

HOUSE SUBSTITUTE FOR
SENATE BILL NO. 723

A bill to amend 1980 PA 299, entitled
"Occupational code,"
by amending sections 601, 602, 721, 723, 725, 729, 732, 734, and
735 (MCL 339.601, 339.602, 339.721, 339.723, 339.725, 339.729,
339.732, 339.734, and 339.735), section 601 as amended by 1998 PA
250, section 602 as amended by 1981 PA 83, sections 721, 723, 729,
732, 734, and 735 as added by 1997 PA 10, and section 725 as
amended by 1998 PA 380.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 601. (1) A person shall not engage in or attempt to
2 engage in the practice of an occupation regulated under this act or
3 use a title designated in this act unless the person possesses a

1 license or registration issued by the department for the
2 occupation.

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

7 (3) A person, school, or institution ~~which~~ **THAT** violates
8 subsection (1) or (2) is guilty of a misdemeanor, punishable by a
9 fine of not more than \$500.00, or imprisonment for not more than 90
10 days, or both.

11 (4) A person, school, or institution ~~which~~ **THAT** violates
12 subsection (1) or (2) a second or any subsequent time is guilty of
13 a misdemeanor, punishable, except as provided in section 735, by a
14 fine of not more than \$1,000.00, or imprisonment for not more than
15 1 year, or both.

16 (5) Notwithstanding the existence and pursuit of any other
17 remedy, an affected person may maintain injunctive action to
18 restrain or prevent a person from violating subsection (1) or (2).
19 If successful in obtaining injunctive relief, the affected person
20 shall be entitled to actual costs and attorney fees.

21 (6) ~~Nothing in this~~ **THIS** act ~~shall~~ **DOES NOT** apply to a
22 person engaging in or practicing the following:

23 (a) Interior design.

24 (b) Building design.

25 (c) Any activity for which the person is licensed under ~~1929~~
26 ~~PA 266, MCL 338.901 to 338.917~~ **THE STATE PLUMBING ACT, 2002 PA**
27 **733, MCL 338.3511 TO 338.3569.**

1 (d) Any activity for which the person is licensed under the
2 Forbes mechanical contractors act, 1984 PA 192, MCL 338.971 to
3 338.988.

4 (e) Any activity for which the person is licensed under the
5 electrical administrative act, 1956 PA 217, MCL 338.881 to 338.892.

6 (7) As used in subsection (5), "affected person" means a
7 person directly affected by the actions of a person suspected of
8 violating subsection (1) or (2) and includes, but is not limited
9 to, **A LICENSEE OR REGISTRANT**, a board established pursuant to this
10 act, a person who has utilized the services of the person engaging
11 in or attempting to engage in an occupation regulated under this
12 act or using a title designated by this act without being licensed
13 or registered by the department, or a private association composed
14 primarily of members of the occupation in which the person is
15 engaging in or attempting to engage in or in which the person is
16 using a title designated under this act without being registered or
17 licensed by the department.

18 (8) An investigation may be conducted under article ~~6~~ 5 to
19 enforce this section. A person who violates this section shall be
20 subject to ~~the strictures prescribed in~~ this section and section
21 506.

22 (9) The remedies under this section are independent and
23 cumulative. The use of 1 remedy by a person shall not bar the use
24 of other lawful remedies by that person or the use of a lawful
25 remedy by another person.

26 (10) An interior designer may perform services in connection
27 with the design of interior spaces including preparation of

1 documents relative to finishes, systems furniture, furnishings,
2 fixtures, equipment, and interior partitions that do not affect the
3 building mechanical, structural, electrical, or fire safety
4 systems.

5 Sec. 602. A person, school, or institution ~~which~~ **THAT**
6 violates ~~a section of~~ this act or a rule or order promulgated or
7 issued under this act shall be assessed 1 or more of the following
8 penalties:

9 (a) Placement of a limitation on a license or certificate of
10 registration for an occupation regulated under articles 8 to 25.

11 (b) Suspension of a license or certificate of registration.

12 (c) Denial of a license, certificate of registration, or
13 renewal of a license or certificate of registration.

14 (d) Revocation of a license or certificate of registration.

15 (e) ~~A civil~~ **AN ADMINISTRATIVE** fine to be paid to the
16 department, not to exceed \$10,000.00.

17 (f) Censure.

18 (g) Probation.

19 (h) A requirement that restitution be made.

