



**House
Legislative
Analysis
Section**

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**LICENSE CARPENTER
CONTRACTORS**

**House Bill 4739 (Substitute H-3)
First Analysis (6-13-02)**

**Sponsor: Rep. Randy Richardville
Committee: Regulatory Reform**

THE APPARENT PROBLEM:

According to information supplied by the Michigan Regional Council of Carpenters, a carpentry contractor is involved in a residential house project from start to finish. Carpenters install the footings and foundations; do the framing; install the roofing, siding, windows, doors and hardware, insulation, drywall, cabinets, and flooring; and do the trim work. Carpenters are therefore an integral part of home construction and renovation, as it is often the carpenter contractor who must make the plans for a project work, such as when the plans do not match the basement or foundation, and it is the carpenter who must pass information on the project to other contractors such as plumbers, electricians, masons, and roofers so that those professionals can do their jobs safely and correctly. Though technically carpenters fall under the trades and activities performed by licensed residential builders or residential maintenance and alteration contractors, it is reported that many carpenters engaging in business in Michigan are not individually licensed by the state or working for licensed builders. Apparently, there have been reports of walls collapsing within five years of construction, of shoddy work practices, and of consumers giving thousands of dollars to contractors for work that is never performed.

When a trade is regulated, there generally is a minimum level of training and competence that must be demonstrated in order to be licensed, and a tradesperson can be subject to administrative sanctions and fines, including loss of his or her license, for violations of the licensing act. Further, a consumer with a complaint against a licensee can contact the appropriate licensing board and can avail himself or herself of the complaint process established in the Department of Consumer and Industry Services. Therefore, many view regulation of a trade or profession as a consumer protection issue. Reportedly, consumer demand for regulation of carpenter contractors has been increasing in recent years. Some in the building professions believe that the situation may be helped by creating a separate

carpenter contractor license for those engaged in the carpentry business.

THE CONTENT OF THE BILL:

The bill would create a new act entitled the "Carpentry Licensure Act". This new act would establish a Board of Carpentry, create new license categories for carpenter contractors and journey carpenters, establish exemptions, set examination and license fees, and establish penalties and license sanctions for violations of the act. The bill would prohibit a person from engaging in carpentry for compensation unless he or she were licensed in the appropriate category or exempt from licensure. However, the bill would not prevent a person from performing any activities within the scope of licensure under certain licensure acts. The bill would take effect January 1, 2003. Specifically, the bill would do the following:

Definitions. A "carpenter contractor" would mean a person who was engaged in the business of carpentry for a fixed sum, price, fee, percentage, or other consideration of value, other than for wages for personal labor only, but would not include a governmental subdivision. A separate licensing category would be created for a "journey carpenter," an individual other than a carpenter contractor who, as his or her principal occupation, is engaged in carpentry for a fixed sum, price, fee, percentage, or other valuable consideration. "Carpentry" would be defined as activity involving both of the following:

- The erecting, installing, altering, repairing, servicing, or maintaining of wooden structures or their structural parts and would include, but not be limited to, all framing, decks, walls, ceilings, roofs, drywall, flooring, trim, and components that go to make the framing of a structure complete in wood construction, including the prefabrication of any wood structure or component. Under the bill, "wood construction" and "wooden structure" would include

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construction methods that utilize substitute materials that include metal studs and composite framing, and finish materials that replace or are used in conjunction with traditional wood construction.

- The application for, and issuance of, a building permit by an enforcing agency under the Stille-DeRosset-Hale Single State Construction Code Act.

Carpentry would not include either the construction, maintenance, or repair of farm buildings and their appurtenances, greenhouses, fences, or structures used for the production or care of farm plants and animals, or the use of materials or activities associated with concrete, road, and bridge construction.

Examination and Licensing. Upon the filing of an application on a department-prescribed form and payment of an examination fee, the Department of Consumer and Industry (CIS) would have to conduct an examination to establish the qualifications and competency of an applicant who was not exempt from the examination requirement and who was seeking a license as a carpenter contractor or journeyman carpenter. CIS would have to issue a license to those who pass the examinations or are otherwise qualified and who pay the initial issuance fee. Only those applicants who meet the “good moral character standard” as defined in Public Act 381 of 1974 (MCL 338.41 et al.) would be eligible to take the license examination.

The DCIS, in conjunction with the Board of Carpentry, could adopt rules to provide an examination and qualification procedure for journey and carpenter contractors. Not less than 180 days after the bill’s effective date, the DCIS and the board would have to set standards for licensure for the two license categories. In the interim, the board would have to utilize the appropriate U.S. Department of Labor Bureau of Apprenticeship Training Standards for the license categories.

