

HOUSE BILL No. 4134

February 1, 2005, Introduced by Reps. Lemmons, III and Lemmons, Jr. and referred to the Committee on Regulatory Reform.

A bill to amend 1980 PA 299, entitled
"Occupational code,"
by amending section 303a (MCL 339.303a), as amended by 1995 PA
183, and by adding article 14.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 303a. The terms provided for in this act shall commence
2 on the following dates:

3	Accountancy	July 1
4	Architects	April 1
5	Athletic board of control	April 1
6	Barbers	October 1
7	Collection agencies	July 1
8	Community planners	July 1

1	Cosmetology	January 1
2	Employment agencies	October 1
3	Foresters	April 1
4	Hearing aid dealers	October 1
5	HOME INSPECTORS	JULY 1
6	Land surveyors	April 1
7	Landscape architects	July 1
8	Marriage counselors	October 1
9	Mortuary science	July 1
10	Nursing home administrators	January 1
11	Professional engineers	April 1
12	Real estate appraisers	July 1
13	Real estate brokers and salespersons	July 1
14	Residential builders	April 1
15	Social workers	October 1

16 **ARTICLE 14**

17 **SEC. 1401. AS USED IN THIS ARTICLE:**

18 (A) "ACCESSORIES" MEANS APPLIANCES THAT ARE FIXTURES IN THE
 19 RESIDENCE. ACCESSORIES INCLUDE BUILT-IN APPLIANCES AND VACUUM
 20 SYSTEMS BUT DO NOT INCLUDE A SECURITY SYSTEM.

21 (B) "CLIENT" MEANS THE PERSON ON WHOSE BEHALF A HOME
 22 INSPECTOR IS ACTING.

23 (C) "ELECTRICAL SYSTEM" MEANS THE TOTAL SYSTEM IN A
 24 RESIDENCE THAT FACILITATES THE FLOW OF ELECTRICITY BEGINNING WITH
 25 THE MAIN PANEL AND EXTENDING TO THE SUBPANELS AND INCLUDING
 26 BRANCH CIRCUITS AND DIRECTLY WIRED ELECTRICAL AND LIGHTING
 27 FIXTURES.

28 (D) "FOUNDATION" MEANS 1 OR MORE OF THE FOLLOWING UPON WHICH

1 A RESIDENCE IS PLACED:

2 (i) SLAB.

3 (ii) CRAWL SPACE.

4 (iii) BASEMENT.

5 (iv) PIERS.

6 (E) "HEATING AND AIR CONDITIONING SYSTEM" MEANS A SEPARATE
7 OR COMBINED SYSTEM USED TO DISTRIBUTE OR RADIATE HEAT OR COOL AIR
8 THROUGHOUT ALL OR PART OF A RESIDENCE. THE RADIATION OR
9 DISTRIBUTION OF HEAT MAY BE ACCOMPLISHED BY MEANS OF A CENTRAL
10 HEAT SOURCE OR THERMOSTATICALLY CONTROLLED HEAT SOURCES IN 1 OR
11 MORE ROOMS OF A RESIDENCE. AIR CONDITIONING DOES NOT INCLUDE A
12 UNIT MOUNTED IN A WALL OR A WINDOW UNLESS THE UNIT UTILIZES DUCTS
13 TO DISTRIBUTE THE AIR.

14 (F) "HOME INSPECTOR" MEANS A PERSON ENGAGED IN, OR OFFERING
15 TO ENGAGE IN, THE BUSINESS OF PROVIDING HOME INSPECTION SERVICES
16 BUT DOES NOT INCLUDE ANY OF THE FOLLOWING:

17 (i) A PERSON ACTING ON BEHALF OF A LOCAL, STATE, OR FEDERAL
18 GOVERNMENTAL UNIT OR AGENCY CONDUCTING AN INSPECTION OR
19 INVESTIGATION CONCERNING COMPLIANCE WITH EITHER OR BOTH OF THE
20 FOLLOWING:

21 (A) HEALTH OR SAFETY LAWS OR REGULATIONS.

22 (B) CONSTRUCTION OR BUILDING LAWS, CODES, OR REGULATIONS.

