

RESIDENTIAL BUILDERS LAWS AND RULES

*Laws and Rules Relating to Residential Builders
and Maintenance and Alteration Contractors*

April 2011



Michigan Department of
Licensing and Regulatory Affairs
Board of Residential Builders and
Maintenance and Alteration Contractors
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PREFACE

This book is reprinted under the editorial direction of the Legislative Service Bureau from the text of the *Michigan Compiled Laws*, supplemented through Act 103 of the 1989 Regular Session of the Michigan Legislature, and from the text of the *Michigan Administrative Code*, supplemented through issue No. 6 of the 1989 *Michigan Register*, and is made available to § 24.258 of the *Michigan Compiled Laws*.

Materials in boldface type, particularly catch lines and annotations to the statutes, are not part of the statutes as enacted by the Legislature.

Legal Editing and Law Publications Division
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NOTE: All references to activities of, or requirements by the Department of Licensing and Regulation, the Department of Commerce, the Office of Commercial Services and/or the Department of Consumer & Industry Services, Bureau of Commercial Services, Department of Energy, Labor & Economic Growth, are now handled by the Department of Licensing and Regulatory Affairs.

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REGISTER OF DEEDS – RECORDING REQUIREMENTS (EXCERPT)

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OCCUPATIONAL CODE (ARTICLES 1-6, 24)

P.A. 299 of 1980

An act to revise, consolidate, and classify the laws of this state regarding the regulation of certain occupations; to create a board for each of those occupations; to establish the powers and duties of certain departments and agencies and the boards of each occupation; to provide for the promulgation of rules; to provide for certain fees; to provide for penalties and civil fines; to establish rights, relationships, and remedies of certain persons under certain circumstances; to repeal certain parts of this act on a specific date; and to repeal certain acts and parts of acts.

The People of the State of Michigan enact:

ARTICLE 1

339.101 Short title.

Sec. 101. This act shall be known and may be cited as the "occupational code".

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980

Compiler's Notes: For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws. For transfer of rule-making authority of occupational and health occupation boards and related task forces from the department of commerce to the director of the department of consumer and industry services, see E.R.O. No. 1996-2, compiled at MCL 445.2001 of the Michigan Compiled Laws.

339.102 Meanings of words.

Sec. 102. For purposes of this act, the words defined in sections 103 to 105 have the meanings ascribed to them in those sections.

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980

339.103 Definitions; B, C.

Sec. 103. (1) "Board" means, in each article which deals with a specific occupation, the agency created in that article composed principally of members of the regulated occupation. In all other contexts, board means each agency created under this act.

(2) "Censure" means an expression of disapproval of a licensee's or registrant's professional conduct, which conduct is not necessarily a violation of this act or a rule promulgated or an order issued under this act.

(3) "Competence" means a degree of expertise which enables a person to engage in an occupation at a level which meets or exceeds minimal standards of acceptable practice for the occupation.

(4) "Complaint" means an oral or written grievance.

(5) "Controlled substance" means a drug, substance, or immediate precursor as set forth in section 7212, 7214, 7216, 7218, or 7220 of the public health code, Act No. 368 of the Public Acts of 1978, being sections 333.7212, 333.7214, 333.7216, 333.7218, and 333.7220 of the Michigan Compiled Laws, not excluded pursuant to section 7227 of Act No. 368 of the Public Acts of 1978, being section 333.7227 of the Michigan Compiled Laws.

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980 ;-- Am. 1994, Act 257, Imd. Eff. July 5, 1994

339.104 Definitions; D to K.

Sec. 104. (1) "Department" means the department of commerce.

(2) "Director" means the director of the department of commerce or an authorized representative of the director of the department of commerce.

(3) "Disability" means an infirmity that prevents a board member from performing a duty assigned to the board member.

(4) "Files" means the records, memoranda, opinions, minutes, and similar written materials that were formerly in the physical dominion of a board abolished by this act and the records, memoranda, opinions, minutes, and similar written materials of a board created under this act.

(5) "Formal complaint" means a document that states the charges of each alleged violation and is prepared by the department or the department of attorney general after a complaint has been received by the department.

(6) "General public" means each individual residing in this state who is 18 years of age or older, other than a person or the spouse of a person who is licensed or registered in the occupation or who has a material financial interest in the occupation being regulated by the specific article in which the term is used.

(7) "Good moral character" means good moral character as defined in section 1 of Act No. 381 of the Public Acts of 1974, being section 338.41 of the Michigan Compiled Laws.

(8) "Incompetence" means a departure from, or a failure to conform to, minimal standards of acceptable practice for the occupation.

(9) "Knowledge and skill" means the information, education, practical experience, and the facility in applying that information, education, and practical experience.

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980 ;-- Am. 1996, Act 151, Imd. Eff. Mar. 25, 1996

339.105 Definitions; L to S.

Sec. 105. (1) "License" means the document issued to a person under this act which will enable that person to use a designated title and practice an occupation, which practice would otherwise be prohibited by this act. License includes a document issued by the department which permits a school, institution, or person to offer training or education in an occupation or which permits the operation of a facility, establishment, or institution in which an occupation is practiced. License includes a permit or approval.

(2) "Licensee" means a person who has been issued a license under this act.

(3) "Limitation" means a condition, stricture, constraint, restriction, or probation attached to a license or registration relative to the scope of practice including the following:

(a) A requirement that the licensee or registrant perform only specified functions of the licensee's or registrant's occupation.

(b) A requirement that the licensee or registrant perform the licensee's or registrant's occupation only for a specified period of time.

(c) A requirement that the licensee or registrant perform the licensee's or registrant's occupation only within a specified geographical area.

(d) A requirement that restitution be made or certain work be performed before a license or registration is issued, renewed, or reinstated.

(e) A requirement that a financial statement certified by a person licensed as a certified public accountant be filed with the department at regular intervals.

(f) A requirement which reasonably assures a licensee's or registrant's competence to perform the licensee's or registrant's occupation.

(g) A requirement that all contracts of a licensee or registrant be reviewed by an attorney.

(h) A requirement that a licensee or registrant have on file with the department a bond issued by a surety insurer approved by the department or cash in an amount determined by the department.

(i) A requirement that a licensee or registrant deposit money received in an escrow account which can be disbursed only under certain conditions as determined by the licensee or registrant and another party.

(j) A requirement that a licensee or registrant file reports with the department at intervals determined by the department.

(4) "Occupation" means a field of endeavor regulated by this act.

(5) "Person" means an individual, sole proprietorship, partnership, association, corporation, common law trust, or a combination of those

legal entities. Person includes a department, board, school, institution, establishment, or governmental entity.

(6) "Physical dominion" means control and possession.

(7) "Physician" means that term as defined in section 17001 and section 17501 of the public health code, Act No. 368 of the Public Acts of 1978, being sections 333.17001 and 333.17501 of the Michigan Compiled Laws.

(8) "Probation" means a sanction which permits a board to evaluate over a period of time a licensee's or registrant's fitness to practice an occupation regulated by this act.

(9) "Public access" means the right of a person to view and copy files pursuant to the freedom of information act, Act No. 442 of the Public Acts of 1976, as amended, being sections 15.231 to 15.246 of the Michigan Compiled Laws.

(10) "Registrant" means a person who is registered under this act.

(11) "Registration" means the document issued to a person under this act which will enable that person to use a designated title, which use would be otherwise prohibited by this act.

(12) "Rule" means a rule promulgated under this act and pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, as amended, being sections 24.201 to 24.328 of the Michigan Compiled Laws.

(13) "State" means the District of Columbia or a commonwealth, state, or territory of the United States.

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980 ;-- Am. 1988, Act 463, Eff. Sept. 1, 1989

Article 2

339.201 Department of licensing and regulation; appointment of director; designation of persons to investigate licensees or persons against whom complaints lodged.

Sec. 201. The department shall consist of a director as its executive head and other officers and employees appointed or employed by the department. The director shall be appointed by the governor, subject to the advice and consent of the senate, and shall hold office at the pleasure of the governor. The department shall designate only those persons who meet the qualifications for licensure established for an occupation regulated under article 7, 20, or 22 to investigate licensees or persons against whom complaints have been lodged.

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980

Compiler's Notes: For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws.

339.202 Licensure or registration; application; form; fees; requirements for issuance of license or registration; expiration date.

Sec. 202. (1) An application for licensure or registration shall be made on a form provided by the department and accompanied by the appropriate fees prescribed in article 4. Except as otherwise provided in this act, the department shall issue a license or registration to a person who meets the licensure or registration requirements set forth in a specific article and in rules promulgated under this act, subject to the exceptions set forth in section 203.

(2) The expiration date of a license or registration issued under this act shall be established by rule promulgated by the department under section 205, which rule shall not permit the issuance of a permanent license or registration.

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980 ;-- Am. 1988, Act 463, Eff. Sept. 1, 1989

339.203 License or registration; issuance upon demonstration of unfair or inadequate requirements; review; fees; limitation; notice; approval or disapproval; practice by person licensed, registered, or certified under repealed act.

Sec. 203. (1) The department may issue a license or registration to a person pursuant to a specific article, if the person demonstrates to the satisfaction of the department and a board that the licensure or registration requirements do not constitute a fair and adequate measure of the person's knowledge and skills or that a required examination for receipt of a license or registration does not serve as an adequate basis for determining whether a person could perform an occupation with competence. The procedure to be followed in obtaining the review by the director and a board is prescribed in article 5. A person shall not have a license or registration issued under this section until the person pays the appropriate fees as prescribed in article 4.

(2) A license or registration issued under this article may be issued with a limitation. The department shall notify the appropriate board of the department's intent to impose a limitation on the issuance of a license or registration of a person seeking a license or registration in the occupation for which the board serves. The department may impose the limitation only with the approval of the notified board. However, if the notified board, within 60 days after receipt of the notification by the department, neither approves nor disapproves the imposition of a limitation, the department may impose the limitation. A person who receives a license or registration with a limitation may receive a review of the limitation as provided in section 519.