Local government restrictions. Beginning on the bill’s effective date, a governmental subdivision could not establish or maintain local licensing requirements for journey carpentry or carpenter contractors, nor could the local unit prohibit a person licensed under the bill from engaging in the work for which he or she was licensed to perform.

Exemptions from licensure. The bill states that it would not prevent a person from performing any activities within the scope of licensure (or carpentry work incidental to the scope of licensure) under any

other licensure act including, but not limited to, activities performed by a person licensed under the following:

- The elevator licensing act, Public Act 333 of 1976.
- The plumbing code, Public Act 266 of 1929.
- The Forbes Mechanical Contractors Act.
- The Electrical Administrative Act.
- The Boiler Act of 1965.

The bill would also specify that it would not require an employee, subcontractor, or other person working under the control and authority of a licensed residential builder or a licensed maintenance and alteration contractor to be licensed under the bill even though the person’s activities, in whole or in part, involved carpentry.

In addition, a person could engage in carpentry without a carpenter contractor or journey carpenter license only on his or her own place of residence (or a home that will become his or her place of residence when the work is completed). A friend or relative could assist the owner without being licensed as long as he or she did not receive compensation. The owner would have to secure required permits for the project, and also obtain any necessary inspections after the carpentry was completed.

Exemptions from examination. A person required to be licensed under the bill would have to be issued a license for the category for which he or she is qualified without taking an examination if all of the following applied: 1) on the bill’s effective date, he or she had been engaged in, or worked at, a business as a journey carpenter or carpenter contractor; 2) he or she furnished the department with satisfactory evidence of having been engaged in, or having worked at, a business as a journey carpenter or carpenter contractor for a minimum of three out of the five years immediately preceding the bill’s effective date (or furnishing satisfactory evidence of having had successfully completed an appropriate U.S. Department of Labor Bureau of Apprenticeship Training Program within the preceding five years); 3) demonstrating that he or she had the other necessary qualifications; 4) applied within one year of the bill’s effective date; and, 5) paid the initial license fee.

In addition, the following people would also be exempt from the examination if they applied within one year of the bill’s effective date, furnished

satisfactory evidence of meeting the required criteria, and paid the initial license fee:

- A person who was licensed on the bill's effective date by a municipal licensing board as a journey carpenter or carpenter contractor.
- A person employed on the bill's effective date as a code inspector for a governmental subdivision and who had engaged in the business of a journey carpenter or carpenter contractor for three out of the five years immediately preceding the person's starting date of employment as a code inspector.
- A person who was licensed on the bill's effective date either as a residential builder or a residential maintenance and alteration contractor in the trade of carpentry or a related subject matter area, under Section 2404 of the Occupational Code.

In addition, the CIS could license, without examination and upon payment of the initial license fee, an applicant who was a legally authorized journey carpenter or carpenter contractor in another state or country that observed reciprocity and the licensing requirements of the other state or country were substantially equivalent to those specified in the bill. Further, the rules promulgated under the bill would have to allow the board to approve the issuance of a license in the appropriate category to an applicant who demonstrated to the board's satisfaction that the written examination requirements do not serve as an adequate basis for determining whether he or she could engage in carpentry with competence. A person who was issued a license without taking the examination could renew the license in the same manner as those who took the examination.

Finally, unless otherwise provided by departmental rules, a person who had successfully completed an appropriate U.S. Department of Labor Bureau of Apprenticeship Training Program (or an equivalent program approved by the Board of Carpentry and adopted by rule of the DCIS) within one year of application for a journey carpenter license would not have to take the initial licensure examination.

Examination and license fees. The examination fee for either a journey carpenter's or carpenter contractor's license would be \$25. The initial and renewal fee for a journey carpenter's or carpenter contractor's license would be \$75 per year. A journey carpenter's license would have to be renewed each year and a carpenter contractor's license would have to be renewed every three years. All licenses in

each category would expire on August 31, and would have to be renewed prior to October 31; otherwise, a person would have to apply for license reinstatement and pay the license fee. If a voided license were not renewed within three years after it was voided, the person would be subject to reexamination. An initial or reinstated carpenter contractor license issued at any other time would be pro-rated. Revenue from license fees and any other income received under the bill would have to be paid into the general fund for appropriation to DCIS for enforcement and administration of the bill.

In addition to the examination and license fees, an applicant would also have to pay an amount required by the Construction Lien Act for deposit in the Homeowner Construction Lien Recovery Fund; however, he or she would not have to pay more than \$50 in an assessment period, regardless of the number of licenses applied for or held.

