

SKILLED TRADES REGULATION ACT (EXCERPT)
Act 407 of 2016

ARTICLE 5

COMPLAINTS, INVESTIGATIONS, AND ADMINISTRATIVE PROCEEDINGS

339.5501 Complaint; submission.

Sec. 501. A complaint that alleges that a person has violated this act or a rule promulgated or an order issued under this act shall be submitted to the department. The department of attorney general, the department, a board, or any other person may file a complaint.

History: 2016, Act 407, Eff. Apr. 4, 2017.

339.5503 Complaint; investigation of allegations; correspondence file; acknowledgement; complaint made by department.

Sec. 503. If it receives a complaint, the department shall immediately begin an investigation of the allegations of the complaint and shall open a correspondence file. Within 15 days after it receives a complaint, the department shall make a written acknowledgment of the complaint to the person that made the complaint. If the complaint is made by the department, the director shall designate 1 or more employees of the department to act as the person that made the complaint.

History: 2016, Act 407, Eff. Apr. 4, 2017.

339.5505 Investigation; petition to issue subpoena.

Sec. 505. The department shall conduct the investigation required under section 503. In furtherance of that investigation, the department may request that the attorney general petition a circuit court of this state to issue a subpoena that requires a person to appear before the department and be examined with reference to a matter within the scope of the investigation and to produce books, papers, or documents pertaining to the investigation.

History: 2016, Act 407, Eff. Apr. 4, 2017.

339.5507 Investigation; report; closing of complaint; action.

Sec. 507. (1) The investigative unit of the department, within 30 days after the department receives the complaint, shall report to the director on the results of the investigation. If, for good cause shown, an investigation cannot be completed within 30 days, the director may extend the time in which a report may be filed. The total number of extensions granted under this section shall be included in the report required under section 217.

(2) If the report of the investigative unit of the department does not disclose a violation of this act or a rule promulgated or an order issued under this act, the department shall close the complaint. The department shall forward the reasons for closing the complaint to the respondent and complainant, who then may provide additional information to reopen the complaint.

(3) If the report of the investigative unit made under subsection (1) discloses evidence of a violation of this act or a rule promulgated or an order issued under this act, the department or the department of attorney general shall prepare the appropriate action against the respondent which may be any of the following:

- (a) A formal complaint.
- (b) A cease and desist order.
- (c) A notice of summary suspension.
- (d) A citation.

History: 2016, Act 407, Eff. Apr. 4, 2017.

339.5509 Summary suspension of license; order; affidavit; administrative proceedings; petition to dissolve order; hearing; granting request; exception; record.

Sec. 509. (1) After an investigation is conducted, the department may issue an order summarily suspending a license issued under this act based on an affidavit by an individual who is familiar with the facts set forth in the affidavit, or, if appropriate, based on an affidavit made on information and belief, that an imminent threat to the public health, safety, and welfare exists. After a summary suspension order is issued under this section, the department shall promptly commence the administrative proceedings described in this article to determine what additional administrative action is appropriate.

(2) If a person's license is summarily suspended under this section, the person may petition the department to dissolve the order. If it receives a petition under this subsection, the department shall immediately schedule a hearing to decide whether to grant or deny the request to dissolve the order.

(3) An administrative law hearings examiner shall grant a request to dissolve a summary suspension order made under subsection (2), unless sufficient evidence is presented that an imminent threat to the public health, safety, and welfare exists that requires emergency action and continuation of the director's summary suspension order.

(4) The record created at the hearing to dissolve a summary suspension order shall become part of the record on the complaint at a subsequent contested case hearing.

History: 2016, Act 407, Eff. Apr. 4, 2017.

339.5511 Order to cease and desist; hearing; action to restrain and enjoin.

Sec. 511. (1) After an investigation is conducted, the director may order a person to cease and desist from a violation of this act or a rule promulgated or an order issued under this act.

(2) A person that is ordered to cease and desist under subsection (1) is entitled to a hearing before the department if a written request for a hearing is filed within 30 days after the effective date of the order.

(3) If a cease and desist order issued under this section is violated, the department of the attorney general may bring an action in a circuit court of this state to restrain and enjoin, temporarily or permanently, or both, a person from further violating the cease and desist order.

History: 2016, Act 407, Eff. Apr. 4, 2017.

339.5513 Summary suspension order, cease and desist order, or injunctive relief; addition to other action.

Sec. 513. A summary suspension order, cease and desist order, or injunctive relief issued or granted in relation to a license or permit issued under this act is in addition to and not in place of an informal conference under section 515(3); criminal prosecution; or proceeding to deny, revoke, suspend, or place a limitation on, a license or permit or any other action authorized under this act.