(3) Notwithstanding any other provision of this act, a person licensed, registered, or certified under an act repealed by this act to practice an

occupation on the day immediately preceding the effective date of this act shall be considered to be appropriately licensed, registered, or certified under this act until the expiration of the licensure, registration, or certification granted under the repealed act.

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980 ;-- Am. 1988, Act 463, Eff. Sept. 1, 1989

339.204 License or registration; renewal; requirements; continuing education requirement not subject to waiver; review procedure; fees; limitation; review; renewal as responsibility of licensee or registrant; renewal application; failure to notify department of change of address.

Sec. 204. (1) Unless otherwise provided in this act and subject to the limitations set forth in this section, the department shall renew the license or registration of a person who fulfills all of the following requirements:

(a) Has applied to the department on a form provided by the department for renewal of a license or registration. The application for renewal shall be received by the department on or before the date prescribed by the department for the expiration of the current license or registration.

(b) Has paid the appropriate fees prescribed in article 4.

(c) Has met the renewal requirements set forth in a specific article, rule, or an order issued under this act.

(2) Except as otherwise provided in this act, the department may renew the license or registration of a person who does not meet the requirements for renewal, if the person demonstrates to the satisfaction of the department and a board that the requirements for renewal as set forth in an article or rule do not constitute a fair and adequate measure of the person's knowledge and skills or that the requirements for renewal do not serve as an adequate basis for determining whether a person could continue to perform an occupation with competence. However, a requirement of attendance in a continuing education program shall not be waived as a requirement for the renewal. The procedure to be followed in obtaining a review of requirements for renewal by the director and a board is prescribed in article 5. The department shall not issue a license or registration under this subsection until the person seeking renewal pays the appropriate fees as prescribed in article 4.

(3) Except as otherwise provided in article 7, a license or registration renewed under this section may be renewed with a limitation. The department shall notify the appropriate board of the department's intent to impose a limitation on the renewal of a license of a person seeking license renewal in the occupation for which the board serves. The department may impose the limitation only with the approval of the notified board. However, if the notified board, within 30 days after receipt of the notification by the department, neither approves nor disapproves

the imposition of a limitation, the department may impose the limitation. A person who receives a license or registration renewed with a limitation may receive a review of that limitation as provided in section 519.

(4) It is the responsibility of the licensee or registrant to renew a license or registration. The department shall send a renewal application to the last known address of a licensee or registrant on file with the department. The failure of a licensee or registrant to notify the department of a change of address shall not extend the expiration date of a license or registration and may result in disciplinary action.

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980 ;-- Am. 1988, Act 463, Eff. Sept. 1, 1989

339.205 Promulgation of rules.

Sec. 205. The department shall promulgate rules to implement articles 1 to 6 and rules which are necessary and appropriate to enable the department to fulfill its role under this act.

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980

Admin Rule: R 285.901.1 et seq.; R 338.551 et seq.; R 338.581 et seq.; R 338.861 et seq.; R 338.881; R 338.1301 et seq.; R 338.1401 et seq.; R 338.1511 et seq.; R 338.1801 et seq.; R 338.1841 et seq.; R 338.1861; R 338.1901 et seq.; R 338.2001 et seq.; R 338.2101 et seq.; R 338.2401 et seq.; R 338.2601 et seq.; R 338.2701 et seq.; R 338.2801 et seq.; R 338.2841 et seq.; R 338.2901 et seq.; R 338.4001 et seq.; R 338.5101 et seq.; R 339.1001 et seq.; R 339.18901 et seq.; R 339.22101 et seq.; R 339.23101 et seq.; R 431.101 et seq.; and R 451.501 et seq. of the Michigan Administrative Code.

339.206 Examination or test; review and approval of form and content; administration, scoring, and monitoring; providing equipment, examination room, written form, and other items; delegation of duties.

Sec. 206. (1) Before an examination or other test required under this act is administered and except as otherwise provided in this act, the department and the appropriate board, acting jointly, shall review and approve the form and content of the examination or other test. The examination or test shall be structured to provide a measure of whether a person has sufficient knowledge and skills to perform an occupation with competence.

(2) Except as otherwise provided in this act, the department shall administer, score, and monitor the examination or test, but may delegate any or all of those duties to a board or to any other person.

(3) Except as otherwise provided in this act, the department shall provide the equipment, examination room, written form, and any other item needed to administer the examination or test, but may delegate all or any of these duties to a board or any other person.

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980

339.207 Licensing or approval of school, institution, or other person offering training or education; approval or recognition of continuing education program; processing request within certain period of time; recommendation by board; request.

Sec. 207. (1) If provided in an article, the department may issue a license to, or grant approval to, a school, institution, or other person offering training or education in an occupation.

(2) If provided in an article, the department may grant approval or recognition to a program of continuing education, unless the approval or recognition of the program is the responsibility of a board.

(3) The department shall process a request under subsection (1) within 90 days after the submission of the completed application in the manner described in section 411(6), which 90-day period includes the time period described in subsection (4) regarding board approval.

(4) A board shall make a recommendation on the licensure or approval or recognition of a school, institution, or other person or a program within 90 days after a request for that recommendation is made by the department.

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980 ;-- Am. 2004, Act 264, Imd. Eff. July 23, 2004

339.208 Files of board; physical dominion; public access.

Sec. 208. The department shall have physical dominion over the files of each board. The department shall ensure that applicable laws concerning public access to the files are met.

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980

339.209 Office services; administrative and secretarial staff, clerks, and employees.

Sec. 209. (1) The department shall furnish office services to each board and perform managerial, administrative, and budgetary functions for each board.

(2) The department shall appoint administrative and secretarial staff, clerks, and employees necessary for the proper exercise of the powers and duties of a board.

(3) The department, subject to the strictures imposed by the civil service commission, may fire, suspend, promote, demote, or transfer a person providing administrative or secretarial service for a board.

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980

339.210 Contracting with persons or agencies to implement act and fulfill responsibilities of department or board.

Sec. 210. The department, on its own behalf and on behalf of a board created under this act, may contract with persons or agencies who are not employees or agencies of the department to implement this act and to fulfill the responsibilities of the department or a board.

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980

339.211 Orientation program for board members.

Sec. 211. The department shall provide a comprehensive orientation program for each individual appointed and confirmed as a member of a board.

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980

339.212 Annual report.

Sec. 212. The department shall prepare and publish an annual report describing the activities of the department and each agency created pursuant to this act. The annual report shall be filed with the governor and the legislature.

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980

339.213 Temporary license or certificate of registration; nonrenewable; validity; limitation.

Sec. 213. (1) If a person has not previously been denied a license or a certificate of registration or had a license or a certificate of registration revoked or suspended, the department may grant a nonrenewable temporary license or certificate of registration to an applicant for licensure or registration or transfer of licensure or registration pursuant to articles 8 to 25.

(2) As approved by a board, a temporary license or certificate of registration issued under this section is valid until 1 or more of the following occurs:

- (a) The results of the next scheduled examination are available.
- (b) The results of the next required evaluation procedure are available.
- (c) A license or certificate of registration is issued.
- (d) The next examination date of an examination for licensure or registration in the applicable occupation, if the applicant does not take the examination.
- (e) The applicant fails to meet the requirements for a license or certificate of registration.
- (f) A change in employment is made.

(3) A temporary license or certificate of registration may be limited as defined in article 1.

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980

339.214 Applicant whose records unavailable from foreign country; examination; reciprocal license.

Sec. 214. An applicant for licensure or registration pursuant to articles 8 to 25 whose records relative to education or experience required by an article are unavailable from a foreign country shall be allowed, upon approval of the board and the department, to take an examination or apply for a reciprocal license upon submitting the following to the department:

(a) A notarized affidavit approved by the department stating the total number of years of education received, the name of the school or schools attended, the dates each school was attended, the degree obtained, the courses taken, the grades received, and the names of each former employer.

(b) A notarized statement approved by the department from a governmental official testifying to unavailability of the necessary records.

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980

339.215, 339.216 Repealed. 1994, Act 257, Imd. Eff. July 5, 1994.

Compiler's Notes: The repealed sections pertained to creation of the commission on professional and occupational licensure and recommendations made to the legislature.

Article 3

339.301 Boards; composition; qualifications of members; director as ex officio member.

Sec. 301. Each board shall consist of 9 voting members. Except as otherwise provided in this act, 6 of the members of a board shall be individuals who have a license or registration in the occupation which the board monitors. Except as otherwise provided in this act, 3 of the members of a board shall represent the general public. The director shall be an ex officio member without vote of a board, but is not a member for purposes of section 5 of article V of the state constitution of 1963 or for determining a quorum. A member, in addition to fulfilling the requirements set forth in an article, shall be not less than 18 years of age and shall be a resident of this state.

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980 ;-- Am. 1990, Act 269, Imd. Eff. Oct. 17, 1990

Compiler's Notes: For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws.

Popular Name: Act 299

339.302 Nomination and appointment of board members.

Sec. 302. The governor shall appoint an individual as a member of a board with the advice and consent of the senate, including an individual appointed to fill a vacancy on a board. In making an appointment, the governor shall seek nominations from a wide range of interested groups and persons, including appropriate professional associations, consumer associations, labor unions, and other organizations or individuals.

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980

339.303 Terms of board members; vacancy; appointment and removal of members; qualifications; terms.

Sec. 303. (1) The term of a member appointed to a board shall be 4 years except that an individual appointed to fill a vacancy on a board which vacancy results from a member's resignation, death, disability, or removal for cause by the governor shall serve for the balance of the term of the member replaced and may be reappointed for not more than 2 full terms. A vacancy shall be filled in the same manner as the original appointment was made. The governor shall appoint an individual as a member of a board, subject to the advice and consent of the senate, within 60 days after a vacancy occurs and within 60 days after the senate disapproves an appointment by the governor. The governor may remove a member of a board or committee in accordance with section 10 of article V of the state constitution of 1963.

(2) Except as provided in subsection (1), an individual shall not be appointed to or serve for more than 2 consecutive terms.

(3) Subject to subsection (4), for a board created or first appointed on or after January 1, 1990, the governor may appoint, as the initial members of the board who are required to be licensed or registered, individuals who meet either or both of the following qualifications:

(a) Are certified or otherwise approved by a national organization that certifies or otherwise approves individuals in the occupation to be licensed or registered by the board.