Board of Carpentry. The bill would create the Board of Carpentry within the DCIS. The seven-member board would have to be appointed by the governor according to criteria specified in the bill. The bill would also establish criteria for the length of terms, filling vacancies, removal of board members, election of officers, and duties and powers of the board. Members, who could serve no more than two consecutive terms, could receive per diem compensation and reimbursement for actual expenses incurred in the performance of their duties. An organizational meeting would have to be held within 60 days of the bill's effective date, quarterly meetings would have to be held annually, and special meetings could be called by the chairperson or a group of three board members. All meetings would have to be conducted according to the Open Meetings Act, and writings of the board would be available to the public under the Freedom of Information Act.

The duties of the board would include making recommendations to the State Construction Code Commission regarding the promulgation of rules necessary for the safe design, construction, alteration, servicing, and inspection of carpentry and its components. The board could also test and evaluate a material, product, method of manufacture, or method of construction or installation for acceptability under the Stille-DeRossett-Hale Single State Construction Code and then make recommendations to the commission regarding the issuance of certificates of acceptability.

Penalties and license sanctions. A violation of the bill would result in a misdemeanor punishable by a

fine of not more than \$1,000 for a first offense and \$2,000 for a second or subsequent offense, or imprisonment for not more than 90 days, or both.

The DCIS could also investigate the activities of a licensee and could hold hearings, administer oaths, and order relevant testimony to be taken, the findings of which would have to be reported to the Board of Carpentry. The board could impose license sanctions or levy an administrative fine if it found any of the following grounds:

- The practice of fraud or deceit in obtaining a license or in the performance of work requiring a journey carpenter or carpenter contractor license;
- an act of gross negligence;
- the practice of false advertising;
- an act that demonstrated incompetence;
- a violation of the bill or a rule promulgated under the bill; or,
- an administrative fine of not more than \$1,000 for a first offense and \$2,000 for a second or subsequent offense.

After an administrative hearing, the board could suspend, deny, revoke, limit a license, and/or require that restitution be made. If restitution were ordered, the DCIS could suspend the person's license until restitution was made. A person required to be licensed under the bill as a carpenter contractor or journey carpenter contractor could not perform carpentry under a suspended, revoked, or expired license.

Further, the board would have to, upon the recommendation of the DCIS, suspend the license of any person whose failure to pay a lien claimant resulted in a payment being made from the Homeowner Construction Lien Recovery Fund under provisions of the Construction Lien Act. The DCIS could not renew the license, and a new license could not be issued, until the person whose license was suspended or revoked repaid the full amount expended from the fund plus the costs of litigation and interest at the rate set by Section 6013 of the Revised Judicature Act. The DCIS would also have to conduct a review upon notice that a licensee had violated the Asbestos Abatement Contractors Licensing Act, and could suspend or revoke the person's license for a knowing violation of that act.

BACKGROUND INFORMATION:

Legislation has been offered twice before to create a licensure structure for carpenter contractors. House Bill 4987 of the 1999-2000 legislative session was reported from the House Regulatory Reform committee and then re-referred to the Employment Relations, Training and Safety committee. House Bill 6226 of the 1997-1998 legislative session was passed by the House of Representatives.

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, by requiring the Department of Consumer and Industry services to administer the licensure of carpenter contractors and journey carpenters, requiring the department and the Board of Carpentry to investigate and penalize licensees for certain prohibited acts, and reimbursing board members for per diem expenses, House Bill 4739 would increase costs to the department by an indeterminate amount.

However, increased costs would likely be met out of increased state revenues generated under the bill. Based on calendar year 2000 occupational data from the Department of Career Development, it is estimated that roughly 35,000 individuals work as carpenters in Michigan. The bill could also require other individuals or businesses to obtain a license under this act. This could include roughly 71,000 licensed residential builders. If all of these individuals or businesses were eventually licensed under the act, the bill would generate up to \$8 million per year in license fee revenue. If only carpenters were licensed, the bill would generate around \$2.6 million annually. Significantly smaller amounts of examination fee revenue would also be generated.

Unlike the revenue generated through the majority of the department's licensing programs, the revenue generated under this bill appears to accrue to the state's general fund, rather than to a restricted fund. While the bill specifies that revenue would be paid to the general fund "for appropriation to the department for enforcement and administration of this act", it is not clear whether revenue that either goes unappropriated or unexpended would eventually be used for the purposes of the act. It is possible that such revenue could be used for other unrelated programs.

