

Legislative Analysis



OCCUPATIONAL CODE: REMEDIES AND PENALTIES FOR UNLICENSED ACTIVITIES

Mitchell Bean, Director
Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 5874 (Substitute H-1)
House Bill 5875 with committee amendment
Sponsor: Rep. Chris Ward
Committee: Regulatory Reform

First Analysis (5-3-06)

BRIEF SUMMARY: House Bill 5874 would increase the penalties for unlicensed activities regulated by the Occupational Code and make revisions to Article 20.

FISCAL IMPACT: A fiscal analysis is in process.

THE APPARENT PROBLEM:

According to members of licensed professions and the Department of Labor and Economic Growth, the penalties for the practice of activities regulated under the Occupational Code by unlicensed persons are too lenient to act as a deterrent. As a result, many individuals pass themselves off as licensees or blatantly engage in activities for which a state license or registration is required with little to no consequence. When consumers are injured, whether physically or monetarily, by these unlicensed persons, the state is hindered in its prosecution by the minor penalties currently available under law. It is hoped that increasing the penalties will act as a deterrent to these unlicensed activities.

THE CONTENT OF THE BILLS:

The bills are tie-barred to each other and are described in detail as follows:

House Bill 5874 would amend the Occupational Code (MCL 339.601 and 339.2006). The Occupational Code provides for the licensing and regulation of certain occupations, which is a responsibility of the Department of Labor and Economic Growth.

Penalties for Violations. Under Section 601 of the code, a person is prohibited from engaging or attempting to engage in the practice of a regulated occupation or from using a designated title unless the person is licensed or registered by the department for the occupation. Further, a school, institution, or person is prohibited from operating a barber college, a school of cosmetology, or a real estate school unless licensed or approved by the department. Currently, the offense is a misdemeanor punishable by a fine of up to \$500 and/or imprisonment for not more than 90 days. Second and subsequent offenses are subject to a \$1,000 maximum fine and/or imprisonment for up to one year.

Under the bill, a violation of Section 601 would be a misdemeanor punishable by a fine of not more than \$5,000 and/or imprisonment for up to four years. A second or subsequent violation would be a felony punishable by a fine of not more than \$10,000 and/or imprisonment of up to four years.

Article 20 Revisions. Article 20 regulates architects, professional engineers, and professional surveyors. Under the bill, a person, a qualifying officer, or an agent for a legal entity licensed or registered under the code could not bring or maintain an action in court for the collection of compensation for the performance of an act or contract for which licensure or registration is required without alleging and proving that the person, officer, or agent was licensed or registered during the performance of the act or contract. (This provision is similar to the current Section 2512a.)

A person who has used the services of a person engaging in or attempting to engage in a regulated occupation, or using a designated title, without being licensed or registered by the department could bring an action in a court of competent jurisdiction, or offer as a counterclaim to an action brought by an unlicensed or unregistered person, for a refund of compensation after deducting the value of the goods or services retained by the person.

The bill would also add a new section, Section 2006, to allow DLEG, attorney general, a county prosecutor, and an attorney representing a local unit of government to use the forfeiture provisions of Chapter 47 of the Revised Judicature Act for items seized and determined to be proceeds, substituted proceeds, or the instrumentality of a crime related to a violation of this code.

House Bill 5875 would amend the Revised Judicature Act of 1961 (MCL 600.4701) to add to the definition of "crime" a violation of Section 601 of the Occupational Code regarding the unlicensed practice of an occupation regulated under Article 20 of the code.

ARGUMENTS:

For:

State regulation of tradespersons and professional exists to protect the public from physical or financial harm from undertrained or incompetent individuals. However, the current penalties for engaging in activities regulated under the Occupational Code, and for which a state license or registration is required, are too low to act as a deterrent. House Bill 5874 would increase the penalty for a first offense to a major misdemeanor and make a second or subsequent violation a felony. With high fines and up to four years of imprisonment, it is hoped that the bill will make it financially and ethically more worthwhile for a person to seek the proper state licensure or registration. The increased penalties should also help law enforcement officers and prosecutors to take violations of the code more seriously and to prosecute offenders more aggressively.

In addition, House Bill 5875 would allow prosecutors to utilize forfeiture provisions contained in the Revised Judicature Act for violations of the Occupational Code that involve unlicensed persons engaging in the activities reserved for licensed architects,

professional engineers, and professional surveyors. House Bill 5874 also closes a loophole in current law that allows an unlicensed architect, engineer, or surveyor to sue a person for compensation for doing a job that he or she was not legally authorized to perform.

Against:

According to a representative of DLEG, the department is inundated with calls from consumers who witness unlicensed persons engaging in regulated activities or who have been injured by such persons and who wonder why the department is not doing more to stop such practices. It is unclear at this time if keeping a first offense a misdemeanor, rather than raising it to a felony as the bill as introduced would have done, is sufficient to deter such potentially dangerous activities. Also, expanding the authority to utilize the forfeiture provisions to all occupations, instead of limiting it to persons regulated under Article 20, would go far to interest prosecutors to charge and prosecute violators. As it is, leaving a first offense a misdemeanor may still send a message that these are not serious crimes, even though the potential exists for harm to the public.

Rebuttal:

Reportedly, some supporters of the bills felt it was better to take a slower approach and to see if the increased penalties or the ability to utilize the forfeiture laws made sense for all occupations equally. For example, it is illegal for any person to cut another's hair without a cosmetology or barber license, but is it appropriate to make a first offense a felony? If the changes do not sufficiently address the needs of consumers and the department, the issue can be revisited

POSITIONS:

The Department of Labor and Economic Growth supports the bills. (5-2-06)

A representative of the American Institute of Architects testified in support of the bills. (5-2-06)

Representatives of the Michigan Society of Professional Engineers indicated support for the bills. (5-2-06)

A representative of the American Council of Engineering Companies indicated support for the bills. (5-2-06)

Legislative Analyst: Susan Stutzky
Fiscal Analyst: Marilyn Peterson

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.