History: 2016, Act 407, Eff. Apr. 4, 2017.

339.5515 Formal complaint and notice; service; alternatives; informal conference; settlement; contested case hearing.

Sec. 515. (1) After an investigation is conducted and a formal complaint is prepared, the department shall serve the formal complaint on the respondent and the complainant. At the same time, the department shall serve the respondent with a notice that describes the compliance conference and hearing processes and offers the following alternatives to the respondent:

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

(b) If the respondent is a licensee or registrant under this act, an opportunity to demonstrate compliance before a contested case hearing is held.

(c) An opportunity to proceed to a contested case hearing.

(2) A respondent that is served with notice of a formal complaint under this section may select, within 15 days after the respondent receives the notice, 1 of the alternatives described in subsection (1). If a respondent does not select 1 of those alternatives within the time period described in this subsection, then the department shall proceed to a contested case hearing as described in subsection (1)(c).

(3) At any time during an investigation or administrative process under this article, the department may bring the parties together for an informal conference to attempt to resolve the issues raised in the complaint. An informal conference may be attended by a member of the board, at the discretion of that board, and may result in a settlement, consent order, waiver, default, or other method of settlement agreed on by the parties and the department. A settlement may include the revocation, suspension, or limitation of a license or registration; censure; probation; restitution; or a penalty under article 6.

(4) A board may reject a settlement and require a contested case hearing.

(5) An authorized employee or agent of the department may represent the department in any contested case hearing.

History: 2016, Act 407, Eff. Apr. 4, 2017.

339.5517 Showing compliance with act, rule, or order in contested case hearing.

Sec. 517. This act does not prevent a person against which a complaint is filed from showing compliance with this act, or a rule promulgated or an order issued under this act, in a contested case hearing.

History: 2016, Act 407, Eff. Apr. 4, 2017.

339.5519 Hearing.

Sec. 519. If an informal conference under section 515(3) is not held or does not result in a resolution of a

complaint, the department shall hold a hearing as authorized under section 92 of the administrative procedures act of 1969, MCL 24.292. A member of a board may attend a hearing under this section.

History: 2016, Act 407, Eff. Apr. 4, 2017.

339.5521 Subpoena.

Sec. 521. The department or the department of the attorney general may petition a circuit court to issue a subpoena that requires the person subpoenaed to appear or testify or produce relevant documentary material for examination at a proceeding conducted under section 515 or 519.

History: 2016, Act 407, Eff. Apr. 4, 2017.

339.5523 Determination of findings of fact and conclusions of law; hearing report.

Sec. 523. (1) At the conclusion of a hearing conducted under section 519, the administrative law hearings examiner shall submit a determination of findings of fact and conclusions of law to the department and the department of the attorney general and the appropriate board in a hearing report. The submitted hearing report may recommend the assessment of penalties under article 6.

(2) The department shall submit a copy of a hearing report described in subsection (1) to the person that made the complaint and to the person against which the complaint was made.

History: 2016, Act 407, Eff. Apr. 4, 2017.

339.5525 Assessment of penalties; determination; basis; transcript; time limits; issuance of final order; board member prohibited from participation in final determination.

Sec. 525. (1) Within 60 days after a board receives an administrative law hearings examiner's hearing report under section 523, the board shall meet and make a determination of the penalties to be assessed under article 6. The board shall make its determination based on the administrative law hearings examiner's report. A transcript of a hearing or a portion of the transcript shall be made available to a board on request. If a transcript or a portion of the transcript is requested, the board shall make its determination of the penalty or penalties to be assessed under article 6 at a meeting of the board held within 60 days after it receives the transcript or portion of the transcript.

(2) If a board does not determine the appropriate penalty or penalties to be assessed within the time limits described in subsection (1), the director may determine the appropriate penalty and issue a final order assessing that penalty.

(3) A member of a board who has participated in an investigation on a complaint filed with the department or who has attended an informal conference under section 515(3) shall not participate in making a final determination in a proceeding on that complaint.

History: 2016, Act 407, Eff. Apr. 4, 2017.

339.5527 Petition; review.

Sec. 527. A person that is seeking a license or renewal under this act may petition the department and the appropriate board for a review if that person does not receive a license or renewal.

History: 2016, Act 407, Eff. Apr. 4, 2017.

339.5529 Petition; writing; reasons.

Sec. 529. A petition submitted under section 527 shall be in writing and shall set forth the reasons the petitioner believes that the department should issue the license or permit.

History: 2016, Act 407, Eff. Apr. 4, 2017.

339.5531 Issuance of license based on review of qualifications.

Sec. 531. The department may issue a license or renewal for an occupation regulated under this act, if, based on a review of the qualifications of the person that submitted a petition under section 527, the department and the appropriate board determine that the person could perform the occupation with competence.

