

HOUSE BILL NO. 5691

January 26, 2022, Introduced by Rep. Tisdell and referred to the Committee on Regulatory Reform.

A bill to amend 1980 PA 299, entitled
"Occupational code,"
by amending sections 303a and 601 (MCL 339.303a and 339.601),
section 303a as amended by 2014 PA 265 and section 601 as amended
by 2016 PA 412, and by adding article 14.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 303a. The term of office of a member of a board appointed
2 under this article ~~shall commence~~ **commences** on 1 of the following

1 dates, as applicable:

2	Accountancy	July 1
3	Architects	April 1
4	Barbers	October 1
5	Collection agencies	July 1
6	Cosmetology	January 1
7	Employment agencies	October 1
8	Hearing aid dealers	October 1
9	Home inspectors	July 1
10	Land surveyors	April 1
11	Landscape architects	July 1
12	Mortuary science	July 1
13	Professional engineers	April 1
14	Real estate appraisers	July 1
15	Real estate brokers and salespersons	July 1
16	Residential builders	April 1

17 Sec. 601. (1) A person shall not engage in or attempt to
 18 engage in the practice of an occupation regulated under this act or
 19 use a title designated in this act unless the person possesses a
 20 license or registration issued by the department for the
 21 occupation.

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

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

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

5 (5) Except as otherwise provided for in section 735, a person,
6 school, or institution that violates subsection (1) or (2) a second
7 or any subsequent time is guilty of a misdemeanor, punishable by a
8 fine of not more than \$1,000.00 ~~or~~ imprisonment for not more than
9 1 year, or both.

10 (6) Notwithstanding subsections (4) and (5), a person that is
11 not licensed under **article 14 as a home inspector or under** article
12 24 as a residential builder or a residential maintenance and
13 alteration contractor and that violates subsection (1) or (2) is
14 guilty ~~as follows:~~ **of 1 of the following:**

15 (a) ~~In the case of~~ **For** a first offense, a misdemeanor
16 punishable by a fine of not less than \$5,000.00 or more than
17 \$25,000.00, or imprisonment for not more than 1 year, or both.

18 (b) ~~In the case of~~ **For** a second or subsequent offense, a
19 misdemeanor punishable by a fine of not less than \$5,000.00 or more
20 than \$25,000.00 ~~or~~ imprisonment for not more than 2 years, or
21 both.

22 (c) ~~In the case of~~ **For** an offense that causes death or serious
23 injury, a felony punishable by a fine of not less than \$5,000.00 or
24 more than \$25,000.00, or imprisonment for not more than 4 years, or
25 both.

26 (7) Notwithstanding subsections (4) and (5), ~~a person that~~ **an**
27 **individual who** is not licensed under article 20 as an architect,
28 professional engineer, or professional ~~land~~ surveyor and ~~that~~ **who**
29 violates subsection (1) or (2) is guilty as follows:

1 (a) ~~In the case of~~ **For** a first offense, a misdemeanor
2 punishable by a fine of not less than \$5,000.00 or more than
3 \$25,000.00 or imprisonment for not more than 93 days, or both.

4 (b) ~~In the case of~~ **For** a second or subsequent offense, a
5 misdemeanor punishable by a fine of not less than \$5,000.00 or more
6 than \$25,000.00 or imprisonment for not more than 1 year, or both.

7 (c) ~~In the case of~~ **For** an offense that causes death or serious
8 injury, a felony punishable by a fine of not less than \$5,000.00 or
9 more than \$25,000.00 or imprisonment for not more than 4 years, or
10 both.

11 (8) If a trier of fact finds that a person has violated this
12 act, the trier of fact shall require that person to make
13 restitution, based on proofs submitted to and findings made by the
14 trier of fact as provided by law.

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

21 (10) This act does not apply to a person that is engaging in
22 or practicing any of the following:

23 (a) Interior design.

24 (b) Residential building design. As used in this subdivision,
25 "residential building design" means the rendering of residential
26 design services for a detached 1- and 2-family residence building
27 by a person that is exempt ~~from the requirements of~~ **under** section
28 2012 **from the requirements of article 20.**

29 (c) Any activity for which the person is licensed under

1 article 11 of the skilled trades regulation act, **2016 PA 407**, MCL
2 339.6101 to 339.6133.

3 (d) Any activity for which the person is licensed under
4 article 8 of the skilled trades regulation act, **2016 PA 407**, MCL
5 339.5801 to 339.5819.