(b) Have actively practiced the occupation licensed or registered by the board or taught in an educational institution which prepares applicants for licensure or registration in that occupation, or a combination of both, for not less than the 2 years immediately preceding their appointment.

(4) Within 3 years after October 17, 1990, each individual appointed under subsection (3) shall be licensed or registered in the occupation licensed or registered by the board to which the individual was appointed.

(5) Of the initial members of a board created or first appointed after January 1, 1990, the terms of 3 of the members, including 2 of the members who have a license or registration in the occupation which the

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board monitors and 1 of the members representing the general public, shall be 4 years; the terms of 2 of the members, including 1 of the members who has a license or registration in the occupation which the board monitors and 1 of the members representing the general public, shall be 3 years; the terms of 2 of the members, including 1 of the members who has a license or registration in the occupation which the board monitors and 1 of the members who represents the general public, shall be 2 years; and the terms of the remaining members shall be 1 year.

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980 ;-- Am. 1981, Act 83, Imd. Eff. July 1, 1981 ;-- Am. 1990, Act 269, Imd. Eff. Oct. 17, 1990 ;-- Am. 1994, Act 257, Imd. Eff. July 5, 1994

339.303a Commencement of terms; dates.

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

Accountancy	July 1
Architects	April 1
Auctioneers	October 1
Barbers	October 1
Collection agencies	July 1
Community planners	July 1
Cosmetology	January 1
Employment agencies	October 1
Foresters	April 1
Hearing aid dealers	October 1
Land surveyors	April 1
Landscape architects	July 1
Mortuary science	July 1
Professional engineers	April 1
Real estate appraisers	July 1
Real estate brokers and salespersons	July 1
Residential builders	April 1

History: Add. 1990, Act 269, Imd. Eff. Oct. 17, 1990 ;-- Am. 1995, Act 104, Imd. Eff. June 23, 1995 ;-- Am. 1995, Act 183, Imd. Eff. Oct. 23, 1995 ;-- Am. 2006, Act 489, Eff. Oct. 1, 2007

339.304 Compensation and expenses of board members.

Sec. 304. Annually the legislature shall fix the per diem compensation of a member of a board. Travel or other expenses incurred by a member of a board in the performance of an official function shall be payable by the department pursuant to the standardized travel regulations of the department of management and budget.

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980

339.305 Board; meetings; quorum; voting by proxy prohibited; conduct of meeting; availability of files.

Sec. 305. (1) A board shall meet as often as necessary to fulfill its duties under this act, but shall meet not less than 2 times a year and at other dates set by the director. A majority of the members appointed and serving shall constitute a quorum. A member of a board shall not vote by proxy. A board shall conduct its meetings pursuant to Act No. 267 of the Public Acts of 1976, as amended, being sections 15.261 to 15.275 of the Michigan Compiled Laws.

(2) The files of the board shall be available to the public under section 208.

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980

339.306 Board; election of officers; vacancy; bylaws; report.

Sec. 306. (1) Annually a board shall elect a chairperson, a vice-chairperson, and other officers the board determines necessary. A board may fill a vacancy in an office of the board for the balance of the 1-year term.

(2) A board may adopt bylaws for the regulation of its internal affairs.

(3) A board shall report its activities to the department annually and as often as the director orders.

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980

339.307 Board; creation within department; duties; attendance of board member at informal conference; assisting department.

Sec. 307. (1) Each board created by this act shall be created within the department.

(2) A board's duties shall include the interpretation of a licensure or registration requirement of an article, and, if necessary, the furnishing of aid in an investigation conducted under article 5. At the discretion of the board, a member of that board may attend an informal conference conducted under section 508. A board shall assist the department in the implementation of this act.

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980

339.308 Promulgation of rules.

Sec. 308. (1) A board shall promulgate rules as required in the article in which it is created as are necessary and appropriate to fulfill its role.

(2) A board may promulgate rules to set the minimal standards of acceptable practice for an occupation for which the board is created.

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980

Admin Rule: R 338.1511 et seq.; R 338.2101 et seq.; R 338.5101 et seq.; R 339.601; R 339.6001 et seq.; R 339.14001 et seq.; R 339.15101 et seq.; R 339.16001 et seq.; R 339.17101 et seq.; R 339.18001 et seq.; R 339.18901 et seq.; R 339.19001 et seq.; R 339.22101 et seq.; and R 339.23101 et seq. of the Michigan Administrative Code.

339.309 Assessment of penalties.

Sec. 309. A board, upon completion of a hearing conducted pursuant to section 511, shall assess a penalty or penalties as provided in article 6.

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980

339.310 Aiding department in interpreting licensure or registration requirements.

Sec. 310. A board shall aid the department in interpreting a licensure or registration requirement set forth in this act which is incomplete or subjective in nature to determine whether the person seeking a license or a certificate of registration or a renewal has met the requirements for the issuance or renewal.

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980

339.313 Recommending licensure of school, institution, or other person; recommending approval or recognition of program offering training or education.

Sec. 313. (1) A board shall recommend to the department whether to grant licensure to a school, institution, or other person or approval or recognition of a program which offers training or education in the occupation for which the board is created, unless it is the board's function to grant the licensure, approval, or recognition.

(2) Before recommending the licensure, approval, or recognition of a school, institution, or other person or a program, a board shall ascertain whether the school, institution, or other person or program provides the type of training which will provide a graduate with the knowledge and skills required to perform the occupation with competence.

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980

339.314 Recommending approval or recognition of continuing education program.

Sec. 314. A board shall recommend to the department the approval or recognition of a program of continuing education which is required by an article, unless it is the board's function to grant the approval or recognition.

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980

339.315 Failure to receive licensure, approval, or recognition; protest; review.

Sec. 315. A school, institution, or other person which fails to receive licensure or approval, or approval or recognition of a program offered by the school, institution, or person may protest that decision and be granted an opportunity for review of that decision by the department under section 520 or 521.

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980

339.316 Examination or test; development; consideration of material in closed session; alternative form of testing.

Sec. 316. (1) Unless otherwise provided in an article, a board and the department shall develop an examination or test required by an article. The board and the department in developing an examination or test may adopt an examination or test prepared by another agency if the board and the department determine that the examination or test serves as a basis for determining whether a person has the knowledge and skills to perform an occupation with competence.

(2) The material required by the board and the department to develop an examination or test may be considered by the board in a closed session, if the board meets the requirements of section 7 of the open meetings act, 1976 PA 267, MCL 15.267.

(3) A board and the department, in determining the form the recommended examination or test shall take, shall give special emphasis to an alternative form of testing which permits a person to demonstrate a special qualification a person may have which is not evident under a written examination, but which is related to an occupation. The alternative form of testing shall be structured to give weight to a person's experience, noninstitutional training, and innate skills and shall be flexible enough to enable a person with a mental or physical disability to demonstrate that the person has the requisite knowledge and skills.

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980 ;-- Am. 1998, Act 90, Imd. Eff. May 13, 1998

339.317 Surrendering files of abolished board; personnel, office space, and items or equipment to be utilized by successor board.

Sec. 317. (1) A board abolished under this act shall surrender physical dominion over any files to the department.

(2) The successor board, until the department determines otherwise, shall utilize the personnel, office space, and items or equipment which were utilized by the abolished board and which are needed for the board to function.

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980

Article 4

339.401 Specific amounts to be charged for licenses, registrations, and other activities.

Sec. 401. The specific amounts to be charged for licenses, registrations, and other activities provided for in this act shall be as prescribed in the state license fee act, Act No. 152 of the Public Acts of 1979, being sections 338.2201 to 338.2277 of the Michigan Compiled Laws.

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980 ;-- Am. 1988, Act 463, Eff. Sept. 1, 1989

Compiler's Notes: For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws.

339.402 Definitions.

Sec. 402. As used in this article:

(a) "Expiration date" means the date prescribed in rules promulgated by the department in accordance with section 202(2).

(b) "Reinstatement" means the granting of a license or registration, with or without limitations or conditions, to a person whose license or registration has been revoked.

(c) "Relicensure" means the granting of a license to a person whose license has lapsed for failure to renew the license within 60 days after the expiration date.

(d) "Reregistration" means the granting of a registration to a person whose registration has lapsed for failure to renew the registration within 60 days after the expiration date.

History: Add. 1988, Act 463, Eff. Sept. 1, 1989

339.403 Collection of fees charged under contract; termination of contract.

Sec. 403. (1) This act does not prohibit a person who has a contract with the department or any other person providing direct services from collecting fees directly from an applicant, registrant, or licensee.

(2) If the department terminates a contract with a person who has been administering a licensing or registration examination to applicants for licensure or registration in a specific profession, and the department itself begins to administer the examination, the department shall not charge an applicant a fee greater than the fee charged under the terminated contract unless the examination fee for that profession is increased under the state license fee act, Act No. 152 of the Public Acts of 1979, being sections 338.2201 to 338.2277 of the Michigan Compiled Laws.

History: Add. 1988, Act 463, Eff. Sept. 1, 1989

339.405 Nonrefundable application processing fee; examination or inspection fee; fee for initial license or registration period.

Sec. 405. An application for a license or registration shall be accompanied by a nonrefundable application processing fee. The department may also require that the application be accompanied by the fee for a required examination or inspection or the fee for the initial license or registration period.

History: Add. 1988, Act 463, Eff. Sept. 1, 1989

339.407 Examination fee; forfeiture; reexamination fee; publication of application deadline.

Sec. 407. (1) An individual who is required to take an examination shall pay an examination fee before being scheduled for an examination.

(2) An individual who is scheduled for examination or reexamination and who fails to appear shall forfeit the examination fee.

(3) An individual who fails all or part of an examination may be reexamined, if eligible, after paying for the complete examination or such parts of the examination as must be repeated.

(4) The department shall publish in its application instructions the deadline by which applications must be received in order for an applicant to be scheduled for a required examination.

History: Add. 1988, Act 463, Eff. Sept. 1, 1989

339.409 Payment of fee as condition to issuance of license and registration; amount; period for completion of requirements for licensure or registration; forfeiture of fees; effect of void application.