20 Sec. 721. (1) The state board of accountancy is created.

21 (2) Six members of the board shall be certified public
22 accountants who hold a certificate as a certified public
23 accountant, who are licensed under section 727, and who have
24 practiced in this state as certified public accountants for not
25 less than 5 years. Three members shall be representative of the
26 general public, 1 of whom shall be an attorney who is a member in

1 good standing in the bar of this state. **ONE OF THE 9 MEMBERS OF THE**
2 **BOARD SHALL BE A FULL-TIME INSTRUCTOR OF ACCOUNTING ABOVE THE**
3 **ELEMENTARY LEVEL AT AN ACCREDITED COLLEGE OR UNIVERSITY.**

4 (3) The director may promulgate the following rules:

5 (a) Rules of professional conduct for establishing and
6 maintaining high standards of competence and integrity in the
7 practice of public accounting.

8 (b) Rules governing corporations practicing public accounting,
9 consistent with the professional service corporation act, 1962 PA
10 192, MCL 450.221 to 450.235.

11 (c) Rules governing educational and experience requirements
12 for the issuance of a certificate as a certified public accountant.

13 (d) Rules of procedure governing the conduct of matters before
14 the board.

15 (e) Rules governing the recognition of educational
16 institutions by the board.

17 (f) Rules governing continuing education as required by
18 section 729.

19 (g) Any other rules considered necessary by the director to
20 implement and enforce this article.

21 Sec. 723. (1) Each licensed or registered individual holder of
22 a certificate as a certified public accountant shall be known as a
23 certified public accountant and a person shall not use that title
24 or the abbreviation "CPA" or any other word, words, letters, or
25 figures to indicate that the person using them is a certified
26 public accountant unless the use is specifically approved by the
27 board. Use of the terms "certified accountant", "chartered

1 accountant", "public accountant", and "registered accountant" and
2 the abbreviations "C.A.", "P.A.", and "R.A." is specifically
3 prohibited as being prima facie misleading to the public.

4 (2) Except as provided in section 724, a person shall not
5 engage in the practice of public accounting either in the person's
6 own name, under an assumed name, or as a member of a firm or as an
7 employee, unless the person holds a certificate as a certified
8 public accountant and a license as a certified public accountant
9 issued under this article.

10 (3) Unless use of a term is specifically approved by the
11 board, the display or uttering by a person of a card, sign,
12 advertisement, directory listing, or other printed, engraved, or
13 written instrument or device bearing a person's name in conjunction
14 with a title described in subsection (1) shall be prima facie
15 evidence that the person whose name is so displayed caused or
16 procured the display or uttering of the card, sign, advertisement,
17 directory listing, or other printed, engraved, or written
18 instrument or device. Evidence of the commission of a single act
19 prohibited by this ~~article~~ **SECTION** is sufficient to justify an
20 injunction or a conviction without evidence of a general course of
21 conduct.

22 (4) Each licensed firm may use the designation "certified
23 public accountants" in connection with the firm name, except that a
24 licensed firm having only 1 member may use only the designation
25 "certified public accountant". An unlicensed firm shall not use the
26 designation "certified public accountants", "certified
27 accountants", "chartered accountants", "public accountants", or

1 "registered accountants" or the abbreviation "C.P.A.", "CPA",
2 "CPAs", "C.A.", "P.A.", or "R.A." in connection with the firm name.

3 (5) A PERSON THAT VIOLATES THIS SECTION OR A RULE OR ORDER
4 PROMULGATED OR ISSUED UNDER OR RELATED TO THIS SECTION IS LIABLE
5 FOR AN ADMINISTRATIVE FINE PAYABLE TO THE DEPARTMENT OF NOT MORE
6 THAN \$25,000.00 PER VIOLATION.

7 (6) THE DEPARTMENT MAY CONDUCT AN INVESTIGATION AND PROCEED
8 UNDER ARTICLE 5 TO ENFORCE THIS SECTION.

9 Sec. 725. (1) The department shall issue a certificate as a
10 certified public accountant to an individual who meets all of the
11 following requirements:

12 (a) Is of good moral character.

13 (b) Has complied with the education requirements of subsection
14 (2).

15 (c) Has passed an examination meeting the requirements of
16 subsection (3).

17 (d) Has complied with the experience requirements of
18 subsection (4).

19 (e) ~~After July 1, 2003, shall have~~ **HAS** completed at least
20 150 semester hours of college education, including a baccalaureate
21 degree or higher degree with a concentration in accounting, at an
22 educational institution approved by the board.

