

SENATE BILL No. 723

September 6, 2005, Introduced by Senators BISHOP, GOSCHKA, KUIPERS, STAMAS, GILBERT, GEORGE, TOY, PATTERSON, CROUSEY, BASHAM, THOMAS, ALLEN, VAN WOERKOM, McMANUS and BARCIA and referred to the Committee on Banking and Financial Institutions.

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
4 license or registration issued by the department for the

1 occupation.

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

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

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

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

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

22 (a) Interior design.

23 (b) Building design.

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

27 (d) Any activity for which the person is licensed under the

1 Forbes mechanical contractors act, 1984 PA 192, MCL 338.971 to
2 338.988.

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

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

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

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

25 (10) An interior designer may perform services in connection
26 with the design of interior spaces including preparation of
27 documents relative to finishes, systems furniture, furnishings,

1 fixtures, equipment, and interior partitions that do not affect the
2 building mechanical, structural, electrical, or fire safety
3 systems.

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

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

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

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

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

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

16 (f) Censure.

17 (g) Probation.

18 (h) A requirement that restitution be made.

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

20 (2) Six members of the board shall be certified public
21 accountants who hold a certificate as a certified public
22 accountant, who are licensed under section 727, and who have
23 practiced in this state as certified public accountants for not
24 less than 5 years. Three members shall be representative of the
25 general public, 1 of whom shall be an attorney who is a member in
26 good standing in the bar of this state. **ONE OF THE 9 MEMBERS OF THE**

1 **BOARD SHALL BE A FULL-TIME INSTRUCTOR OF ACCOUNTING ABOVE THE**
2 **ELEMENTARY LEVEL AT AN ACCREDITED COLLEGE OR UNIVERSITY.**

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (5) A PERSON THAT VIOLATES THIS SECTION OR A RULE OR ORDER
2 PROMULGATED OR ISSUED UNDER THIS SECTION IS LIABLE FOR A CIVIL FINE
3 OF NOT MORE THAN \$25,000.00 PER VIOLATION. THE ATTORNEY
4 REPRESENTING A POLITICAL SUBDIVISION OR THE PROSECUTING ATTORNEY OF
5 THE COUNTY MAY BRING AN ACTION UNDER THIS SUBSECTION IN A COURT OF
6 COMPETENT JURISDICTION.

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

10 (a) Is of good moral character.

11 (b) Has complied with the education requirements of subsection
12 (2).

13 (c) Has passed an examination meeting the requirements of
14 subsection (3).

15 (d) Has complied with the experience requirements of
16 subsection (4).

17 (e) ~~After July 1, 2003, shall have~~ **HAS** completed at least
18 150 semester hours of college education, including a baccalaureate
19 degree or higher degree with a concentration in accounting, at an
20 educational institution approved by the board.

21 (2) ~~Except as otherwise provided in this subsection, an~~ **AN**
22 individual who has completed a curriculum required for a
23 baccalaureate degree with a concentration in accounting at an
24 educational institution approved by the board may sit for the
25 examination required under subsection (3). ~~An individual shall be~~
26 ~~considered to have fulfilled the educational requirements of this~~
27 ~~subsection if he or she is scheduled to receive his or her~~

1 ~~baccalaureate degree with a concentration in accounting from an~~
2 ~~educational institution approved by the board, within 30 days after~~
3 ~~the date of the examination required under subsection (3), as~~
4 ~~certified by the chief academic officer of the educational~~
5 ~~institution. If an individual fails to fulfill the educational~~
6 ~~requirements of the educational institution within 30 days of the~~
7 ~~examination, then the board shall not credit the examination~~
8 ~~results to the applicant.~~

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

14 ~~(4) Subject to subsections (5) and (6) and until July 1,~~
15 ~~2003, an AN~~ applicant for a certificate as a certified public
16 accountant shall have 2 years of qualifying experience, and ~~—~~
17 ~~after July 1, 2003,~~ an applicant for a certificate as a certified
18 public accountant shall have 1 year of qualifying experience under
19 the direction and supervision of a licensed certified public
20 accountant of this or another state in either of the following:

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

26 (i) The application of a variety of auditing procedures and
27 techniques to the usual and customary financial transactions

1 recorded in accounting records.

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

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

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

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

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

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

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

26 ~~—— (5) Until July 1, 2003, an individual who has done both of the~~
27 ~~following is considered to have received the equivalent of 1 year~~

1 of ~~qualifying experience under subsection (4):~~

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

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

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

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

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

16 (5) ~~—(7)—~~ In complying with the requirement of subsection (4)
17 that an applicant shall have performed 1 financial audit, an
18 applicant may submit an audit performed under the direction and
19 supervision of a licensed certified public accountant who is not
20 the applicant's employer or an audit performed while the applicant
21 was meeting the educational requirements of subsection (2).

22 Sec. 729. (1) ~~In order to renew~~ **AS A CONDITION OF LICENSE**
23 **RENEWAL**, an individual ~~license, a~~ licensee shall complete at
24 least 40 hours of continuing education for each year since the
25 issuance of the original license or the last renewal. Of the 40
26 hours of continuing education credits, the board shall not require
27 more than 8 of those hours to be in the areas of auditing and

1 accounting. ~~(2)~~ The board may make exceptions from the continuing
2 education requirements of **THIS** subsection ~~(1)~~ for reasons of
3 health, military service, or other good cause.