Sec. 409. (1) Except as otherwise provided in section 411, the department shall not issue a license or registration to a person who has completed the requirements for a license or registration or who seeks to renew a license or registration until the person has paid the license or registration fee.

(2) License and registration fees shall be prescribed on a per year basis. If licenses and registrations are established by rules promulgated by the department under section 202 as biennial or triennial renewals, the fee required shall be twice or 3 times, as appropriate, the per year amount.

(3) Unless otherwise provided by this act or rules promulgated under this act, all requirements for licensure or registration shall be completed by the applicant within 1 year after receipt of the application by the department or mailing of a notice of an incomplete application to the last known address on file with the department, whichever is later. If the requirements are not completed, the fees paid shall be forfeited to the department and the application shall be void. A person whose application has been determined to be void under this subsection shall submit a new application and fees and shall meet the standards in effect on the date of receipt by the department of the new application.

History: Add. 1988, Act 463, Eff. Sept. 1, 1989 ;-- Am. 2002, Act 611, Imd. Eff. Dec. 20, 2002 ;-- Am. 2004, Act 264, Imd. Eff. July 23, 2004

339.411 Failure to renew license or registration; conditions to relicensing or reregistration; report; exceptions; temporary exemption; "completed application" defined.

Sec. 411. (1) Subject to subsection (2), a person who fails to renew a license or registration on or before the expiration date shall not practice the occupation, operate, or use the title after the expiration date printed on the license or registration. A license or registration shall lapse on the day after the expiration date.

(2) A person who fails to renew a license or registration on or before the expiration date shall be permitted to renew the license or registration by payment of the required license or registration fee and a late renewal fee within 60 days after the expiration date.

(3) Except as otherwise provided in this act, a person who fails to renew a license or registration within the time period set forth in subsection (2) may be relicensed or reregistered without examination and without meeting additional education or training requirements in

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force at the time of application for relicensure or reregistration if all of the following conditions are met:

(a) The person applies within 3 years after the expiration date of the last license or registration.

(b) The person pays an application processing fee, the late renewal fee, and the per year license or registration fee for the upcoming licensure or registration period, subject to subsection (8).

(c) Penalties and conditions imposed by disciplinary action in this state or any other jurisdiction have been satisfied.

(d) The person submits proof of having completed the equivalent of 1 year of continuing education within the 12 months immediately preceding the date of application or as otherwise provided in a specific article or by rule, if continuing education is required of licensees or registrants under a specific article.

(4) Except as otherwise provided in this act, a person may be relicensed or reregistered subsequent to 3 or more years after the expiration date of the last license or registration upon showing that the person meets the requirements for licensure or registration as established by the department in rules or procedures which may require a person to pass all or part of a required examination, to complete continuing education requirements, or to meet current education or training requirements.

(5) Unless otherwise provided in this act, a person who seeks reinstatement of a license or registration shall file an application on a form provided by the department, pay the application processing fee, and file a petition to the department and the appropriate board stating reasons for reinstatement and including evidence that the person can and is likely to serve the public in the regulated activity with competence and in conformance with all other requirements prescribed by law, rule, or an order of the department or board. The procedure to be followed in conducting the review of a petition for reinstatement is prescribed in article 5. If approved for reinstatement, the person shall pay the per year license or registration fee for the upcoming license or registration period if appropriate, in addition to completing any requirements imposed in accordance with section 203(2).

(6) Beginning July 23, 2004, the department shall issue an initial or renewal license or registration not later than 90 days after the applicant files a completed application. Receipt of the application is considered the date the application is received by any agency or department of the state of Michigan. If the application is considered incomplete by the department, the department shall notify the applicant in writing, or make information electronically available, within 30 days after receipt of the incomplete application, describing the deficiency and requesting the additional information. The 90-day period is tolled upon notification by the department of a deficiency until the date the requested information is

received by the department. The determination of the completeness of an application does not operate as an approval of the application for the license or registration and does not confer eligibility of an applicant determined otherwise ineligible for issuance of a license or registration.

(7) Notwithstanding the time periods described in subsection (6), in the case of a real estate broker and associate broker licensed under article 25, the time period for approval by the department of a completed application is 30 days and the time period for notification sent in writing, or made electronically available, by the department to the applicant regarding an incomplete application is 15 days after the receipt of the application by any agency or department of the state of Michigan.

(8) If the department fails to issue or deny a license or registration within the time required by this section, the department shall return the license or registration fee, and shall reduce the license or registration fee for the applicant's next renewal application, if any, by 15%. The failure to issue or deny a license or registration within the time required under this section does not allow the department to otherwise delay the processing of the application, and that application, upon completion, shall be placed in sequence with other completed applications received at that same time. The department shall not discriminate against an applicant in the processing of an application based upon the fact that the license or registration fee was refunded or discounted under this subsection.

(9) Beginning October 1, 2005, the director shall submit a report by December 1 of each year to the standing committees and appropriations subcommittees of the senate and house of representatives concerned with occupational issues. The director shall include all of the following information in the report concerning the preceding fiscal year:

(a) The number of initial and renewal applications the department received and completed within the 90-day time period described in subsection (6) and the 30-day time period described in subsection (7).

(b) The number of applications denied.

(c) The number of applicants not issued a license or registration within the applicable time period and the amount of money returned to licensees and registrants under subsection (8).

(10) Subsection (6) does not apply to licenses or registrations for any of the following:

(a) An interior designer listed under article 6.

(b) A certified public accountant and registered accountant under article 7.

(c) An agency non-owner manager of a collection agency under article 9.

(d) A barber, student barber, student instructor, and barber instructor under article 11.

(e) An employment and consulting agent of a personnel agency under article 10.

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- (f) A cosmetologist, manicurist, natural hair culturist, esthetician, electrologist, instructor, and registered student under article 12.
 - (g) A hearing aid salesperson and trainee under article 13.
 - (h) A mortuary science licensee, embalmer, and resident trainee in mortuary science under article 18.
 - (i) An individual architect, surveyor, and engineer under article 20.
 - (j) A forester under article 21.
 - (k) An individual landscape architect under article 22.
 - (l) A community planner under article 23.
 - (m) An individual residential builder and alteration and maintenance contractor and a salesperson for a residential builder and alteration and maintenance contractor under article 24.
 - (n) A real estate salesperson under article 25.
 - (o) A real estate appraiser under article 26.
 - (p) An ocularist and ocularist apprentice under article 27.
- (11) Notwithstanding any provision in this act to the contrary, an individual or qualifying officer who is a licensee or registrant under this act and who is mobilized for military duty in the armed forces of the United States by the president of the United States is temporarily exempt from the renewal license fee, continuing education requirements, and any other related requirements of this act. It is the obligation of the licensee or registrant to inform the department by written or electronic mail of the desire to exercise the temporary exemption under this subsection. If the licensee applying for the temporary exemption is the individual responsible for supervision and oversight of licensed activities, notice of arrangements for adequate provision of that supervision and oversight shall be provided to the department. The licensee or registrant shall accompany the request with proof, as determined by the department, to verify the mobilized duty status. The department, upon receiving a request for a temporary exemption under this subsection, shall make a determination of the requestor's status and grant the temporary exemption after verification of mobilized duty status under this subsection. A temporary exemption is valid until 90 days after the licensee's or registrant's release from the mobilized duty upon which the exemption was based, but shall not exceed 36 months from the date of expiration of the license or registration.

(12) As used in this section, "completed application" means an application complete on its face and submitted with any applicable licensing or registration fees as well as any other information, records, approval, security, or similar item required by law or rule from a local unit of government, a federal agency, or a private entity but not from another department or agency of the state of Michigan.

History: Add. 1988, Act 463, Eff. Sept. 1, 1989 ;-- Am. 1989, Act 261, Eff. Jan. 1, 1990 ;-- Am. 2002, Act 611, Imd. Eff. Dec. 20, 2002 ;-- Am. 2004, Act 264, Imd. Eff. July 23, 2004 ;-- Am. 2004, Act 373, Imd. Eff. Oct. 11, 2004 ;-- Am. 2008, Act 309, Imd. Eff. Dec. 18, 2008

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Admin Rule: R 339.1001 et seq.; R 339.3101 et seq.; R 339.15101 et seq.; R 339.16001 et seq.; R 339.17101 et seq.; R 339.18001 et seq.; and R 339.19001 et seq. of the Michigan Administrative Code.

Article 5

339.501 Lodging or filing complaint.

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

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980

Compiler's Notes: For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws.

339.501a Definitions.

Sec. 501a. As used in this article:

(a) "Complainant" means a person who has filed a complaint with the department alleging that a person has violated this act or a rule promulgated or an order issued under this act. If a complaint is made by the department, the director shall designate 1 or more employees of the department to act as the complainant.

(b) "Respondent" means a person against whom a complaint has been filed who may be a person who is or is required to be licensed or registered under this act.

History: Add. 1989, Act 261, Eff. Jan. 1, 1990

Admin Rule: R 339.1001 et seq.; R 339.3101 et seq.; R 339.15101 et seq.; R 339.16001 et seq.; R 339.17101 et seq.; R 339.18001 et seq.; and R 339.19001 et seq. of the Michigan Administrative Code.

339.502 Investigation; correspondence file; acknowledgment of complaint; complaint made by department.

Sec. 502. The department, upon receipt of a complaint, immediately shall begin its investigation of the allegations of the complaint and shall open a correspondence file. The department shall make a written acknowledgment of the complaint within 15 days after receipt of the complaint to the person making 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 making the complaint.

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980

339.503 Investigation; petition to issue subpoena.

Sec. 503. The department shall conduct the investigation required under section 502. In furtherance of that investigation, the department

may request that the attorney general petition the circuit court to issue a subpoena requiring 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: 1980, Act 299, Imd. Eff. Oct. 21, 1980

339.504 Investigation; status report; time extension; closing and reopening complaint; preparation of appropriate action; informal conference.

Sec. 504. (1) The investigative unit of the department, within 30 days after the department receives the complaint, shall report to the director on the status 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 permitted under this section shall be included in the report required by section 212.