23 (2) ~~Except as otherwise provided in this subsection, an~~ **AN**
24 individual who has completed a curriculum required for a
25 baccalaureate degree with a concentration in accounting at an
26 educational institution approved by the board may sit for the
27 examination required under subsection (3). ~~An individual shall be~~

1 ~~considered to have fulfilled the educational requirements of this~~
2 ~~subsection if he or she is scheduled to receive his or her~~
3 ~~baccalaureate degree with a concentration in accounting from an~~
4 ~~educational institution approved by the board, within 30 days after~~
5 ~~the date of the examination required under subsection (3), as~~
6 ~~certified by the chief academic officer of the educational~~
7 ~~institution. If an individual fails to fulfill the educational~~
8 ~~requirements of the educational institution within 30 days of the~~
9 ~~examination, then the board shall not credit the examination~~
10 ~~results to the applicant.~~

11 (3) An applicant for a certificate as a certified public
12 accountant shall pass an examination in accounting, auditing, and
13 other related subjects, acceptable to the department and the board,
14 that is given reciprocal status in the plurality of states as
15 compared to other examinations.

16 (4) ~~Subject to subsections (5) and (6) and until July 1,~~
17 ~~2003, an~~ AN applicant for a certificate as a certified public
18 accountant shall have 2 years of qualifying experience, and ~~—~~
19 ~~after July 1, 2003,~~ an applicant for a certificate as a certified
20 public accountant shall have 1 year of qualifying experience under
21 the direction and supervision of a licensed certified public
22 accountant of this or another state in either of the following:

23 (a) The practice of public accounting with experience obtained
24 in 1 financial audit and in all of the following areas ~~which~~ **THAT**
25 may be performed under the direction and supervision of a licensed
26 certified public accountant while the applicant was meeting the
27 education requirements of subsection (2):

1 (i) The application of a variety of auditing procedures and
2 techniques to the usual and customary financial transactions
3 recorded in accounting records.

4 (ii) The preparation of working papers covering the examination
5 of the accounts usually found in accounting records for audit,
6 review, and compilation.

7 (iii) The participation in the planning of the program of work
8 including the selection of the procedures to be followed for audit,
9 review, and compilation.

10 (iv) The participation in the preparation of reports, including
11 written explanations and comments on the findings of the
12 examinations and on the content of the accounting records.

13 (v) The participation in the preparation and analysis of
14 financial statements together with explanations and notes.

15 (b) The practice of public accounting with a governmental
16 agency involving either of the following:

17 (i) The auditing of the books and accounts or financial
18 activities of persons engaged in 3 or more distinct lines of
19 commercial or industrial business in accordance with generally
20 accepted auditing standards or generally accepted government
21 auditing standards.

22 (ii) The auditing of the books and accounts of financial
23 activities of 3 or more distinct governmental agencies or
24 independent organizational units other than an employer of the
25 applicant in accordance with generally accepted auditing standards
26 or generally accepted government auditing standards, and in which
27 the results of the auditing are reported to a third party.

1 ~~—— (5) Until July 1, 2003, an individual who has done both of the~~
 2 ~~following is considered to have received the equivalent of 1 year~~
 3 ~~of qualifying experience under subsection (4):~~

4 ~~—— (a) Has earned a graduate degree in accounting or its~~
 5 ~~equivalent at an educational institution approved by the board.~~

6 ~~—— (b) Has completed a curriculum in public accounting as~~
 7 ~~prescribed in rules promulgated by the director.~~

8 ~~—— (6) Until July 1, 2003, an individual who has done all of the~~
 9 ~~following is considered to have received the equivalent of 2 years~~
 10 ~~of qualifying experience under subsection (4):~~

11 ~~—— (a) Has earned a graduate degree in accounting or its~~
 12 ~~equivalent at an educational institution approved by the board and~~
 13 ~~has completed a curriculum in public accounting as prescribed in~~
 14 ~~rules promulgated by the director.~~

15 ~~—— (b) Has completed at least 2 years as a full time instructor~~
 16 ~~of accounting in subjects above the elementary level prescribed in~~
 17 ~~rules promulgated by the director.~~

18 ~~(5) —(7)—~~ In complying with the requirement of subsection (4)
 19 that an applicant shall have performed 1 financial audit, an
 20 applicant may submit an audit performed under the direction and
 21 supervision of a licensed certified public accountant who is not
 22 the applicant's employer or an audit performed while the applicant
 23 was meeting the educational requirements of subsection (2).