23 (ii) A PERSON LICENSED, REGISTERED, OR CERTIFIED UNDER 1 OR
24 MORE OF THE FOLLOWING WHILE CONDUCTING AN INSPECTION THAT IS
25 REASONABLY RELATED TO A TASK OR PROSPECTIVE TASK WITHIN THE SCOPE
26 OF LICENSURE, REGISTRATION, OR CERTIFICATION:

27 (A) ARTICLE 20.

1 (B) ARTICLE 24.

2 (C) ARTICLE 25.

3 (D) ARTICLE 26.

4 (E) THE STATE PLUMBING ACT, 2002 PA 733, MCL 338.3511 TO
5 338.3569.

6 (F) THE ELECTRICAL ADMINISTRATIVE ACT, 1956 PA 217, MCL
7 338.881 TO 338.892.

8 (G) THE FORBES MECHANICAL CONTRACTORS ACT, 1984 PA 192, MCL
9 338.971 TO 338.988.

10 (G) "HOME INSPECTION SERVICES" MEANS SERVICES PROVIDED TO A
11 CLIENT, FOR CONSIDERATION, THAT ARE DESIGNED TO IDENTIFY AND
12 DISCLOSE THE FUNCTIONAL CONDITION OF THE MAJOR SYSTEMS AND
13 ACCESSORIES IN A RESIDENCE AT THE TIME OF THE INSPECTION. HOME
14 INSPECTION SERVICES DO NOT INCLUDE AN INSPECTION DESIGNED ONLY TO
15 DISCLOSE ANY OF THE FOLLOWING:

16 (i) COMPLIANCE WITH LOCAL, STATE, OR FEDERAL BUILDING OR
17 CONSTRUCTION LAWS, CODES, OR REGULATIONS.

18 (ii) COMPLIANCE WITH LOCAL, STATE, OR FEDERAL HEALTH AND
19 SAFETY LAWS OR REGULATIONS.

20 (iii) THE PRESENCE OR ABSENCE OF PESTS, TERMITES, OR OTHER
21 VERMIN OR DAMAGE RESULTING FROM THE PRESENCE OF PESTS, TERMITES,
22 OR VERMIN.

23 (H) "MAJOR DEFICIENCY" MEANS A DEFECT IN 1 OR MORE MAJOR
24 SYSTEMS OR ACCESSORIES THAT MAY CAUSE THE REASONABLE LIKELIHOOD
25 OF HARM TO THE SAFETY OF THE OCCUPANTS SO AS TO REQUIRE THEIR
26 EVACUATION OF THE RESIDENCE FOR MORE THAN 3 DAYS OR THAT MAY
27 RESULT IN THE REASONABLE LIKELIHOOD OF A MAJOR SYSTEM OR

1 ACCESSORY BECOMING NONOPERATIONAL.

2 (I) "MAJOR SYSTEM" MEANS ANY 1 OF THE FOLLOWING:

3 (i) ELECTRICAL SYSTEM.

4 (ii) HEATING AND AIR CONDITIONING SYSTEM.

5 (iii) PLUMBING SYSTEM.

6 (iv) STRUCTURE AND FOUNDATION.

7 (J) "PLUMBING SYSTEM" MEANS THAT SYSTEM REGULATING THE
8 INWARD AND OUTWARD FLOW OF WATER AND SEWAGE IN A RESIDENCE AND
9 INCLUDES, BUT IS NOT LIMITED TO, WATER HEATERS, FIXTURES,
10 FAUCETS, VALVES, AND PIPES. PLUMBING DOES NOT INCLUDE WELLS,
11 SEPTIC SYSTEMS, WATER SOFTENERS, OR SUMP PUMPS UNLESS INCLUDED IN
12 WRITING IN THE CONTRACT FOR HOME INSPECTION SERVICES.

13 (K) "RESIDENCE" MEANS A BUILDING USED PRIMARILY FOR FAMILY
14 LIVING QUARTERS AND DESIGNED FOR OCCUPANCY OF NOT MORE THAN 4
15 FAMILIES IN SEPARATE LIVING QUARTERS.

16 (L) "STRUCTURE" MEANS THE WALLS, WINDOWS, DOORS, AND ROOF ON
17 THE EXTERIOR OF A RESIDENCE AND THE WALLS, CEILINGS, FLOORS,
18 WINDOWS, AND DOORS ON THE INTERIOR OF A RESIDENCE.

