

SENATE BILL No. 1215

March 18, 2008, Introduced by Senator SCHAUER and referred to the Committee on Commerce and Tourism.

A bill to amend 1980 PA 299, entitled
"Occupational code,"
by amending section 2411 (MCL 339.2411), as amended by 2007 PA 157.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2411. (1) A complaint filed under this section or article
2 5, or both, shall be made within 18 months after the latest of the
3 following regarding a residential structure or a combination of
4 residential and commercial structure as follows:

5 (a) In the case of a maintenance and alteration contract:

6 (i) Completion.

7 (ii) Occupancy.

8 (iii) Purchase.

9 (b) In the case of a project requiring an occupancy permit:

1 (i) Issuance of the certificate of occupancy or temporary
2 certificate of occupancy.

3 (ii) Closing.

4 (2) A licensee or applicant who commits 1 or more of the
5 following shall be subject to the penalties set forth in article 6:

6 (a) Abandonment without legal excuse of a contract,
7 construction project, or operation engaged in or undertaken by the
8 licensee.

9 (b) Diversion of funds or property received for prosecution or
10 completion of a specific construction project or operation, or for
11 a specified purpose in the prosecution or completion of a
12 construction project or operation, and the funds or property
13 application or use for any other construction project or operation,
14 obligation, or purposes.

15 (c) Failure to account for or remit money coming into the
16 person's possession ~~which~~ **THAT** belongs to others.

17 (d) A willful departure from or disregard of plans or
18 specifications in a material respect and prejudicial to another,
19 without consent of the owner or an authorized representative and
20 without the consent of the person entitled to have the particular
21 construction project or operation completed in accordance with the
22 plans and specifications.

23 (e) A willful violation of the building laws of the state or
24 of a political subdivision of the state.

25 (f) In a residential maintenance and alteration contract,
26 failure to furnish to a lender the purchaser's signed completion
27 certificate executed upon completion of the work to be performed

1 under the contract.

2 (g) If a licensed residential builder or licensed residential
3 maintenance and alteration contractor, failure to notify the
4 department within 10 days of a change in the control or direction
5 of the business of the licensee resulting from a change in the
6 licensee's partners, directors, officers, or trustees, or a change
7 in the control or direction of the business of the licensee
8 resulting from any other occurrence or event.

9 (h) Failure to deliver to the purchaser the entire agreement
10 of the parties including finance and any other charge arising out
11 of or incidental to the agreement when the agreement involves
12 repair, alteration, or addition to, subtraction from, improvement
13 of, wrecking of, or demolition of a residential structure or
14 combination of residential and commercial structure, or building of
15 a garage, or laying of concrete on residential property, or
16 manufacture, assembly, construction, sale, or distribution of a
17 residential or combination residential and commercial structure
18 ~~which~~**THAT** is prefabricated, preassembled, precut, packaged, or
19 shell housing.

20 (i) If a salesperson, failure to pay over immediately upon
21 receipt money received by the salesperson, in connection with a
22 transaction governed by this article, to the residential builder or
23 residential maintenance and alteration contractor under whom the
24 salesperson is licensed.

25 (j) Aiding or abetting an unlicensed person to evade this
26 article, or knowingly combining or conspiring with, or acting as
27 agent, partner, or associate for an unlicensed person, or allowing

1 one's license to be used by an unlicensed person, or acting as or
2 being an ostensible licensed residential builder or licensed
3 residential maintenance and alteration contractor for an
4 undisclosed person who does or shall control or direct, or who may
5 have the right to control or direct, directly or indirectly, the
6 operations of a licensee.

7 (k) Acceptance of a commission, bonus, or other valuable
8 consideration by a salesperson for the sale of goods or the
9 performance of service specified in the article from a person other
10 than the residential builder or residential maintenance and
11 alteration contractor under whom the person is licensed.

12 (l) Becoming insolvent, filing a bankruptcy action, becoming
13 subject to a receivership, assigning for the benefit of creditors,
14 failing to satisfy judgments or liens, or failing to pay an
15 obligation as it becomes due in the ordinary course of business.

16 (m) Workmanship not meeting the standards of the Michigan
17 residential code as promulgated under the Stille-DeRossett-Hale
18 single state construction code act, 1972 PA 230, MCL 125.1501 to
19 125.1531.