History: 2016, Act 407, Eff. Apr. 4, 2017.

339.5533 Decision to place limitation; petition to review; reply; removal of limitation.

Sec. 533. (1) If a limitation is placed on a license or the renewal of a license under section 203 or 205, the licensee, within 30 days after the limitation is placed on the license or renewal of the license, may petition the department in writing for a review of the decision to place the limitation.

(2) The department, in reply to a petition submitted under subsection (1), shall set forth the reasons the department determined that the limitation should be placed on the license or renewal of a license. The

department shall send its reply to a petition submitted under subsection (1) to the petitioner within 15 days after the department receives the petition.

(3) The department and a board may remove a limitation on a license or renewal of a license, if, based on a review of the petitioner's qualifications, the department and the appropriate board determine that the person that submitted a petition under subsection (1) is able to perform with competence each function of the occupation without the limitation.

History: 2016, Act 407, Eff. Apr. 4, 2017.

339.5535 Grievance under former act.

Sec. 535. Notwithstanding any other provision of this act, if an oral or written grievance was lodged before the effective date of this act against a person that is licensed under a former act, the department shall conduct the proceedings on that grievance in the manner prescribed in the former act.

History: 2016, Act 407, Eff. Apr. 4, 2017.

339.5537 Citation; issuance; conditions; contents; "employee of the department" defined.

Sec. 537. (1) An employee of the department may issue a citation to a person that is licensed under this act or required to obtain a license under this act if the employee observes or deduces from an investigation, inspection, or complaint that conduct or conditions exist or have existed that violate this act or rules promulgated or orders issued under this act.

(2) The department may send a citation to a respondent by certified mail, return receipt requested, or by electronic mail if the department has an electronic mail address for the respondent on file, or the employee of the department who issued the citation may deliver it in person.

(3) A citation shall contain all of the following:

(a) The date of the citation.

(b) The name and title of the employee of the department who issued the citation.

(c) The name and address of the respondent, and a statement indicating that the respondent is being cited for a violation of this act or rules promulgated or orders issued under this act.

(d) A brief description of the conduct or conditions that the employee of the department who issued the citation considers a violation of this act or rules or orders issued under this act and a reference to the section of this act, the rule, or the order the respondent is alleged to have violated.

(e) The proposed penalties or actions required for compliance, including the payment of a fine in an amount that does not exceed \$100.00 for each violation.

(f) A space for the respondent to sign as a receipt for the citation.

(g) A space where the respondent may accept the citation and agree to comply or may indicate that the respondent contests that the violation described in the citation occurred.

(h) A notice that the respondent must accept or contest the terms of the citation within 30 days.

(i) A brief description of the hearing process and the process for settlement through an informal conference under section 515(3).

(4) As used in this section, "employee of the department" means an individual who is employed by the department, or a person that is under contract to the department, whose duty it is to enforce the provisions of this act or rules promulgated or orders issued under this act.

History: 2016, Act 407, Eff. Apr. 4, 2017.

339.5539 Citation; notice of acceptance or denial of violation; signature; return; placement in records; force and effect as final order; disclosure; removal; explanation; statement; formal complaint.

Sec. 539. (1) A respondent has 30 days to notify the department in writing that the person accepts the conditions described in a citation or that the person contests the violation alleged in the citation occurred.

(2) If a respondent accepts the conditions described in a citation under subsection (1), the respondent, within 30 days after receiving the citation, shall sign the citation and return it to the department along with any fine or other material the respondent is required to submit under the terms of the citation. The department shall place the citation and accompanying material in the person's records with the department, and include in those records the nature of the violation and that the person accepted the conditions imposed. A citation issued under this section has the same force and effect as a final order issued by a board and may be disclosed to the public. If the department does not take any additional disciplinary actions against the person within 5 calendar years after the citation is issued, the department shall remove the citation and accompanying material from its records. If requested by the respondent, the department shall place a 1-page explanation prepared by the respondent in the department's files and shall disclose the explanation each time the department discloses

the issuance of the citation.

(3) If the respondent does not admit to the violation alleged in a citation, the person may so state on the citation and return 1 copy to the department within the 30 days after the respondent receives the citation. If a respondent returns a copy of the citation that includes this statement within the 30-day time period, the citation is considered a formal complaint under section 515 and the administrative process described in that section applies.

History: 2016, Act 407, Eff. Apr. 4, 2017.

339.5541 Effect of signature.

Sec. 541. If a citation is signed as an indication that the respondent received the citation, the signature is considered a receipt of the citation and not an admission to the violation alleged in the citation.

History: 2016, Act 407, Eff. Apr. 4, 2017.