6 (e) Any activity for which the person is licensed under
7 article 7 of the skilled trades regulation act, **2016 PA 407**, MCL
8 339.5701 to 339.5739.

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

22 (12) ~~An~~ **The department may conduct an** investigation ~~may be~~
23 ~~conducted~~ under article 5 to enforce this section. A person that
24 violates this section is subject to this section and sections 506,
25 602, and 606.

26 (13) The department, the attorney general, or a county
27 prosecutor may utilize forfeiture as a remedy **for a violation of**
28 **this section** in the manner provided for in section 606.

29 (14) The remedies under this section are independent and

1 cumulative. The use of 1 remedy by a person does not bar the use of
2 other lawful remedies by that person or the use of a lawful remedy
3 by another person.

4 (15) An interior designer may perform services in connection
5 with the design of interior spaces including preparation of
6 documents relative to finishes, systems furniture, furnishings,
7 fixtures, equipment, and interior partitions that do not affect the
8 building mechanical, structural, electrical, or fire safety
9 systems.

10 (16) At the time a court enters a conviction ~~under~~ **for a**
11 **violation of** subsection (4), (5), ~~or~~ (6), **or (7)**, the court shall
12 notify, by mail, facsimile transmission, or ~~electronic mail,~~ **email**,
13 the department of the conviction.

14 ARTICLE 14

15 Sec. 1401. As used in this article:

16 (a) "Client" means a person on whose behalf a home inspector
17 is acting. The term may include a seller under certain
18 circumstances.

19 (b) "Electrical system" means the total system, beginning with
20 the utility connection, in a residence that facilitates the flow of
21 electricity beginning with the main panel and extending to the
22 subpanels and including branch circuits, and directly wired
23 electrical and lighting fixtures.

24 (c) "Foundation" means 1 or more of the supporting elements of
25 a structure, including, but not limited to, any of the following:

26 (i) Slab.

27 (ii) Crawl space.

28 (iii) Basement.

29 (iv) Piers.

1 (d) "Heating and air conditioning system" means a separate or
2 combined system that is used to distribute or radiate heat or cool
3 air throughout all or part of a residence.

4 (e) "Home inspection services" means services provided to a
5 client, for consideration, that are designed to identify and
6 disclose the functional condition of the major systems in a
7 residence at the time of the inspection. Home inspection services
8 do not include an inspection designed only to disclose any of the
9 following:

10 (i) Compliance with local, state, or federal building or
11 construction laws, codes, or regulations.

12 (ii) Compliance with local, state, or federal health and safety
13 laws or regulations.

14 (iii) The presence or absence of pests, termites, or other
15 vermin or damage resulting from the presence of pests, termites, or
16 other vermin.

17 (f) "Home inspector" means an individual who is engaged in, or
18 offering to engage in, the business of providing home inspection
19 services but does not include any of the following:

20 (i) An individual who is acting on behalf of a local, state, or
21 federal governmental unit or agency and is conducting an inspection
22 or investigation concerning compliance with either or both of the
23 following:

24 (A) Health or safety laws or regulations.

25 (B) Construction or building laws, codes, or regulations.

26 (ii) An individual who is licensed, registered, or certified
27 under 1 or more of the following while conducting an inspection
28 that is reasonably related to a task or prospective task within the
29 scope of licensure, registration, or certification:

1 (A) Article 20.

2 (B) Article 24.

3 (C) Article 25.

4 (D) Article 26.

5 (E) Article 7, 8, or 11 of the skilled trades regulation act,
6 2016 PA 407, MCL 339.5701 to 339.5739, 339.5801 to 339.5819, and
7 339.6101 to 339.6133.

8 (g) "Major deficiency" means a defect in 1 or more major
9 systems that may cause a reasonable likelihood of harm to the
10 safety of the occupants or that may result in the reasonable
11 likelihood of a major system becoming nonoperational.

12 (h) "Major system" means any 1 of the following:

13 (i) Electrical system.

14 (ii) Heating and air conditioning system.

15 (iii) Plumbing system.

16 (iv) Structure and foundation.

17 (i) "Plumbing system" means that system regulating the inward
18 and outward flow of water and sewage in a residence and includes,
19 but is not limited to, water heaters, fixtures, faucets, valves,
20 and pipes. Plumbing does not include wells, septic systems, water
21 softeners, or sump pumps unless included in writing in the contract
22 for home inspection services.