4 (2) BEGINNING MARCH 1, 2007, EACH LICENSED FIRM AND SOLE
5 PRACTITIONER THAT PERFORMS ATTEST SERVICES, INCLUDING AUDITS,
6 REVIEWS, AND COMPILATIONS THAT ARE RELIED UPON BY THIRD PARTIES,
7 SHALL PARTICIPATE IN A PEER REVIEW PROGRAM ESTABLISHED BY RULE OF
8 THE DEPARTMENT AND APPROVED BY THE BOARD. AN APPLICANT FOR RENEWAL
9 OR RELICENSURE SHALL SUBMIT TO THE DEPARTMENT AT THE TIME OF
10 RENEWAL OR RELICENSURE PROOF OF PEER REVIEW OBTAINED WITHIN THE 3
11 YEARS IMMEDIATELY PRECEDING THE APPLICATION. A FIRM OR SOLE
12 PRACTITIONER REQUIRED TO PARTICIPATE IN A PEER REVIEW PROGRAM UNDER
13 THIS SUBSECTION SHALL NOTIFY THE DEPARTMENT WITHIN 30 DAYS AFTER
14 RECEIPT OF AN ADVERSE REPORT OR SECOND MODIFIED PEER REVIEW REPORT.

15 Sec. 732. (1) Except by written permission of the client or
16 the heir, successor, or personal representative of the client to
17 whom the information pertains, a licensee, or a person employed by
18 a licensee, shall not disclose or divulge and shall not be required
19 to disclose or divulge information relative to and in connection
20 with an examination or audit of, or report on, books, records, or
21 accounts that the licensee or a person employed by the licensee was
22 employed to make. Except as otherwise provided in this section, the
23 information derived from or as the result of professional service
24 rendered by a certified public accountant is confidential and
25 privileged.

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

27 (A) A certified public accountant, whose professional

1 competence has been challenged in a court of law or before an
2 administrative agency, from disclosing information otherwise
3 confidential and privileged as part of a defense in the court
4 action or administrative hearing.

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

13 (C) **A LICENSEE, OR A PERSON EMPLOYED BY A LICENSEE, FROM**
14 **DISCLOSING INFORMATION OTHERWISE PRIVILEGED AND CONFIDENTIAL TO**
15 **APPROPRIATE LAW ENFORCEMENT OR GOVERNMENTAL AGENCIES WHEN THE**
16 **LICENSEE, OR PERSON EMPLOYED BY THE LICENSEE, HAS KNOWLEDGE THAT**
17 **FORMS A REASONABLE BASIS TO BELIEVE THAT A CLIENT HAS COMMITTED A**
18 **VIOLATION OF FEDERAL OR STATE LAW OR A LOCAL GOVERNMENTAL**
19 **ORDINANCE.**

20 (3) **DOCUMENTS OR RECORDS IN THE POSSESSION OF THE DEPARTMENT**
21 **PERTAINING TO A REVIEW, AN INVESTIGATION, OR DISCIPLINARY ACTIONS**
22 **UNDER THIS ARTICLE ARE EXEMPT FROM DISCLOSURE UNDER THE FREEDOM OF**
23 **INFORMATION ACT, 1976 PA 442, MCL 15.231 TO 15.246, UNLESS THE**
24 **RECORDS OR DOCUMENTS ARE USED FOR EITHER OR BOTH OF THE FOLLOWING**
25 **PURPOSES:**

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

27 (B) **AS A BASIS FOR FORMAL ACTION BY THE DEPARTMENT AND UNTIL**

1 **THE ACTION IS RESOLVED BY A FINAL ORDER ISSUED BY THE BOARD.**

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

5 (a) Fraud or deceit in obtaining a certificate as a certified
6 public accountant, a license to practice public accounting, or a
7 registration under this article.

8 (b) Dishonesty, fraud, or negligence in the practice of public
9 accounting.

10 (c) Violation of a rule of professional conduct promulgated
11 under this article.

12 (d) Conviction of a felony under the laws of this or another
13 state or the United States or conviction of a crime, an element of
14 which is dishonesty, fraud, or negligence, under the laws of this
15 or another state or of the United States, including, but not
16 limited to, the failure to file a personal federal, state, or local
17 income tax return.

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

22 (f) Suspension or revocation for cause of the right to engage
23 in the practice of public accounting before a state or federal
24 agency.

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

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

27 (i) A violation of this article or a rule promulgated under

1 this article.

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

3 (k) A violation of professional standards regarding the
4 issuance of reports on financial statements; 1 or more kinds of
5 management advisory, financial advisory, or consulting services;
6 the preparation of tax returns; or the furnishing of advice on tax
7 matters.

8 (2) NOTWITHSTANDING SECTION 602(E), A PERSON THAT VIOLATES
9 THIS SECTION OR A RULE OR ORDER PROMULGATED OR ISSUED UNDER THIS
10 SECTION IS LIABLE FOR AN ADMINISTRATIVE FINE OF NOT MORE THAN
11 \$25,000.00 PER VIOLATION.

12 (3) WITHIN 30 DAYS AFTER A FINAL DETERMINATION RENDERED BY A
13 FEDERAL OR STATE ADMINISTRATIVE AGENCY OR A JUDGMENT OR CONVICTION
14 ISSUED BY A FEDERAL OR STATE COURT, A LICENSEE OR REGISTRANT SHALL
15 REPORT TO THE DEPARTMENT IN WRITING OR ELECTRONICALLY A
16 DETERMINATION, ORDER, JUDGMENT, OR CONVICTION REGARDING A VIOLATION
17 IN WHICH DISHONESTY, FRAUD, OR NEGLIGENCE IS AN ELEMENT OF THAT
18 DETERMINATION, ORDER, JUDGMENT, OR CONVICTION.

19 Sec. 735. A person who violates section ~~723~~ 723(1) THROUGH
20 (4) is guilty of a ~~misdemeanor~~, **FELONY** punishable by a fine of
21 not more than ~~\$5,000.00~~ \$25,000.00, or imprisonment for not more
22 than ~~1 year~~ 5 YEARS, or both.