ by the hearing
11 examiner after a contested case.

12 (6) ~~(7)~~ As used in this section, "verified complaint" means a
13 complaint in which all or a portion of the allegations have been
14 confirmed by an affidavit of the state or local building official.

15 Enacting section 1. This amendatory act does not take effect
16 unless Senate Bill No. ____ or House Bill No. 5830(request no.
17 04360'09 *) of the 95th Legislature is enacted into law.