

SENATE BILL No. 345

March 25, 2003, Introduced by Senators PATTERSON, KUIPERS, BIRKHOLZ, CROPSEY, GILBERT, BROWN and GOSCHKA and referred to the Committee on Judiciary.

A bill to amend 1980 PA 299, entitled "Occupational code," by amending sections 508, 511, 513, and 514 (MCL 339.508, 339.511, 339.513, and 339.514), section 508 as amended by 1989 PA 261.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 508. (1) After an investigation has been conducted and
 2 a formal complaint prepared, the department shall serve the
 3 formal complaint upon the respondent and the complainant. **The**
 4 **respondent may join a licensee or registrant under this act as a**
 5 **respondent by so indicating in writing to the department or as**
 6 **part of a written response to a complaint. In such a case, the**
 7 **department shall appropriately notify the co-respondent.** At the
 8 same time, the department shall serve ~~the respondent~~ **all**
 9 **respondents** with a notice describing the compliance conference

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1 and hearing processes and offering ~~the respondent~~ **all**
2 **respondents** a choice of 1 of the following opportunities:

3 (a) An opportunity to meet with the department to negotiate a
4 settlement of the matter.

5 (b) If the respondent is a licensee or registrant under this
6 act, an opportunity to demonstrate compliance prior to holding a
7 contested case hearing, as required by section 92 of the
8 administrative procedures act of 1969, ~~Act No. 306 of the Public~~
9 ~~Acts of 1969, being section 24.292 of the Michigan Compiled Laws~~
10 **1969 PA 306, MCL 24.292.**

11 (c) An opportunity to proceed to a contested case hearing as
12 set forth in section 71 of ~~Act No. 306 of the Public Acts of~~
13 ~~1969, being section 24.271 of the Michigan Compiled Laws~~ **the**
14 **administrative procedures act of 1969, 1969 PA 306, MCL 24.271.**

15 (2) ~~A respondent~~ **All respondents** upon whom service of a
16 formal complaint has been made pursuant to this section may
17 select, within 15 days after the receipt of notice, 1 of the
18 options described in subsection (1). If a respondent does not
19 select 1 of those options within the time period described in
20 this section, then the department shall proceed to a contested
21 case hearing as described in subsection (1)(c).

22 (3) An informal conference may be attended by a member of the
23 board, at the discretion of that board, or by a member of a
24 committee and may result in a settlement, consent order, waiver,
25 default, or other method of settlement agreed upon by the parties
26 and the department. A settlement may include the revocation,
27 suspension, or limitation of a license or registration; censure;

1 probation; restitution; or a penalty provided for in article 6.
2 A board may reject a settlement and require a contested case
3 hearing under section 71 of ~~Act No. 306 of the Public Acts of~~
4 ~~1969, as amended, being section 24.271 of the Michigan Compiled~~
5 ~~Laws~~ **the administrative procedures act of 1969, 1969 PA 306, MCL**
6 **24.271.**

7 (4) An authorized employee or agent of the department may
8 represent the department in any contested case hearing. ~~held~~
9 ~~pursuant to Act No. 306 of the Public Acts of 1969.~~

10 Sec. 511. (1) If an informal conference is not held or does
11 not result in a settlement of a complaint, **the department shall**
12 **hold** a hearing pursuant to ~~section 92 of Act No. 306 of the~~
13 ~~Public Acts of 1969, as amended, shall be held~~ **the**
14 **administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to**
15 **24.328.** A hearing **held** under this section may be attended by a
16 member of a board.

17 (2) **The administrative law hearing examiner shall make a**
18 **determination of fault regarding a respondent and among 1 or more**
19 **respondents. If more than 1 respondent is determined to be at**
20 **fault, the administrative law hearing examiner shall make a**
21 **determination of the percentage of the total fault attributable**
22 **to each respondent. Fault is considered several and not joint.**

23 Sec. 513. (1) Except as provided in subsection ~~(3)~~ (4),
24 at the conclusion of a hearing conducted under section 511, the
25 administrative law hearings examiner shall submit a determination
26 of findings of fact and conclusions of law to the department and
27 the department of the attorney general and the appropriate board

1 in a hearing report. **In the case of findings involving a**
2 **licensee under more than 1 article, the hearing report shall be**
3 **submitted to the board governing the original respondent.** The
4 submitted hearing report may recommend the penalties to be
5 assessed as prescribed in article 6.

6 (2) A copy of a hearing report shall be submitted to the
7 person who made the complaint, ~~and~~ to the person against whom
8 the complaint was lodged, **and to any person who has been joined**
9 **as a respondent under section 508.**

10 (3) **In the case of a determination of findings of fact and**
11 **conclusions of law that involve respondents licensed or**
12 **registered in occupations under different articles, the board**
13 **governing the original respondent shall make the determinations**
14 **of penalties, remedies, and sanctions.**

15 (4) ~~(3)~~ For a complaint involving professional standards of
16 practice under article 7, a majority of the members of the board
17 who have not participated in an investigation of the complaint or
18 who have not attended an informal conference, shall sit to make
19 findings of fact in relation to the complaint.

20 Sec. 514. (1) Within 60 days after receipt of an
21 administrative law hearings examiner's hearing report, the board
22 receiving the hearing report shall meet and make a determination
23 of the penalties to be assessed under article 6. The board's
24 determination shall be made on the basis of the administrative
25 law hearings examiner's report. A transcript of a hearing or a
26 portion of the transcript shall be made available to a board upon
27 request. If a transcript or a portion of the transcript is

1 requested, the board's determination of the penalty or penalties
2 to be assessed under article 6 shall be made at a meeting within
3 60 days after receipt of a transcript or portion of the
4 transcript.

5 (2) If a board does not determine the appropriate penalty or
6 penalties to be assessed within the time limits prescribed by
7 subsection (1), the director may determine the appropriate
8 penalty and issue a final order for occupations regulated under
9 articles 8 to 25.

10 (3) **The board shall follow the allocation of the percentage**
11 **of fault only under circumstances where restitution is ordered**
12 **under section 602. The board is specifically prohibited from**
13 **awarding property or personal injury damages under this act.**

14 (4) ~~(3)~~ A member of a board who has participated in an
15 investigation on a complaint filed with the department or who has
16 attended an informal conference shall not participate in making a
17 final determination in a proceeding on that complaint.