23 (j) "Residence" means a building that is used primarily for
24 family living quarters and designed for occupancy by not more than
25 4 families in separate dwelling units. Residence does not include
26 any building newly constructed or not previously occupied as a
27 dwelling unit.

28 (k) "Structure" means the walls, windows, doors, and roof on
29 the exterior of a residence and the walls, ceilings, floors,

1 windows, and doors on the interior of a residence.

2 Sec. 1402. There is created a home inspectors board.

3 Sec. 1403. (1) Beginning on the effective date of the
4 amendatory act that added this section, an individual shall not
5 provide, or offer to provide, home inspection services unless he or
6 she is licensed under this article or unless the individual or
7 services do not require licensure under this article under section
8 1401(f) (i) or (ii). An individual shall not use the term "home
9 inspector" or any other similar title that connotes licensure under
10 this article unless he or she is licensed under this article. An
11 individual who violates this section is subject to the penalties of
12 article 6.

13 (2) Except as otherwise provided in subsection (3), the
14 department shall license an individual who files a completed
15 application and pays the appropriate application and license fee
16 and who meets all of the following:

17 (a) Completed education requirements that consist of not less
18 than 80 credit hours of education as determined appropriate by the
19 department.

20 (b) Participated in not less than 200 home inspections
21 conducted under the authority and direction of a home inspector
22 licensed under this article, as evidenced by an affidavit of the
23 licensee.

24 (c) Passed a proctored examination acceptable to the
25 department and the board. The current examination referred to as
26 the national home inspection examination developed by the
27 examination board of professional home inspectors, as it exists on
28 the effective date of this article, is considered an acceptable
29 examination. Any other examination that utilizes psychometric

1 standards and that has substantially the same substantive areas of
2 testing, as determined by the board and the department, may also be
3 used for purposes of this subdivision. The director, in
4 consultation with the board, may by rule adopt any updates or
5 alternatives to the examination described in this subdivision.

6 (d) Is not less than 18 years of age and has not been
7 convicted of any felony.

8 (3) Beginning on the effective date of this article and until
9 the expiration of 12 months after that effective date, the
10 department shall issue a license to an individual who applies for a
11 license; submits the appropriate license and application fees;
12 evidences, in a manner acceptable to the department, that in the
13 preceding 3 calendar years he or she has been engaged in providing
14 home inspection services and during that period has conducted or
15 participated in not less than 200 fee-paid home inspections; and
16 passes the examination described in subsection (2) (c). An
17 individual who meets the conditions described in this subsection is
18 not required to meet the requirements of subsection (2) (a), (b),
19 and (d).

20 (4) The department shall issue a license to an individual as a
21 home inspector if the individual is licensed or otherwise regulated
22 in another state that has substantially the same standards for
23 licensure as this state, as determined by the department, and who
24 meets all other relevant requirements in this state.

25 Sec. 1404. (1) Beginning on the effective date of this
26 article, an individual who provides or offers to provide home
27 inspection services shall comply with the requirements of this
28 section and section 1405.

29 (2) A home inspector who enters into a contract for home

1 inspection services that does not meet the requirements of this
2 article is liable to the client for damages and for penalties and
3 sanctions contained in articles 5 or 6, or both.

4 (3) A home inspector shall inspect those major systems of a
5 residence that are the subject of a contract for home inspection
6 services but is only required to inspect to the extent that those
7 major systems are readily accessible and visible to the home
8 inspector. A home inspector shall indicate in writing any major
9 system, or any part of a major system, that he or she was not able
10 to inspect and the reasons for the inability to inspect.

11 (4) A home inspector shall disclose whether he or she, an
12 employee or agent, or an immediate family member has an ownership
13 interest in the residence being inspected.

14 (5) A home inspector shall disclose whether he or she, an
15 employee or agent, or an immediate family member is a member of a
16 board of directors of, or an officer of, an entity that has an
17 ownership interest in the residence being inspected.

18 (6) A home inspector shall disclose and provide at the time a
19 written home inspection report is delivered to the client at least
20 both of the following:

21 (a) The scope of the home inspection services, including a
22 detailed description of the major systems to be inspected, the type
23 of major deficiencies the home inspection is designed to reveal,
24 and items that are excluded from coverage under the contract for
25 home inspection services.

26 (b) A statement that a home inspector inspecting a particular
27 residence shall not repair or offer to repair a residence that was
28 the subject of home inspection services provided by that home
29 inspector.