24 Sec. 729. (1) ~~In order to renew~~ **AS A CONDITION OF LICENSE**
 25 **RENEWAL**, an individual ~~license, a~~ licensee shall complete at
 26 least 40 hours of continuing education for each year since the
 27 issuance of the original license or the last renewal. Of the 40

1 hours of continuing education credits, the board shall not require
2 more than 8 of those hours to be in the areas of auditing and
3 accounting. ~~(2)~~ The board may make exceptions from the continuing
4 education requirements of **THIS** subsection ~~(1)~~ for reasons of
5 health, military service, or other good cause.

6 **(2) BEGINNING MARCH 1, 2007, EACH LICENSED FIRM AND SOLE**
7 **PRACTITIONER THAT PERFORMS ATTEST SERVICES, INCLUDING AUDITS,**
8 **REVIEWS, AND COMPILATIONS THAT ARE RELIED UPON BY THIRD PARTIES,**
9 **SHALL PARTICIPATE IN A PEER REVIEW PROGRAM ESTABLISHED BY RULE OF**
10 **THE DEPARTMENT AND APPROVED BY THE BOARD. AN APPLICANT FOR RENEWAL**
11 **OR RELICENSURE SHALL SUBMIT TO THE DEPARTMENT AT THE TIME OF**
12 **RENEWAL OR RELICENSURE PROOF OF PEER REVIEW OBTAINED WITHIN THE 3**
13 **YEARS IMMEDIATELY PRECEDING THE APPLICATION. A FIRM OR SOLE**
14 **PRACTITIONER REQUIRED TO PARTICIPATE IN A PEER REVIEW PROGRAM UNDER**
15 **THIS SUBSECTION SHALL NOTIFY THE DEPARTMENT WITHIN 30 DAYS AFTER**
16 **RECEIPT OF AN ADVERSE REPORT OR SECOND MODIFIED PEER REVIEW REPORT.**
17 **VERBAL TESTIMONY OR DOCUMENTS, OR BOTH, PERTAINING TO A PEER REVIEW**
18 **SHALL BE CONSIDERED CONFIDENTIAL AND SHALL BE EXEMPT FROM**
19 **DISCLOSURE TO THE DEPARTMENT, EXCEPT IN THE CASE OF AN ADVERSE OR**
20 **SECOND CONSECUTIVE MODIFIED OPINION.**

21 Sec. 732. (1) Except by written permission of the client or
22 the heir, successor, or personal representative of the client to
23 whom the information pertains, a licensee, or a person employed by
24 a licensee, shall not disclose or divulge and shall not be required
25 to disclose or divulge information relative to and in connection
26 with an examination or audit of, or report on, books, records, or
27 accounts that the licensee or a person employed by the licensee was

1 employed to make. Except as otherwise provided in this section, the
2 information derived from or as the result of professional service
3 rendered by a certified public accountant is confidential and
4 privileged.

5 (2) Subsection (1) does not prohibit ~~a~~ **ANY OF THE FOLLOWING:**

6 (A) A certified public accountant, whose professional
7 competence has been challenged in a court of law or before an
8 administrative agency, from disclosing information otherwise
9 confidential and privileged as part of a defense in the court
10 action or administrative hearing.

11 (B) ~~(3) Subsection (1) does not prohibit the~~ **THE** disclosure
12 of information required to be disclosed in the course of practice
13 monitoring programs and ethical investigations conducted by a
14 licensed certified public accountant. In such cases, the
15 information disclosed to another licensed certified public
16 accountant in the course of practice monitoring programs and
17 ethical investigations is confidential and privileged to the same
18 degree and in the same manner as provided for in subsection (1).

19 (C) **A LICENSEE, OR A PERSON EMPLOYED BY A LICENSEE, FROM**
20 **DISCLOSING INFORMATION OTHERWISE PRIVILEGED AND CONFIDENTIAL TO**
21 **APPROPRIATE LAW ENFORCEMENT OR GOVERNMENTAL AGENCIES WHEN THE**
22 **LICENSEE, OR PERSON EMPLOYED BY THE LICENSEE, HAS KNOWLEDGE THAT**
23 **FORMS A REASONABLE BASIS TO BELIEVE THAT A CLIENT HAS COMMITTED A**
24 **VIOLATION OF FEDERAL OR STATE LAW OR A LOCAL GOVERNMENTAL**
25 **ORDINANCE.**