19 SEC. 1402. THERE IS CREATED A HOME INSPECTORS BOARD.

20 SEC. 1403. (1) BEGINNING THE EFFECTIVE DATE OF THIS ARTICLE,
21 AN INDIVIDUAL SHALL NOT PROVIDE, OR OFFER TO PROVIDE, HOME
22 INSPECTION SERVICES UNLESS LICENSED UNDER THIS ARTICLE OR UNLESS
23 THE INDIVIDUAL OR SERVICES ARE EXEMPTED FROM LICENSURE UNDER THIS
24 ARTICLE AS DESCRIBED IN SECTION 1401(F)(i) OR (ii). AN INDIVIDUAL
25 SHALL NOT USE THE TERM "HOME INSPECTOR" OR ANY OTHER SIMILAR
26 TITLE THAT CONNOTES LICENSURE UNDER THIS ARTICLE.

27 (2) THE LICENSE QUALIFICATION AND EDUCATIONAL STANDARDS, AS

1 WELL AS THE EXAMINATIONS, OF THE NATIONAL ASSOCIATION OF HOME
2 INSPECTORS, AS THEY EXIST ON THE EFFECTIVE DATE OF THIS ARTICLE,
3 ARE ADOPTED AND INCORPORATED BY REFERENCE FOR USE BY THE
4 DEPARTMENT FOR THE LICENSURE OF APPLICANTS UNDER THIS ARTICLE.
5 THE DEPARTMENT, UPON THE ADVICE OF THE BOARD, SHALL DETERMINE
6 WHETHER APPLICANTS NOT AFFILIATED WITH THE NATIONAL ASSOCIATION
7 OF HOME INSPECTORS OTHERWISE MEET THE STANDARDS ADOPTED UNDER
8 THIS SUBSECTION. BY PROMULGATION OF A RULE, THE DEPARTMENT MAY
9 AMEND, SUPPLEMENT, OR UPDATE THE STANDARDS ADOPTED UNDER THIS
10 SUBSECTION.

11 (3) THE DEPARTMENT, IN CONSULTATION WITH THE BOARD, MAY
12 PROMULGATE RULES TO SET STANDARDS FOR EXAMINATION OF APPLICANTS
13 WHO DO NOT MEET THE EDUCATION AND EXPERIENCE STANDARDS DESCRIBED
14 IN THE STANDARDS ADOPTED IN OR THE RULES PROMULGATED UNDER
15 SUBSECTION (2).

16 (4) THE DEPARTMENT SHALL LICENSE AN INDIVIDUAL AS A HOME
17 INSPECTOR IF THE INDIVIDUAL IS LICENSED OR OTHERWISE REGULATED IN
18 ANOTHER STATE THAT HAS SUBSTANTIALLY THE SAME STANDARDS FOR
19 LICENSURE AS THIS STATE, AS DETERMINED BY THE BOARD, AND THAT
20 OFFERS RECIPROCITY TO LICENSEES IN THIS STATE.

21 SEC. 1404. (1) BEGINNING THE EFFECTIVE DATE OF THIS ARTICLE,
22 AN INDIVIDUAL PROVIDING OR OFFERING TO PROVIDE HOME INSPECTION
23 SERVICES SHALL COMPLY WITH THE REQUIREMENTS OF THIS SECTION AND
24 SECTION 1405.

25 (2) A HOME INSPECTOR WHO ENTERS INTO A CONTRACT FOR HOME
26 INSPECTION SERVICES THAT IS NOT IN CONFORMANCE WITH THIS ARTICLE
27 IS SUBJECT TO AN ACTION FOR DAMAGES BROUGHT BY THE CLIENT OR

1 SUSPENSION OR REVOCATION OF HIS OR HER LICENSE, OR BOTH.

2 (3) A HOME INSPECTOR SHALL INSPECT THOSE MAJOR SYSTEMS AND
3 ACCESSORIES OF A RESIDENCE THAT ARE THE SUBJECT OF A CONTRACT FOR
4 HOME INSPECTION SERVICES ONLY TO THE EXTENT THAT THOSE MAJOR
5 SYSTEMS AND ACCESSORIES ARE READILY ACCESSIBLE AND VISIBLE TO THE
6 HOME INSPECTOR. A HOME INSPECTOR SHALL INDICATE IN WRITING TO THE
7 CLIENT ANY ACCESSORY OR MAJOR SYSTEM, OR ANY PART OF AN ACCESSORY
8 OR MAJOR SYSTEM, THAT WAS NOT ABLE TO BE INSPECTED AND THE
9 REASONS FOR THE INABILITY TO INSPECT.