1 Sec. 1405. (1) A contract for home inspection services must be
2 in writing, executed by the home inspector and either the client or
3 the client's agent, and meet the requirements of subsection (4). A
4 home inspector shall provide a copy of the executed contract for
5 home inspection services to the client at the time of its
6 execution.

7 (2) All terms of a contract for home inspection services must
8 be contained in the written contract except that conditions of the
9 residence affecting the home inspector's ability to conduct a home
10 inspection must be noted in the report provided to the client after
11 the inspection is conducted. Any changes or modifications of the
12 terms of a contract for home inspection services must be reduced to
13 writing.

14 (3) Unless otherwise indicated in writing, the purchaser or
15 owner of a residence being inspected is considered the client in
16 the case of a home inspection conducted as part of a sale of the
17 residence.

18 (4) The following must be contained in a contract for home
19 inspection services:

20 (a) A description of the home inspection services to be
21 provided.

22 (b) Any disclaimers including, but not limited to, the absence
23 of any warranties as to the adequacy of future performance of a
24 major system and that the home inspection is considered a valid
25 assessment of the condition of the residence only as of the date
26 the home inspection is conducted.

27 (c) Any exclusion of defects that are not reasonably apparent
28 by visual inspection.

29 (d) Any exclusion of any major system that is not operable at

1 the time the home inspection is conducted.

2 (e) The disclosures required in section 1404(4) and (5).

3 (5) After performing home inspection services, a home
4 inspector shall provide to the client a written home inspection
5 report that contains the results of the home inspection. The home
6 inspection report must include a list of the major systems that
7 were inspected and any major systems that were not inspected. The
8 home inspector shall list in the report any conditions that affect
9 or limit the ability of the home inspector to provide home
10 inspection services under the contract.

11 (6) A home inspection report must include all of the following
12 statements:

13 (a) That defects that are not reasonably apparent by visual
14 inspection are excluded.

15 (b) That a major system that is not operable at the time of
16 the conduct of the home inspection is excluded.

17 (7) The home inspector shall indicate in a written home
18 inspection report that the home inspection is considered a valid
19 assessment of the condition of the residence only as of the date
20 the home inspection is conducted.

21 (8) A home inspector shall retain a copy of a contract for
22 home inspection services and the written home inspection report for
23 not less than 18 months after the date of the report.

24 (9) Any disputes between a home inspector and a client may be
25 resolved by arbitration, if the contract so provides. The
26 arbitration must be conducted in compliance with the rules of the
27 American Arbitration Association.

28 (10) The home inspector-client relationship is privileged.
29 Communications between a home inspector and client, including the

1 home inspection report, are privileged. A person shall not
2 intentionally or willfully interfere in the home inspector-client
3 relationship or any communications arising from the home inspector-
4 client relationship.

5 (11) A client or the department may not file an administrative
6 or civil complaint against a home inspector under this article more
7 than 12 months after the date of the inspection.

8 Sec. 1406. The remedies under this article are cumulative and
9 the use of 1 remedy does not bar the use of any other remedy
10 provided by law.

11 Sec. 1407. The director shall promulgate rules to provide for
12 all of the following:

13 (a) A requirement that licensees complete not less than 20
14 hours of continuing education for professional competence annually.

15 (b) Requirements for acceptable courses offered at seminars
16 and conventions by trade associations, research institutes, risk
17 management entities, manufacturers, suppliers, governmental
18 agencies, consulting agencies, or other entities.

19 (c) Acceptable distance learning.

20 (d) Standards of performance and practice and a code of
21 ethics.

22 (e) Alternate forms of demonstrating continuing competency,
23 including, but not limited to, comprehensive testing, participation
24 in mentoring programs, research, participation in code hearings
25 conducted by the international code council, and publication of
26 articles in a trade journal or regional magazine as an expert in
27 the field, if those alternate forms are designed to maintain and
28 improve the licensee's ability to perform the occupation with
29 competence.

1 **(f) The types of documentation necessary to demonstrate that a**
2 **licensee has fulfilled the requirements of continuing competency.**

3 Enacting section 1. This amendatory act takes effect 1 year
4 after the date it is enacted into law.

5 Enacting section 2. This amendatory act does not take effect
6 unless Senate Bill No.____ or House Bill No. 5690 (request no.
7 04961'21 a) of the 101st Legislature is enacted into law.