

SENATE BILL No. 1515

September 18, 2008, Introduced by Senator SANBORN and referred to the Committee on Economic Development and Regulatory Reform.

A bill to amend 1980 PA 299, entitled
"Occupational code,"
by amending section 601 (MCL 339.601), as amended by 2007 PA 157,
and by adding section 2006.

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
5 occupation.

6 (2) A school, institution, or person shall not operate or
7 attempt to operate a barber college, school of cosmetology, or real

1 estate school unless the school, institution, or person is licensed
2 or approved by the department.

3 (3) Subject to section 411, a person whose license or
4 registration is suspended, revoked, or lapsed, as determined by the
5 records of the department, is considered unlicensed or
6 unregistered.

7 (4) Except as otherwise provided for in section 735, a person,
8 school, or institution that violates subsection (1) or (2) is
9 guilty of a misdemeanor, punishable by a fine of not more than
10 \$500.00, or imprisonment for not more than 90 days, or both.

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

16 (6) Notwithstanding subsections (4) and (5), a person not
17 licensed under article 24 as a residential builder or a residential
18 maintenance and alteration contractor who violates subsection (1)
19 or (2) is guilty as follows:

20 (a) In the case of a first offense, a misdemeanor punishable
21 by a fine of not less than \$5,000.00 or more than \$25,000.00, or
22 imprisonment for not more than 1 year, or both.

23 (b) In the case of a second or subsequent offense, a
24 misdemeanor punishable by a fine of not less than \$5,000.00 or more
25 than \$25,000.00, or imprisonment for not more than 2 years, or
26 both.

27 (c) In the case of an offense that causes death or serious

1 injury, a felony punishable by a fine of not less than \$5,000.00 or
2 more than \$25,000.00, or imprisonment for not more than 4 years, or
3 both.

4 (7) NOTWITHSTANDING SUBSECTIONS (4) AND (5), A PERSON NOT
5 LICENSED UNDER ARTICLE 20 AS AN ARCHITECT, PROFESSIONAL ENGINEER,
6 OR PROFESSIONAL LAND SURVEYOR WHO VIOLATES SUBSECTION (1) OR (2) IS
7 GUILTY AS FOLLOWS:

8 (A) IN THE CASE OF A FIRST OFFENSE, A MISDEMEANOR PUNISHABLE
9 BY A FINE OF NOT LESS THAN \$5,000.00 OR MORE THAN \$25,000.00 OR
10 IMPRISONMENT FOR NOT MORE THAN 93 DAYS, OR BOTH.

11 (B) IN THE CASE OF A SECOND OR SUBSEQUENT OFFENSE, A
12 MISDEMEANOR PUNISHABLE BY A FINE OF NOT LESS THAN \$5,000.00 OR MORE
13 THAN \$25,000.00 OR IMPRISONMENT FOR NOT MORE THAN 1 YEAR, OR BOTH.

14 (C) IN THE CASE OF AN OFFENSE THAT CAUSES DEATH OR SERIOUS
15 INJURY, A FELONY PUNISHABLE BY A FINE OF NOT LESS THAN \$5,000.00 OR
16 MORE THAN \$25,000.00 OR IMPRISONMENT FOR NOT MORE THAN 4 YEARS, OR
17 BOTH.

18 (8) ~~(7)~~—Any violation of this act shall include a requirement
19 that restitution be made, based upon proofs submitted to and
20 findings made by the trier of fact as provided by law.

21 (9) ~~(8)~~—Notwithstanding the existence and pursuit of any other
22 remedy, an affected person may maintain injunctive action to
23 restrain or prevent a person from violating subsection (1) or (2).
24 If successful in obtaining injunctive relief, the affected person
25 shall be entitled to actual costs and attorney fees.

26 (10) ~~(9)~~—This act does not apply to a person engaging in or
27 practicing the following:

1 (a) Interior design.

2 (b) ~~Building~~ **RESIDENTIAL BUILDING** design. **AS USED IN THIS**
3 **SUBDIVISION, "RESIDENTIAL BUILDING DESIGN" MEANS THE RENDERING OF**
4 **RESIDENTIAL DESIGN SERVICES FOR A DETACHED 1- AND 2-FAMILY**
5 **RESIDENCE BUILDING BY A PERSON EXEMPTED FROM THE REQUIREMENTS OF**
6 **SECTION 2012.**

7 (c) Any activity for which the person is licensed under the
8 state plumbing act, 2002 PA 733, MCL 338.3511 to 338.3569.