10 (4) A HOME INSPECTOR WHO INSPECTS A RESIDENCE SHALL NOT
11 REPAIR OR OFFER TO REPAIR A RESIDENCE THAT WAS THE SUBJECT OF
12 HOME INSPECTION SERVICES PROVIDED BY THAT HOME INSPECTOR UNLESS
13 THE REPAIR IS PURSUANT TO A HOME WARRANTY PROVIDED BY THE HOME
14 INSPECTOR.

15 (5) THE HOME INSPECTOR SHALL DISCLOSE TO THE CLIENT WHETHER
16 HE OR SHE, AN EMPLOYEE OR AGENT, OR AN IMMEDIATE FAMILY MEMBER
17 HAS AN OWNERSHIP INTEREST IN THE RESIDENCE BEING INSPECTED.

18 (6) A HOME INSPECTOR SHALL DISCLOSE TO THE CLIENT WHETHER HE
19 OR SHE, AN EMPLOYEE OR AGENT, OR AN IMMEDIATE FAMILY MEMBER IS A
20 MEMBER OF A BOARD OF DIRECTORS OF, OR AN OFFICER OF, AN ENTITY
21 THAT HAS AN OWNERSHIP INTEREST IN THE RESIDENCE BEING INSPECTED.

22 (7) A HOME INSPECTOR SHALL FURNISH TO THE CLIENT A DOCUMENT
23 ENTITLED "DISCLOSURE STATEMENT", WHICH SHALL BE PRESENTED AT THE
24 TIME THE WRITTEN HOME INSPECTION REPORT IS CONVEYED TO THE CLIENT
25 AND SHALL CONTAIN, AT A MINIMUM, BOTH OF THE FOLLOWING:

26 (A) THE SCOPE OF THE HOME INSPECTION SERVICES WITH A
27 DETAILED DESCRIPTION OF THE MAJOR SYSTEMS AND ACCESSORIES TO BE

1 INSPECTED, THE TYPE OF MAJOR DEFICIENCIES THE HOME INSPECTION IS
2 DESIGNED TO REVEAL, AND ITEMS THAT ARE EXCLUDED FROM COVERAGE
3 UNDER THE CONTRACT OF HOME INSPECTION SERVICES.

4 (B) A STATEMENT THAT A HOME INSPECTOR INSPECTING A
5 PARTICULAR RESIDENCE SHALL NOT REPAIR OR OFFER TO REPAIR A
6 RESIDENCE THAT WAS THE SUBJECT OF HOME INSPECTION SERVICES
7 PROVIDED BY THAT HOME INSPECTOR UNLESS THE REPAIR IS PURSUANT TO
8 A HOME WARRANTY PROVIDED BY THE HOME INSPECTOR.

9 SEC. 1405. (1) A CONTRACT FOR HOME INSPECTION SERVICES SHALL
10 BE IN WRITING, EXECUTED BY THE HOME INSPECTOR AND EITHER THE
11 CLIENT OR THE CLIENT'S AGENT, AND IN CONFORMANCE WITH SUBSECTION
12 (4). A COPY OF THE EXECUTED CONTRACT FOR HOME INSPECTION SERVICES
13 SHALL BE PROVIDED TO THE CLIENT OR THE CLIENT'S AGENT AT THE TIME
14 OF ITS EXECUTION.

15 (2) ALL TERMS OF THE CONTRACT FOR HOME INSPECTION SERVICES
16 SHALL BE CONTAINED IN THE WRITTEN CONTRACT EXCEPT THAT CONDITIONS
17 OF THE RESIDENCE AFFECTING THE HOME INSPECTOR'S ABILITY TO
18 CONDUCT A HOME INSPECTION SHALL BE NOTED IN A SEPARATE DOCUMENT
19 ATTACHED TO THE CONTRACT. ANY CHANGES OR MODIFICATIONS OF THE
20 TERMS OF THE CONTRACT FOR HOME INSPECTION SERVICES SHALL BE
21 REDUCED TO WRITING.