(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 complaint shall be closed by the department. The reasons for closing the complaint shall be forwarded to the respondent and complainant, who then may provide additional information to reopen the complaint.

(3) If the report of the investigative unit made pursuant to 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.

(4) At any time during its investigation or after the issuance of a formal complaint, the department may bring together the complainant and the respondent for an informal conference. At the informal conference, the department shall attempt to resolve issues raised in the complaint and may attempt to aid the parties in reaching a formal settlement or stipulation.

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980 ;-- Am. 1989, Act 261, Eff. Jan. 1, 1990

Admin Rule: R 339.1001 et seq.; R 339.3101 et seq.; R 339.15101 et seq.; R 339.16001 et seq.; R 339.17101 et seq.; R 339.18001 et seq.; and R 339.19001 et seq. of the Michigan Administrative Code.

339.505 Summary suspension of license or certificate of registration; order; affidavit; petition to dissolve order; hearing; granting requested relief; record.

Sec. 505. (1) After an investigation has been conducted, the department may issue an order summarily suspending a license or a certificate of registration issued pursuant to articles 8 to 25 based on an affidavit by a person familiar with the facts set forth in the affidavit, or, if appropriate, based upon an affidavit on information and belief, that an imminent threat to the public health, safety, and welfare exists. Thereafter, the proceedings described in this article shall be promptly commenced and decided.

(2) A person whose license or certificate of registration has been summarily suspended under this section may petition the department to dissolve the order. Upon receiving a petition, the department immediately shall schedule a hearing to decide whether to grant or deny the requested relief.

(3) An administrative law hearings examiner shall grant the requested relief dissolving the summary suspension order, unless sufficient evidence is presented that an imminent threat to the public health, safety, and welfare exists which 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 hearing in a contested case.

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980

339.506 Cease and desist order; hearing; request; application to restrain and enjoin further violation.

Sec. 506. (1) After an investigation has been 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 ordered to cease and desist shall be 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) Upon a violation of a cease and desist order issued under this act, the department of the attorney general may apply in the circuit court of this state to restrain and enjoin, temporarily or permanently, or both, a person from further violating a cease and desist order.

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980

339.507 Informal conference; criminal prosecution; other action authorized by act.

Sec. 507. A summary suspension order, cease and desist order, or injunctive relief issued or granted in relation to a license or certificate of registration issued pursuant to articles 8 to 25 shall be in addition to and not in place of an informal conference; criminal prosecution; or proceeding to deny, revoke, suspend, or place a limitation on, a license or certificate of registration or any other action authorized by this act.

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980

339.508 Formal complaint and notice; service; options; attendance at informal conference; methods of settlement; representation.

Sec. 508. (1) After an investigation has been conducted and a formal complaint prepared, the department shall serve the formal complaint upon the respondent and the complainant. At the same time, the department shall serve the respondent with a notice describing the compliance conference and hearing processes and offering the respondent a choice of 1 of the following opportunities:

(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 prior to holding a contested case hearing, as required by section 92 of the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being section 24.292 of the Michigan Compiled Laws.

(c) An opportunity to proceed to a contested case hearing as set forth in section 71 of Act No. 306 of the Public Acts of 1969, being section 24.271 of the Michigan Compiled Laws.

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

(3) An informal conference may be attended by a member of the board, at the discretion of that board, or by a member of a committee and may result in a settlement, consent order, waiver, default, or other method of settlement agreed upon 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 provided for in article 6. A board may reject a settlement and require a contested case hearing under section 71 of Act No. 306 of the Public Acts of 1969, as amended, being section 24.271 of the Michigan Compiled Laws.

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

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980 ;-- Am. 1989, Act 261, Eff. Jan. 1, 1990

339.510 Showing compliance with act, rule, or order.

Sec. 510. This act does not prevent a person against whom a complaint has been filed from showing compliance with this act, or a rule or an order promulgated or issued under this act, under section 92 of Act No. 306 of the Public Acts of 1969, as amended.

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980

339.511 Hearing.

Sec. 511. If an informal conference is not held or does not result in a settlement of a complaint, a hearing pursuant to section 92 of Act No. 306 of the Public Acts of 1969, as amended, shall be held. A hearing under this section may be attended by a member of a board.

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980

339.512 Subpoena.

Sec. 512. The department or the department of the attorney general may petition a circuit court to issue a subpoena which shall require the person subpoenaed to appear or testify or produce relevant documentary material for examination at a proceeding conducted under section 511 or 508.

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980

339.513 Findings of fact and conclusions of law; hearing report; copies; complaint involving professional standards of practice.

Sec. 513. (1) Except as provided in subsection (3), at the conclusion of a hearing conducted under section 511, 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 penalties to be assessed as prescribed in article 6.

(2) A copy of a hearing report shall be submitted to the person who made the complaint and to the person against whom the complaint was lodged.

(3) For a complaint involving professional standards of practice under article 7, a majority of the members of the board who have not participated in an investigation of the complaint or who have not attended

an informal conference, shall sit to make findings of fact in relation to the complaint.

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980

339.514 Determination of penalties to be assessed; hearing report; transcript; time limit; board member prohibited from participating in final determination.

Sec. 514. (1) Within 60 days after receipt of an administrative law hearings examiner's hearing report, the board receiving the hearing report shall meet and make a determination of the penalties to be assessed under article 6. The board's determination shall be made on the basis of 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 upon request. If a transcript or a portion of the transcript is requested, the board's determination of the penalty or penalties to be assessed under article 6 shall be made at a meeting within 60 days after receipt of a 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 prescribed by subsection (1), the director may determine the appropriate penalty and issue a final order for occupations regulated under articles 8 to 25.

(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 shall not participate in making a final determination in a proceeding on that complaint.

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980

339.515 Petition for review generally.

Sec. 515. A person seeking a license or certificate of registration 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 certificate of registration or renewal.

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980

339.516 Petition for review; contents.

Sec. 516. A petition submitted under section 515 shall be in writing and shall set forth the reasons the petitioner feels the licensure or registration should be issued.

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980

339.517 Consideration of petition; alternative form of testing; personal interview.

Sec. 517. In considering a petition submitted under section 515 for an occupation regulated under articles 8 to 25, the department and the appropriate board may administer an alternative form of testing to the petitioner, or conduct a personal interview with the petitioner, or both.

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980

339.518 Issuance of license or certificate of registration or renewal based on review of petitioner's qualifications.

Sec. 518. The department may issue a license or certificate of registration or renewal for an occupation regulated under articles 8 to 25, if based on a review of the qualifications of the person who submitted a petition under section 515, the department and the appropriate board determine that the person could perform the occupation with competence.

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980

339.519 Petition to review limitation on license, certification of registration, or renewal; reply; removal of limitation.

Sec. 519. (1) A person who has had a limitation placed on a license, a certificate of registration, or the renewal of a license or certificate of registration under section 203 or 204, within 30 days after the limitation is placed on the license, certificate of registration, or renewal of the license or certificate of registration, 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, certificate of registration, or renewal of a license or certificate of registration. The reply to the person who submits a petition under section 519 shall be sent to the petitioner within 15 days after receipt of the petition.

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

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980

339.520 Petition to review decision denying person licensure, approval, or recognition.

Sec. 520. A school, institution, program, or other person which has been denied licensure, approval, or recognition within 30 days after the decision, may petition the department in writing for a review of that decision.

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980

339.521 Consideration of petition; reinvestigation; reply.

Sec. 521. In considering a petition submitted under section 520, the department and an appropriate board may reinvestigate the school, institution, or person and the curriculum of the school, institution, or program offered by the person before replying to the petition. The reply to the petition shall set forth the reasons licensure, approval, or recognition had not been granted. The reply shall be sent to the petitioning school, institution, or person.

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980

339.522 Conducting proceedings on grievance lodged before effective date of act.

Sec. 522. 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 licensed under an act repealed by this act, the proceedings on that grievance shall be conducted in the manner prescribed in the repealed act.

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980

339.551 Additional definitions.

Sec. 551. As used in sections 553 to 559:

(a) "Employee of the department" means an individual employed by the department or a person 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.

(b) "Citation" means a form prepared by the department pursuant to section 553.

History: Add. 1989, Act 261, Eff. Jan. 1, 1990

Admin Rule: R 339.1001 et seq.; R 339.3101 et seq.; R 339.15101 et seq.; R 339.16001 et seq.; R 339.17101 et seq.; R 339.18001 et seq.; and R 339.19001 et seq. of the Michigan Administrative Code.

339.553 Citation generally.

Sec. 553. (1) An employee of the department may issue a citation to a person licensed or registered under this act or required to be licensed or registered under this act if the employee observes or deduces from an investigation, inspection, or complaint that conduct or conditions exist or have existed which are in violation of this act or rules promulgated or orders issued under this act.

(2) A citation may be sent to a respondent by certified mail, return receipt requested, or may be delivered in person by the issuing employee.

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

(a) The date of the citation.

(b) The name and title of the individual issuing the citation.

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

(d) A brief description of the conduct or conditions which are considered to be a violation of the act or rules or orders issued under the act and a reference to the section of the act, the rule, or order the respondent is alleged to have violated.

(e) The proposed penalties or actions required for compliance, including the payment of a fine which shall 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 violation contained in the citation is contested.

(h) A notice that the respondent must accept or reject 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 as described in section 508.

History: Add. 1989, Act 261, Eff. Jan. 1, 1990

Admin Rule: R 339.1001 et seq.; R 339.3101 et seq.; R 339.15101 et seq.; R 339.16001 et seq.; R 339.17101 et seq.; R 339.18001 et seq.; and R 339.19001 et seq. of the Michigan Administrative Code.

339.555 Citation; notice of acceptance or denial of violation; signature; return; records; citation as final order; disclosure; removal from records; explanation; statement.

Sec. 555. (1) A respondent shall have 30 days in which to notify the department in writing that the person accepts the conditions set forth in the citation or that the person does not admit to the violation cited.