20 **(N) KNOWINGLY HIRING, OR CONTINUING TO EMPLOY, A PERSON NOT**
21 **AUTHORIZED TO WORK IN THE UNITED STATES.**

22 (3) The department shall suspend or revoke the license of a
23 person licensed under this article whose failure to pay a lien
24 claimant results in a payment being made from the homeowner
25 construction lien recovery fund pursuant to the construction lien
26 act, 1980 PA 497, MCL 570.1101 to 570.1305, regardless of whether
27 the person was performing services as a licensee under this

1 article; under the electrical administrative act, 1956 PA 217, MCL
2 338.881 to 338.892; or under the state plumbing act, 2002 PA 733,
3 MCL 338.3511 to 338.3569. The department shall not renew a license
4 or issue a new license until the licensee has repaid in full to the
5 fund the amount paid out plus the costs of litigation and interest
6 at the rate set by section 6013 of the revised judicature act of
7 1961, 1961 PA 236, MCL 600.6013.

8 (4) The department shall conduct a review upon notice that the
9 licensee has violated the asbestos abatement contractors licensing
10 act, 1986 PA 135, MCL 338.3101 to 338.3319. The department may
11 suspend or revoke that person's license for a knowing violation of
12 the asbestos abatement contractors licensing act, 1986 PA 135, MCL
13 338.3101 to 338.3319.

14 (5) Notwithstanding article 5, the following apply to
15 administrative proceedings regarding workmanship under subsection
16 (2) (m):

17 (a) A complaint submitted by an owner shall describe in
18 writing to the department the factual basis for the allegation. The
19 homeowner shall send a copy of the initial complaint to the
20 licensee concurrent with the submission of the complaint to the
21 department.

22 (b) The department shall presume the innocence of the licensee
23 throughout the proceeding until the administrative law hearing
24 examiner finds otherwise in a determination of findings of fact and
25 conclusions of law under article 5. The licensee has the burden of
26 refuting evidence submitted by a person during the administrative
27 hearing. The licensee also has the burden of proof regarding the

1 reason deficiencies were not corrected.

2 (c) Upon receipt of a building inspection report issued to the
3 department by a state or local building enforcement official
4 authorized to do so under the Stille-DeRossett-Hale single state
5 construction code act, 1972 PA 230, MCL 125.1501 to 125.1531, which
6 report verifies or confirms the substance of the complaint, the
7 department shall send by certified mail a copy of the verified
8 complaint to the licensee. Failure of the department to send a copy
9 of the verified complaint within 30 days of receipt of the building
10 inspection report prevents the department from assessing a fine
11 against the licensee under article 6 but does not prevent the
12 department from pursuing restitution, license suspension, or other
13 remedies provided under this act.

14 (d) A licensee may contractually provide for an alternative
15 dispute resolution procedure to resolve complaints filed with the
16 department. The procedure shall be conducted by a neutral third
17 party for determining the rights and responsibilities of the
18 parties and shall be initiated by the licensee, who shall provide
19 notice of the initiation of the procedure to the complainant by
20 certified mail not less than 30 days before the commencement of
21 that procedure. The procedure shall be conducted at a location
22 mutually agreed to by the parties.

23 (e) The department shall not initiate a proceeding against a
24 licensee under this subsection in the case of a licensee who
25 contractually provides for an alternative dispute resolution
26 procedure that has not been utilized and completed unless it is
27 determined that the licensee has not complied with a decision or

1 order issued as a result of that alternative dispute resolution
2 procedure, that alternative dispute resolution procedure was not
3 fully completed within 90 days after the filing of the complaint
4 with the department, or an alternative dispute resolution procedure
5 meeting the requirements of subdivision (d) is not available to the
6 complainant.

7 (f) The complainant shall demonstrate that notice has been
8 provided to the licensee describing reasonable times and dates that
9 the residential structure was accessible for any needed repairs and
10 proof acceptable to the department that the repairs were not made
11 within 60 days after the sending of the notice. This subdivision
12 does not apply where the department determines a necessity to
13 safeguard the structure or to protect the occupant's health and
14 safety and, in such case, the department may utilize any remedy
15 available under section 504(3)(a) through (d).

16 (g) In the case where the owner and licensee have agreed
17 contractually on mutually acceptable performance guidelines
18 relating to workmanship, the department shall consider those
19 guidelines in its evaluation of a complaint. The guidelines shall
20 be consistent with the Stille-DeRossett-Hale single state
21 construction code act, 1972 PA 230, MCL 125.1501 to 125.1531.

22 (6) In any case where the licensee or respondent fails to
23 appear, participate, or defend any action, the board shall issue an
24 order granting by default the relief requested, based upon proofs
25 submitted to and findings made, by the hearing examiner after a
26 contested case.

27 (7) As used in this section, "verified complaint" means a

- 1 complaint in which all or a portion of the allegations have been
- 2 confirmed by an affidavit of the state or local building official.