22 (3) UNLESS OTHERWISE INDICATED IN WRITING, THE PURCHASER OF
23 A RESIDENCE BEING INSPECTED IS CONSIDERED THE CLIENT IN THE CASE
24 OF A HOME INSPECTION CONDUCTED AS PART OF A SALE OF THE
25 RESIDENCE.

26 (4) THE FOLLOWING SHALL BE CONTAINED IN A CONTRACT FOR HOME
27 INSPECTION SERVICES:

1 (A) A DESCRIPTION OF THE HOME INSPECTION SERVICES TO BE
2 PROVIDED.

3 (B) ANY DISCLAIMERS INCLUDING, BUT NOT LIMITED TO, THE
4 ABSENCE OF ANY WARRANTIES AS TO THE ADEQUACY OF FUTURE
5 PERFORMANCE OF A MAJOR SYSTEM OR ACCESSORY AND THE FACT THAT THE
6 HOME INSPECTION IS CONSIDERED A VALID ASSESSMENT OF THE CONDITION
7 OF THE RESIDENCE ONLY AS OF THE DATE THE HOME INSPECTION WAS
8 CONDUCTED.

9 (C) ANY EXCLUSION OF DEFECTS NOT REASONABLY APPARENT BY
10 VISUAL INSPECTION.

11 (D) ANY EXCLUSION OF ANY MAJOR SYSTEM OR ACCESSORY NOT
12 OPERABLE AT THE TIME OF THE CONDUCT OF THE HOME INSPECTION.

13 (5) AFTER PERFORMING HOME INSPECTION SERVICES, A HOME
14 INSPECTOR SHALL PROVIDE TO THE CLIENT A WRITTEN HOME INSPECTION
15 REPORT CONTAINING THE RESULTS OF THE HOME INSPECTION. THE HOME
16 INSPECTION REPORT SHALL INCLUDE A LIST OF THE MAJOR SYSTEMS OR
17 ACCESSORIES INSPECTED AND ANY MAJOR SYSTEMS OR ACCESSORIES NOT
18 INSPECTED. THE HOME INSPECTOR SHALL LIST IN THE REPORT ANY
19 CONDITIONS AFFECTING OR LIMITING THE ABILITY OF THE HOME
20 INSPECTOR TO PROVIDE HOME INSPECTION SERVICES PURSUANT TO THE
21 CONTRACT.

22 (6) THE HOME INSPECTION REPORT SHALL INCLUDE THE FOLLOWING
23 STATEMENTS:

24 (A) THAT DEFECTS NOT REASONABLY APPARENT BY VISUAL
25 INSPECTION ARE EXCLUDED.

26 (B) THAT A MAJOR SYSTEM OR ACCESSORY NOT OPERABLE AT THE
27 TIME OF THE CONDUCT OF THE HOME INSPECTION IS EXCLUDED.

1 (7) THE HOME INSPECTOR SHALL INDICATE IN THE WRITTEN HOME
2 INSPECTION REPORT THE FACT THAT THE HOME INSPECTION IS CONSIDERED
3 A VALID ASSESSMENT OF THE CONDITION OF THE RESIDENCE ONLY AS OF
4 THE DATE THE HOME INSPECTION WAS CONDUCTED.

5 (8) A HOME INSPECTOR SHALL RETAIN A COPY OF THE CONTRACT FOR
6 HOME INSPECTION SERVICES AND THE WRITTEN HOME INSPECTION REPORT
7 FOR AT LEAST 3 YEARS AFTER THE DATE OF THE REPORT.

8 SEC. 1406. (1) A CLIENT SUFFERING DAMAGES DUE TO A VIOLATION
9 OF THIS ARTICLE MAY BRING AN ACTION FOR DAMAGES IN A COURT OF
10 COMPETENT JURISDICTION.

11 (2) THE REMEDIES UNDER THIS ARTICLE ARE CUMULATIVE AND THE
12 USE OF 1 REMEDY DOES NOT BAR THE USE OF ANY OTHER REMEDY PROVIDED
13 BY LAW.

14 Enacting section 1. This amendatory act does not take
15 effect unless Senate Bill No.____ or House Bill No. 4135(request
16 no. 00520'05 a) of the 93rd Legislature is enacted into law.