Finally, the agency reports that the bill prescribes fines of up to \$2,000 and other penalties (including possible imprisonment) for violations of the act. This

would increase local revenues and incarceration costs to the extent that violations actually occur. (6-3-02)

ARGUMENTS:

For:

Under Article 24 of the Occupational Code, carpentry is within the purview of a licensed residential builder, and a residential maintenance and alteration contractor's license is required to specify the particular craft or trade for which the licensee has qualified (e.g., carpentry, concrete, swimming pool installation, waterproofing a basement, and so on). These licensees can hire carpenter subcontractors who, since they are working under the authority of the licensee, do not have to be similarly licensed. The bill would not change this. The bill would address those persons who offer carpentry services to the general public.

Reportedly, some carpentry work in home construction has been performed by unqualified persons, resulting in eventual damage to homes such as interior walls collapsing within a few years of being built. When this happens, a homeowner has little recourse. Bringing a civil suit against an unscrupulous or incompetent carpenter can be costly and time consuming. The Occupational Code does prohibit a person from engaging in a regulated profession and subjects violators to criminal sanctions, but the Department of Consumer and Industry Services directs its limited resources to investigating complaints against licensed individuals. Further, the state construction code prohibits working on residential buildings in the capacity of a licensed residential builder or remodeler without a license, and specifies that a violation is punishable by a civil fine. These provisions are to be enforced by county prosecutors or the attorney general, but again, those enforcement authorities generally direct their limited resources to more pressing criminal matters.

Creating a separate licensing structure for carpenter contractors would be a solution to several problems. Consumers would know that the licensed carpenter contractor they hired would have passed a rigorous examination and demonstrated competency in the trade. In the event of substandard work or fraudulent practices, a disciplinary mechanism would be in place whereby a licensee could face administrative fines and/or license sanctions (after going through a hearing process). Those who would promote themselves as carpenters, but were not licensed, could face criminal charges. This is particularly

important to discourage unqualified persons who target the poor and elderly with various scams.

At the same time, the bill would not be overly burdensome on those currently working as carpenters. The bill would exempt many in the carpentry business from needing to take the initial examination if they applied for a license within a year of the bill's effective date and paid the license fee. Since carpenter contractors must demonstrate a higher level of competency (and tend to work in the trade for a longer period of time), their licenses would only have to be renewed every third year. A person already licensed under another act, whose scope of practice includes carpentry or activities that would fall under the definition of carpentry, would not have to be licensed as a carpenter contractor or journey carpenter. A residential builder or remodeler would not have to be licensed under this bill either; however, if such a licensee desired dual licensure, he or she would be exempt from the initial examination if the carpenter license were applied for within a year of bill's effective date. Further, the licensing and examination fees contained in the bill should be sufficient to support oversight and administration by the Department of Consumer and Industry. In short, therefore, the bill would provide essential and desired consumer protections while not overly burdening those who work in the carpentry trade.

Against:

Two major problems still exist in the bill. First of all, the definition of "carpentry" is still too broad. Without further refinement, the bill would still capture people who merely hang kitchen cabinets, make wood forms for paving driveways, or who predrill walls for electrical contractors to run their wires. Secondly, subcontractors would not have to be licensed under the bill as long as they worked for a licensed builder or remodeler. However, most remodeling companies hire independent contractors (who would have to be licensed under the bill) instead of subcontractors. But, some of the independent contractors in turn have subcontractors who work under them; these subcontractors would also have to be licensed under the bill. In effect then, a subcontractor working for a builder or remodeler would not have to be licensed as a carpenter contractor or journey carpenter, but the same person would have to be licensed if he or she did work for an independent contractor.

In addition, the earlier attempts to create a licensing category for carpenter contractors clearly applied only to residential carpenters. As written, House Bill 4739 does not make this distinction; therefore, it

could be read as applying also to carpenters who work on commercial projects. As there is much more regulation over construction and remodeling of commercial buildings, this is completely unneeded.

Further, though licensees under the bill could be subject to administrative sanctions, the bill does not contain a parallel complaint process that is found in the Occupational Code for builders and remodelers. Finally, at a time when the Department of Consumer and Industry Services is facing budgetary and staff reductions (as is all of state government), it would appear to be an inopportune time to add more regulatory functions.

POSITIONS:

The Michigan Regional Council of Carpenters supports the bill. (6-11-02)

The Department of Consumer and Industry Services does not support the bill. (6-11-02)

The Michigan Association of Home Builders opposes the bill. (6-11-02)

The Associated Builders and Contractors (ABC) oppose the bill. (6-11-02)

The National Federation of Independent Business (NFIB) opposes the bill. (6-11-02)

The Western Michigan Chapter/Associated Builders and Contractors opposes the bill. (6-11-02)

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■ 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.