(2) If the respondent accepts the conditions set forth in the citation, 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 required to be submitted by the terms of the citation. The citation

and accompanying material shall be placed in the person's records with the department, indicating the nature of the violation and that the person accepted the conditions imposed. A citation issued under this section shall have the same force and effect as a final order issued by a board and may be disclosed to the public. If no further disciplinary actions are placed upon the person's record within 5 calendar years after the citation is issued, the department shall remove the citation and accompanying material from the records. If a respondent so chooses, a 1-page explanation prepared by the respondent shall be placed in the department's files and shall be disclosed each time the issuance of the citation is disclosed.

(3) If the respondent does not admit to the violation cited, the person may so state on the citation and return 1 copy to the department within the 30 days after the receipt of the citation. Upon receiving a copy of the citation not admitting to the violation, the process initiated by section 508 of the act shall be invoked, with the citation serving as the formal complaint.

History: Add. 1989, Act 261, Eff. Jan. 1, 1990

339.557 Effect of signing citation.

Sec. 557. The signing of a citation as an indication that the citation was received by the respondent shall be considered to be only a receipt of, not an admission to, the violation cited.

History: Add. 1989, Act 261, Eff. Jan. 1, 1990

339.559 Review of pending cases; notice.

Sec. 559. Beginning on January 1, 1990, the department may review all pending cases and identify those matters occurring before January 1, 1990 which would have been addressed by a citation, had such a program existed at the time the complaint was filed with the department. The department shall notify each respondent that the person may conclude the department's proceedings by accepting the penalties and proposed compliance actions as set forth in a citation or may continue the proceedings under the provisions of the process initiated in section 508.

History: Add. 1989, Act 261, Eff. Jan. 1, 1990

Article 6

339.601 Practicing regulated occupation or using designated title without license or registration; operation of barber college, school of cosmetology, or real estate school without license or approval; effect of suspended, revoked, or lapsed license or registration; violation as misdemeanor; penalties; person not licensed as residential builder or residential maintenance and alteration contractor; person not licensed as architect, professional engineer, or professional land surveyor; restitution; injunctive relief; exceptions; "affected person" defined; investigation; forfeiture; remedies; performance of services by interior designer; notice of conviction to department.

Sec. 601. (1) A person shall not engage in or attempt to engage in the practice of an occupation regulated under this act or use a title designated in this act unless the person possesses a license or registration issued by the department for the occupation.

(2) A school, institution, or person shall not operate or attempt to operate a barber college, school of cosmetology, or real estate school unless the school, institution, or person is licensed or approved by the department.

(3) Subject to section 411, a person whose license or registration is suspended, revoked, or lapsed, as determined by the records of the department, is considered unlicensed or unregistered.

(4) Except as otherwise provided for in section 735, a person, school, or institution that violates subsection (1) or (2) is guilty of a misdemeanor, punishable by a fine of not more than \$500.00, or imprisonment for not more than 90 days, or both.

(5) Except as otherwise provided for in section 735, a person, school, or institution that violates subsection (1) or (2) a second or any subsequent time is guilty of a misdemeanor, punishable by a fine of not more than \$1,000.00, or imprisonment for not more than 1 year, or both.

(6) Notwithstanding subsections (4) and (5), a person not licensed under article 24 as a residential builder or a residential maintenance and alteration contractor who violates subsection (1) or (2) is guilty as follows:

(a) In the case of a first offense, a misdemeanor punishable by a fine of not less than \$5,000.00 or more than \$25,000.00, or imprisonment for not more than 1 year, or both.

(b) In the case of a second or subsequent offense, a misdemeanor punishable by a fine of not less than \$5,000.00 or more than \$25,000.00, or imprisonment for not more than 2 years, or both.

(c) In the case of an offense that causes death or serious injury, a felony punishable by a fine of not less than \$5,000.00 or more than \$25,000.00, or imprisonment for not more than 4 years, or both.

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(7) Notwithstanding subsections (4) and (5), a person not licensed under article 20 as an architect, professional engineer, or professional land surveyor who violates subsection (1) or (2) is guilty as follows:

(a) In the case of a first offense, a misdemeanor punishable by a fine of not less than \$5,000.00 or more than \$25,000.00 or imprisonment for not more than 93 days, or both.

(b) In the case of a second or subsequent offense, a misdemeanor punishable by a fine of not less than \$5,000.00 or more than \$25,000.00 or imprisonment for not more than 1 year, or both.

(c) In the case of an offense that causes death or serious injury, a felony punishable by a fine of not less than \$5,000.00 or more than \$25,000.00 or imprisonment for not more than 4 years, or both.

(8) Any violation of this act shall include a requirement that restitution be made, based upon proofs submitted to and findings made by the trier of fact as provided by law.

(9) Notwithstanding the existence and pursuit of any other remedy, an affected person may maintain injunctive action to restrain or prevent a person from violating subsection (1) or (2). If successful in obtaining injunctive relief, the affected person shall be entitled to actual costs and attorney fees.

(10) This act does not apply to a person engaging in or practicing the following:

(a) Interior design.

(b) Residential building design. As used in this subdivision, "residential building design" means the rendering of residential design services for a detached 1- and 2-family residence building by a person exempted from the requirements of section 2012.

(c) Any activity for which the person is licensed under the state plumbing act, 2002 PA 733, MCL 338.3511 to 338.3569.

(d) Any activity for which the person is licensed under the Forbes mechanical contractors act, 1984 PA 192, MCL 338.971 to 338.988.

(e) Any activity for which the person is licensed under the electrical administrative act, 1956 PA 217, MCL 338.881 to 338.892.

(11) As used in subsection (9), "affected person" means a person directly affected by the actions of a person suspected of violating subsection (1) or (2) and includes, but is not limited to, a licensee or registrant, a board established pursuant to this act, the department, a person who has utilized the services of the person engaging in or attempting to engage in an occupation regulated under this act or using a title designated by this act without being licensed or registered by the department, or a private association composed primarily of members of the occupation in which the person is engaging in or attempting to engage in or in which the person is using a title designated under this act without being registered or licensed by the department.

(12) An investigation may be conducted under article 5 to enforce this section. A person who violates this section shall be subject to this section and sections 506, 602, and 606.

(13) The department, the attorney general, or a county prosecutor may utilize forfeiture as a remedy in the manner provided for in section 606.

(14) The remedies under this section are independent and cumulative. The use of 1 remedy by a person shall not bar the use of other lawful remedies by that person or the use of a lawful remedy by another person.

(15) An interior designer may perform services in connection with the design of interior spaces including preparation of documents relative to finishes, systems furniture, furnishings, fixtures, equipment, and interior partitions that do not affect the building mechanical, structural, electrical, or fire safety systems.

(16) Upon entering a conviction under subsection (4), (5), or (6), a court entering the conviction shall notify, by mail, facsimile transmission, or electronic mail, the bureau of commercial services at the department.

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980 ;-- Am. 1994, Act 400, Imd. Eff. Dec. 29, 1994 ;-- Am. 1998, Act 250, Eff. Oct. 1, 1998 ;-- Am. 2005, Act 278, Imd. Eff. Dec. 19, 2005 ;-- Am. 2007, Act 155, Imd. Eff. Dec. 21, 2007 ;-- Am. 2007, Act 157, Imd. Eff. Dec. 21, 2007 ;-- Am. 2008, Act 319, Eff. Mar. 31, 2009

Compiler's Notes: For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws.

339.601a Advisory subcommittee on interior design; membership; purpose; list of qualified individuals; rules; stamp; "interior designer" defined.

Sec. 601a. (1) There is created in the department an advisory subcommittee on interior design to consist of not more than 5 individuals selected by the department. Of the 5 individuals, 2 shall be licensed architects and the remaining members shall be interior designers chosen from a list of interior designers submitted to the department by nationally recognized associations of interior designers. The department shall assure that the advisory subcommittee on interior design is fully functional not later than 6 months after the effective date of the amendatory act that added this section and shall cease to exist after it has reviewed the last application made under subsection (4)(c). The purpose of the advisory subcommittee on interior design is to verify, by majority vote of its members, the qualifications of interior designers who have not passed an examination as further described in subsection (4)(c) but who seek qualification for the performance of services described in section 601(10) on the basis of education and experience and to recommend the qualifications of those interior designers to perform the services described in section 601(10). The advisory subcommittee on interior design shall also compile a list of all individuals considered

qualified to perform the services described in section 601(10). The advisory subcommittee on interior design shall give the list to the board of architects for review and consideration of those persons determined to have met the standards described in subsection (4). The approval of individuals considered qualified shall occur not less than 90 days after the list is submitted to the board of architects. A person whose qualifications are not approved by the board of architects may appeal that determination to the director or his or her designee. The department shall make the list of persons determined to have met the standards described in subsection (4) electronically available to the state or any local unit of government capable of issuing permits under the state construction code act of 1972, 1972 PA 230, MCL 125.1501 to 125.1531.

(2) The director may promulgate rules to administer this section. The rules may include, but are not limited to, reasonable fees charged to individuals seeking qualification for performing services under section 601(10) and procedures for adding and removing individuals from the list of qualified interior designers.

(3) An interior designer shall have a rectangular nonembossed stamp with the interior designer's name, business address, title "interior designer", and certificate number issued by the national council for interior design qualification, if applicable. Use of the stamp shall be accompanied by the original signature of the interior designer.

(4) As used in this section and section 601, "interior designer" means an individual engaged in the activities described in section 601(10) who meets 1 or more of the following:

(a) Beginning on the effective date of the amendatory act that added this subsection, has proof of passing the complete 1997 examination or other examination adopted by reference by the department and offered by the national council for interior design qualification. For purposes of this subsection, that examination and the qualifications to sit for that examination are adopted by reference and any subsequent update or revision of that examination or the qualifications to sit for that examination may, by rule promulgated by the director, be adopted by reference by the department.

(b) Was engaged, before the effective date of the amendatory act that added this subsection, in the activities described in section 601(10) and has proof of passing any complete examination offered by the national council for interior design qualification. Passage of any past examination offered by the national council for interior design qualification is adequate to qualify an interior designer for the exemption described in section 601(10).