9 (d) Any activity for which the person is licensed under the
10 Forbes mechanical contractors act, 1984 PA 192, MCL 338.971 to
11 338.988.

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

14 (11) ~~(10)~~ As used in subsection ~~(8)~~ (9), "affected person"
15 means a person directly affected by the actions of a person
16 suspected of violating subsection (1) or (2) and includes, but is
17 not limited to, a licensee or registrant, a board established
18 pursuant to this act, the department, a person who has utilized the
19 services of the person engaging in or attempting to engage in an
20 occupation regulated under this act or using a title designated by
21 this act without being licensed or registered by the department, or
22 a private association composed primarily of members of the
23 occupation in which the person is engaging in or attempting to
24 engage in or in which the person is using a title designated under
25 this act without being registered or licensed by the department.

26 (12) ~~(11)~~ An investigation may be conducted under article 5 to
27 enforce this section. A person who violates this section shall be

1 subject to this section and sections 506, 602, and 606.

2 (13) ~~(12)~~—The department, the attorney general, or a county
3 prosecutor may utilize forfeiture as a remedy in the manner
4 provided for in section 606.

5 (14) ~~(13)~~—The remedies under this section are independent and
6 cumulative. The use of 1 remedy by a person shall not bar the use
7 of other lawful remedies by that person or the use of a lawful
8 remedy by another person.

9 (15) ~~(14)~~—An interior designer may perform services in
10 connection with the design of interior spaces including preparation
11 of documents relative to finishes, systems furniture, furnishings,
12 fixtures, equipment, and interior partitions that do not affect the
13 building mechanical, structural, electrical, or fire safety
14 systems.

15 (16) ~~(15)~~—Upon entering a conviction under subsection (4),
16 (5), or (6), a court entering the conviction shall notify, by mail,
17 facsimile transmission, or electronic mail, the bureau of
18 commercial services at the department.

19 **SEC. 2006. (1) A PERSON, A QUALIFYING OFFICER, A LICENSEE, OR**
20 **AN AGENT FOR A LICENSEE UNDER THIS ARTICLE SHALL NOT BRING OR**
21 **MAINTAIN AN ACTION IN A COURT OF THIS STATE FOR THE COLLECTION OF**
22 **COMPENSATION FOR THE PERFORMANCE OF AN ACT OR CONTRACT FOR WHICH**
23 **LICENSURE IS REQUIRED UNDER THIS ARTICLE WITHOUT ALLEGING AND**
24 **PROVING THAT THE PERSON, QUALIFYING OFFICER, LICENSEE, OR AGENT WAS**
25 **LICENSED UNDER THIS ARTICLE DURING THE PERFORMANCE OF THE ACT OR**
26 **CONTRACT. A PERSON WHO HAS UTILIZED THE SERVICES OF A PERSON**
27 **ENGAGING IN OR ATTEMPTING TO ENGAGE IN AN OCCUPATION REGULATED**

1 UNDER THIS ARTICLE OR USING A TITLE DESIGNATED BY THIS ARTICLE
2 WITHOUT BEING LICENSED BY THE DEPARTMENT MAY BRING AN ACTION IN A
3 COURT OF COMPETENT JURISDICTION, OR OFFER AS A COUNTERCLAIM TO AN
4 ACTION BROUGHT BY AN UNLICENSED PERSON, FOR A REFUND OF
5 COMPENSATION AFTER DEDUCTING THE VALUE OF THE GOODS OR SERVICES
6 RETAINED BY THE PERSON.

7 (2) IF THE DEPARTMENT SUSPENDS A LICENSE FOR FAILURE TO MAKE
8 RESTITUTION, IN WHOLE OR IN PART, THE RESTITUTION IN THE FORM OF
9 REPAIR OR REMEDIAL CORRECTIVE WORK SHALL BE PERFORMED BY A PERSON
10 APPROPRIATELY LICENSED UNDER THIS ARTICLE AND SHALL BE PAID FOR BY
11 THE LICENSEE.