26 (3) **DOCUMENTS OR RECORDS IN THE POSSESSION OF THE DEPARTMENT**
27 **PERTAINING TO A REVIEW, AN INVESTIGATION, OR DISCIPLINARY ACTIONS**

1 UNDER THIS ARTICLE ARE EXEMPT FROM DISCLOSURE UNDER THE FREEDOM OF
2 INFORMATION ACT, 1976 PA 442, MCL 15.231 TO 15.246, UNLESS THE
3 RECORDS OR DOCUMENTS ARE USED FOR EITHER OR BOTH OF THE FOLLOWING
4 PURPOSES:

5 (A) AS EVIDENCE IN A CONTESTED CASE HELD BY THE DEPARTMENT.

6 (B) AS A BASIS FOR FORMAL ACTION BY THE DEPARTMENT AND UNTIL
7 THE ACTION IS RESOLVED BY A FINAL ORDER ISSUED BY THE BOARD.

8 Sec. 734. (1) A holder of a certificate as a certified public
9 accountant, a registration, or a license is subject to the
10 penalties of section 602 for 1 or more of the following:

11 (a) Fraud or deceit in obtaining a certificate as a certified
12 public accountant, a license to practice public accounting, or a
13 registration under this article.

14 (b) Dishonesty, fraud, or negligence in the practice of public
15 accounting.

16 (c) Violation of a rule of professional conduct promulgated
17 under this article.

18 (d) Conviction of a felony under the laws of this or another
19 state or the United States or conviction of a crime, an element of
20 which is dishonesty, fraud, or negligence, under the laws of this
21 or another state or of the United States, including, but not
22 limited to, the failure to file a personal federal, state, or local
23 income tax return.

24 (e) Cancellation, revocation, suspension, or refusal to renew
25 authority to practice as a certified public accountant by another
26 state for a cause other than failure to pay a licensure or other
27 required fee in that state.

1 (f) Suspension or revocation for cause of the right to engage
2 in the practice of public accounting before a state or federal
3 agency.

4 (g) Conduct discreditable to the public accounting profession.

5 (h) Determination of mental incompetency by a court of law.

6 (i) A violation of this article or a rule promulgated under
7 this article.

8 (j) A violation of the provisions of section 604.

9 (k) A violation of professional standards regarding the
10 issuance of reports on financial statements; 1 or more kinds of
11 management advisory, financial advisory, or consulting services;
12 the preparation of tax returns; or the furnishing of advice on tax
13 matters.

14 (2) NOTWITHSTANDING SECTION 602(E), A PERSON THAT VIOLATES
15 THIS ARTICLE OR A RULE OR ORDER PROMULGATED OR ISSUED UNDER OR
16 RELATED TO THIS ARTICLE IS LIABLE FOR AN ADMINISTRATIVE FINE
17 PAYABLE TO THE DEPARTMENT OF NOT MORE THAN \$25,000.00 PER
18 VIOLATION.

19 (3) WITHIN 30 DAYS AFTER A FINAL DETERMINATION RENDERED BY A
20 FEDERAL OR STATE ADMINISTRATIVE AGENCY OR A JUDGMENT OR CONVICTION
21 ISSUED BY A FEDERAL COURT, A STATE COURT, OR ANY OTHER COURT OF
22 RECORD, A LICENSEE OR REGISTRANT SHALL REPORT TO THE DEPARTMENT IN
23 WRITING OR ELECTRONICALLY A DETERMINATION, ORDER, JUDGMENT, OR
24 CONVICTION REGARDING A VIOLATION IN WHICH DISHONESTY, FRAUD, OR
25 NEGLIGENCE IS AN ELEMENT OF THAT DETERMINATION, ORDER, JUDGMENT, OR
26 CONVICTION.

27 Sec. 735. (1) A person who violates section ~~723~~ 723(1)

1 **THROUGH (4)** is guilty of a ~~misdemeanor,~~ **FELONY** punishable by a
2 fine of not more than ~~\$5,000.00~~ **\$25,000.00**, or imprisonment for
3 not more than ~~1 year~~ **5 YEARS**, or both.

4 **(2) THE ATTORNEY GENERAL OR THE PROSECUTING ATTORNEY OF A**
5 **COUNTY MAY BRING AN ACTION IN A COURT OF COMPETENT JURISDICTION TO**
6 **ENFORCE THIS SECTION AND SECTION 601.**