(c) Until the expiration of 1 year after the date of the establishment of the advisory subcommittee on interior design, demonstrates to the advisory subcommittee on interior design that he or she was engaged in the activities described in section 601(10) and meets the qualifications of

education and experience that would confer eligibility for sitting for the 1997 or other examination offered by the national council for interior design qualification.

History: Add. 1998, Act 250, Eff. Oct. 1, 1998

Admin Rule: R 339.601 of the Michigan Administrative Code.

339.602 Violation of act, rule, or order; penalties.

Sec. 602. A person, school, or institution that violates this act or a rule or order promulgated or issued under this act shall be assessed 1 or more of the following penalties:

(a) Placement of a limitation on a license or certificate of registration for an occupation regulated under articles 8 to 25.

(b) Suspension of a license or certificate of registration.

(c) Denial of a license, certificate of registration, or renewal of a license or certificate of registration.

(d) Revocation of a license or certificate of registration.

(e) In the case of a person licensed or registered under this act and except as otherwise provided for by this act, an administrative fine to be paid to the department, not to exceed \$10,000.00.

(f) Censure.

(g) Probation.

(h) A requirement that restitution be made, based upon proofs submitted to and findings made by the hearing examiner after a contested case.

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980 ;-- Am. 1981, Act 83, Imd. Eff. July 1, 1981 ;-- Am. 2005, Act 278, Imd. Eff. Dec. 19, 2005 ;-- Am. 2007, Act 155, Imd. Eff. Dec. 21, 2007 ;-- Am. 2007, Act 157, Imd. Eff. Dec. 21, 2007

339.603 Restitution; suspension of license or certificate of registration.

Sec. 603. If restitution is required to be made under section 602, the license or certificate of registration of the person required to make the restitution may be suspended until the restitution is made.

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980

339.604 Violation of article regulating occupation or commission of prohibited act; penalties.

Sec. 604. A person who violates 1 or more of the provisions of an article which regulates an occupation or who commits 1 or more of the following shall be subject to the penalties prescribed in section 602:

(a) Practices fraud or deceit in obtaining a license or registration.

(b) Practices fraud, deceit, or dishonesty in practicing an occupation.

(c) Violates a rule of conduct of an occupation.

(d) Demonstrates a lack of good moral character.

- (e) Commits an act of gross negligence in practicing an occupation.
- (f) Practices false advertising.
- (g) Commits an act which demonstrates incompetence.
- (h) Violates any other provision of this act or a rule promulgated under this act for which a penalty is not otherwise prescribed.
- (i) Fails to comply with a subpoena issued under this act.
- (j) Fails to respond to a citation as required by section 555.
- (k) Violates or fails to comply with a final order issued by a board, including a stipulation, settlement agreement, or a citation.
- (l) Aids or abets another person in the unlicensed practice of an occupation.

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980 ;-- Am. 1981, Act 83, Imd. Eff. July 1, 1981 ;-- Am. 1989, Act 261, Eff. Jan. 1, 1990 ;-- Am. 2007, Act 155, Imd. Eff. Dec. 21, 2007

339.605 Action in name of state; intervention and prosecution by attorney general; action by department; standing.

Sec. 605. (1) The department may bring any appropriate action, including mediation or other alternative dispute resolution, in the name of the people of this state to carry out this act and to enforce this act.

(2) If the attorney general considers it necessary, the attorney general shall intervene in and prosecute all cases arising under this act.

(3) This section does not prohibit the department from bringing any civil, criminal, or administrative action for the enforcement of section 601.

(4) The department has standing to bring an administrative action or to directly bring an action in a court of competent jurisdiction regarding unlicensed practice of an occupation.

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980 ;-- Am. 2007, Act 155, Imd. Eff. Dec. 21, 2007 ;-- Am. 2007, Act 157, Imd. Eff. Dec. 21, 2007

339.606 Forfeiture.

Sec. 606. The department, the attorney general, and a county prosecutor may utilize the forfeiture provisions of chapter 47 of the revised judicature act of 1961, 1961 PA 236, MCL 600.4701 to 600.4709, for items seized and determined to be proceeds of a crime, substituted proceeds of a crime, or the instrumentality of a crime as those terms are defined under section 4701 of the revised judicature act of 1961, 1961 PA 236, MCL 600.4701.

History: Add. 2007, Act 155, Eff. June 1, 2008

ARTICLE 24
RESIDENTIAL BUILDERS AND RESIDENTIAL MAINTENANCE
AND ALTERATION CONTRACTORS

339.2401 Definitions.

Sec. 2401. As used in this article:

(a) "Residential builder" means a person engaged in the construction of a residential structure or a combination residential and commercial structure who, for a fixed sum, price, fee, percentage, valuable consideration, or other compensation, other than wages for personal labor only, undertakes with another or offers to undertake or purports to have the capacity to undertake with another for the erection, construction, replacement, repair, alteration, or an addition to, subtraction from, improvement, wrecking of, or demolition of, a residential structure or combination residential and commercial structure; a person who manufactures, assembles, constructs, deals in, or distributes a residential or combination residential and commercial structure which is prefabricated, preassembled, precut, packaged, or shell housing; or a person who erects a residential structure or combination residential and commercial structure except for the person's own use and occupancy on the person's property.

(b) "Residential maintenance and alteration contractor" means a person who, for a fixed sum, price, fee, percentage, valuable consideration, or other compensation, other than wages for personal labor only, undertakes with another for the repair, alteration, or an addition to, subtraction from, improvement of, wrecking of, or demolition of a residential structure or combination residential and commercial structure, or building of a garage, or laying of concrete on residential property, or who engages in the purchase, substantial rehabilitation or improvement, and resale of a residential structure, engaging in that activity on the same structure more than twice in 1 calendar year, except in the following instances:

(i) If the work is for the person's own use and occupancy.

(ii) If the rehabilitation or improvement work of residential type property or a structure is contracted for, with, or hired entirely to be done and performed for the owner by a person licensed under this article.

(iii) If work is performed by a person employed by the owner to perform work for which the person is licensed by the state.

(c) "Residential structure" means a premises used or intended to be used for a residence purpose and related facilities appurtenant to the premises, used or intended to be used, as an adjunct of residential occupancy.

(d) "Salesperson" means an employee or agent, other than a qualifying officer, of a licensed residential builder or residential maintenance and alteration contractor, who for a salary, wage, fee, percentage, commission, or other consideration, sells or attempts to sell, negotiates or attempts to negotiate, solicits for or attempts to solicit for, obtains or attempts to obtain a contract or commitment for, or furnishes or attempts or agrees to furnish, the goods and services of a residential builder or residential maintenance and alteration contractor, except a person working for a licensed residential builder or residential maintenance and alteration contractor who makes sales which are occasional and incidental to the person's principal employment.

(e) "Wages" means money paid or to be paid on an hourly or daily basis by an owner, lessor, or occupant of a residential structure or combination residential and commercial structure as consideration for the performance of personal labor on the structure by a person who does not perform or promise to perform the labor for any other fixed sum, price, fee, percentage, valuable consideration, or other compensation and who does not furnish or agree to furnish the material or supplies required to be used in the performance of the labor or an act defined in subdivision (a) or (b).

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980 ;-- Am. 1991, Act 166, Imd. Eff. Dec. 19, 1991

Compiler's Notes: For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws.

339.2402 Residential builders' and maintenance and alteration contractors' board; creation; qualifications of members.

Sec. 2402. (1) A residential builders' and maintenance and alteration contractors' board is created. Of the 9-member board, 4 members shall be licensed residential builders, and 2 members shall be licensed maintenance and alteration contractors.

(2) Of the members representing the general public, at least 1 member shall be registered under the building officials and inspectors registration act, 1986 PA 54, MCL 338.2301 to 338.2313.

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980 ;-- Am. 2007, Act 157, Eff. June 1, 2008

339.2403 Engaging in business or acting in capacity of residential builder or residential maintenance and alteration contractor or salesperson without license.

Sec. 2403. Notwithstanding article 6, a person may engage in the business of or act in the capacity of a residential builder or a residential maintenance and alteration contractor or salesperson in this state without having a license, if the person is 1 of the following:

(a) An authorized representative of the United States government, this state, or a county, township, city, village, or other political subdivision of this state.

(b) An owner of property, with reference to a structure on the property for the owner's own use and occupancy.

(c) An owner of rental property, with reference to the maintenance and alteration of that rental property.

(d) An officer of a court acting within the terms of the officer's office.

(e) A person other than the salesperson who engages solely in the business of performing work and services under contract with a residential builder or a residential maintenance and alteration contractor licensed under this article.

(f) A person working on 1 undertaking or project by 1 or more contracts, the aggregate contract price for which labor, material, and any other item is less than \$600.00. This exemption does not apply if the work of a construction is only a part of a larger or major operation, whether undertaken by the same or a different residential builder or residential maintenance and alteration contractor, or in which a division of the operation is made in contracts of amounts less than \$600.00, to evade this act.

(g) An electrical contractor who is licensed under Act No. 217 of the Public Acts of 1956, as amended, being sections 338.881 to 338.892 of the Michigan Compiled Laws. This exemption applies only to the electrical installation, electrical maintenance, or electrical repair work performed by the electrical contractor.

(h) A plumbing contractor licensed under Act No. 266 of the Public Acts of 1929, as amended, being sections 338.901 to 338.917 of the Michigan Compiled Laws. This exemption applies only to plumbing installation, plumbing maintenance, or plumbing repair work performed by the plumbing contractor.

(i) A mechanical contractor who is licensed under the mechanical contractors act. This exemption applies only to mechanical installation, mechanical maintenance, or mechanical repair work performed by the mechanical contractor.

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980 ;-- Am. 1982, Act 6, Imd. Eff. Feb. 15, 1982 ;-- Am. 1984, Act 191, Imd. Eff. July 3, 1984

339.2404 Evidence of good moral character and financial stability; submission; examination; issuance of residential maintenance and alteration contractor's license; scope of crafts and trades; place of business; branch office license; duration of license; documentation of continuing competency requirements.

Sec. 2404. (1) The department may require an applicant, licensee, or each partner, trustee, director, officer, member, or shareholder to submit evidence of good moral character, and financial stability. Before the issuance of a license, an applicant shall submit a copy of an operator's license or state personal identification card, to be used by the department only for proof of identity of the applicant.

(2) The department shall require an applicant for a license to pass an examination establishing that the applicant has a fair knowledge of the obligations of a residential builder or residential maintenance and alteration contractor to the public and the applicant's principal, and the statutes relating to the applicant's licensure.

(3) The department, upon application, may issue a residential maintenance and alteration contractor's license to an applicant who, upon examination, qualifies for a license, which authorizes the licensee according to the applicant's qualifications, crafts, and trades to engage in the activities of a residential maintenance and alteration contractor. A license includes the following crafts and trades: carpentry; concrete; swimming pool installation; waterproofing a basement; excavation; insulation work; masonry work; painting and decorating; roofing; siding and gutters; screen or storm sash installation; tile and marble work; and house wrecking. The license shall specify the particular craft or trade for which the licensee has qualified. This subsection does not prohibit a specialty contractor from taking and executing a contract involving the use of 2 or more crafts or trades if the performance of the work in the craft or trade other than the craft for which the person is licensed is incidental and supplemental to the performance of work in the craft for which the specialty contractor is licensed.

(4) A residential builder or residential maintenance and alteration contractor shall maintain a place of business in this state. If a residential builder or residential maintenance and alteration contractor maintains more than 1 place of business within this state, a branch office license shall be issued to the builder or contractor for each place of business so maintained.

(5) Beginning the license cycle after December 21, 2007, the department shall issue the license of a residential builder and residential maintenance and alteration contractor for a period of 3 years in duration. Beginning December 21, 2007, an applicant for renewal of a residential builder or maintenance and alteration contractor license shall state that he or she has a current copy of the Michigan residential code and has fulfilled the appropriate requirements regarding continuing competency.

(6) Beginning December 21, 2007, a licensee shall maintain documentation, for at least 5 years, of activities meeting the continuing competency requirements as prescribed under this article.

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980 ;-- Am. 1980, Act 496, Eff. Mar. 31, 1981 ;-- Am. 1981, Act 83, Imd. Eff. July 1, 1981 ;-- Am. 1984, Act 193, Imd. Eff. July 3, 1984 ;-- Am. 1988, Act 463, Eff. Sept. 1, 1989 ;-- Am. 2007, Act 157, Eff. June 1, 2008 ;-- Am. 2010, Act 151, Imd. Eff. Aug. 23, 2010

339.2404a Information to be provided as part of contract.

Sec. 2404a. A licensee shall, as part of the contract, provide information relating to his or her individual license and to any license issued to that person as a qualifying officer of another entity.

History: Add. 2007, Act 155, Eff. June 1, 2008

339.2404b Licensure as residential builder or residential maintenance and alteration contractor; completion of prelicensure course of study; exemption; continuing competency requirements; violation; approved courses; waiver of requirement of membership in trade association; subject matter and instructional qualifications; rules; alternate forms of continuing competency; department audit; application for inactive status; designation of licensee as inactive.

Sec. 2404b. (1) Beginning the effective date of the amendatory act that added this section, applicants for initial licensure either as a residential builder or as a residential maintenance and alteration contractor shall successfully complete a prelicensure course of study as prescribed by this subsection. Licensees holding a residential builder or a residential maintenance and alteration contractor license on the effective date of the amendatory act that added this section that are renewing a license in the capacity of an individual or qualifying officer, or both, are exempt from the requirement of successfully completing prelicensure courses described in this subsection. The department shall require an applicant not exempted under this subsection to successfully complete 60 hours of approved prelicensure courses consisting of at least 6 hours of courses in each of the following areas of competency:

- (a) Business management, estimating, and job costing.
- (b) Design and building science.
- (c) Contracts, liability, and risk management.
- (d) Marketing and sales.
- (e) Project management and scheduling.
- (f) The current Michigan residential code.
- (g) Construction safety standards promulgated under the Michigan occupational safety and health act, 1974 PA 154, MCL 408.1001 to 408.1094.

(2) Beginning the calendar year after the effective date of the amendatory act that added this section, a person obtaining initial licensure under this article as a residential builder or a residential maintenance and alteration contractor shall successfully complete not less than 3 hours of activities demonstrating continuing competency per calendar year, during the first 6 calendar years of licensure, and 21 hours per 3-year time period since the issuance of his or her license. At least 3 hours shall be devoted to those activities designed to develop a licensee's understanding and ability to apply state building codes and laws relating to the licensed occupation, safety, and changes in construction and business management laws. A licensee who has held a license for more than 6 years or who has not been determined by the department in a final order to have violated this act or a rule adopted under this act shall successfully complete at least 3 hours of activities demonstrating continuing competency per license cycle to include 1 hour

of codes, 1 hour of safety, and 1 hour of legal issues as described in this subsection.

(3) In the case of a licensee who has been determined by the department in a final order to have violated this act or a rule adopted under this act, he or she shall successfully complete, during the next complete license cycle, up to 21 hours of activities that demonstrate the development of continuing competency during that next license cycle as determined appropriate by order of the department, at least 3 hours of that continuing competency to include 1 hour of codes, 1 hour of safety, and 1 hour of legal issues as described in subsection (2).

(4) As activities that demonstrate the development of continuing competency, the education courses described in section 3, pages 3-6 through 3-58 of the January 2005 edition of the publication "NAHB University of Housing, Blueprint for Success", published by the national association of home builders, and taught by instructors meeting the requirements of section 4, pages 4-5 through 4-9 of the January 2005 edition of "NAHB University of Housing, Blueprint for Success", are considered approved, are considered appropriate for fulfilling the prelicensure and continuing competency requirements of subsections (1), (2), and (3), and are incorporated by reference. A licensee may take any courses equivalent to those courses incorporated by reference by this subsection. Updates to the courses described in this subsection or equivalent courses are acceptable unless the department determines that the courses do not provide a means of developing and maintaining continuing competency for those applicants or licensees who successfully fulfill the course requirements. Any construction code update courses approved by the bureau of construction codes as well as fire safety or workplace safety courses approved or sponsored by the department are also considered appropriate for fulfilling the continuing competency requirements of this subsection. The department may, by rule, amend, supplement, update, substitute, or determine equivalency regarding any courses or alternate activities for developing continuing competency described in this subsection.

(5) The department may waive the requirement of membership in a local, state, or national trade association contained in the instructor standards of section 4, pages 4-5 through 4-9 of the January 2005 edition of the publication "NAHB University of Housing, Blueprint for Success", published by the national association of home builders, and incorporated by reference. By rule, the department may amend, supplement, update, substitute, or determine equivalency regarding the standards in this subsection and shall establish instructor qualifications for courses not incorporated by reference in subsection (4).

(6) The subject matter of the prelicensure and continuing competency activities may be offered by a high school, intermediate school district, community college, university, bureau of construction codes, Michigan

occupational safety and health administration, trade association, or a proprietary school licensed by the department as meeting the subject matter qualifications described in subsection (4) and the instructional qualifications described in subsection (5).

(7) The department shall promulgate rules to provide for the following:

(a) Requirements other than those listed in subsection (4) for determining that a course meets the minimum criteria for developing and maintaining continuing competency.

(b) Requirements for acceptable courses offered at seminars and conventions by trade associations, research institutes, risk management entities, manufacturers, suppliers, governmental agencies other than those named in subsection (4), consulting agencies, or other entities.

(c) Acceptable distance learning.

(d) Alternate forms of continuing competency, including comprehensive testing, participation in mentoring programs, research, participation in code hearings conducted by the international code council, and publication of articles in a trade journal or regional magazine as an expert in the field. The alternate forms shall be designed to maintain and improve the licensee's ability to perform the occupation with competence and shall prescribe proofs that are necessary to demonstrate that the licensee has fulfilled the requirements of continuing competency.

(8) Each licensee may select approved courses in his or her subject matter area or specialty. Service as a lecturer or discussion leader in an approved course shall be counted toward the continuing competency requirements of this section. Alternate forms of continuing competency may be earned and documented as promulgated in rules by the department.

(9) The department may audit a predetermined percentage of licensees who renew in a year for compliance with the requirements of this section. Failure to comply with the audit or the requirements shall result in the investigation of a complaint initiated by the department, and the licensee is subject to the penalties prescribed in this act.

(10) A licensee as a residential builder or residential alteration and maintenance contractor may apply for inactive status by completing an application, made available by the department, in which he or she declares that he or she is no longer actively engaged in the practice authorized by his or her license and temporarily intends to suspend activity authorized by his or her license. Upon submission of a completed application, the department shall designate the licensee as inactive and note that status on records available to the public. A licensee designated as inactive must have a current copy of the Michigan residential code and is exempt from the continuing competency requirements imposed under this section, but must still pay the per-year license fee. An inactive licensee may activate his or her license by submitting an application to

the department requesting activation of the license. Upon activation of a license, the licensee must complete at least 1 credit hour of continuing competency for that calendar year.

History: Add. 2007, Act 157, Eff. June 1, 2008

339.2405 Application for license by corporation, partnership, association, limited liability company, or other entity; designation and responsibilities of qualifying officer; age and license requirements; suspension, revocation, or denial of license.

Sec. 2405. (1) If a license is applied for by a corporation, partnership, association, limited liability company, or other entity, the applicant shall designate 1 of its officers, partners, members, or managing agent as a qualifying officer who, upon taking and passing the examination, and upon meeting all other requirements of this article, is entitled to a license to act for the corporation, partnership, association, limited liability company, or other entity. The qualifying officer shall also obtain and maintain a license under this article as an individual. The qualifying officer shall be responsible for exercising the supervision or control of the building or construction operations necessary to secure full compliance with this article and the rules promulgated under this article. A license shall not be issued to a corporation, partnership, association, limited liability company, or other entity unless each partner, trustee, director, officer, member, and a person exercising control is at least 18 years of age, and meets the requirements for a license under this article other than those relating to knowledge and experience. If an individual licensee is also a qualifying officer, the individual's name and license number shall be listed on any license issued to the individual as a qualifying officer. In the case of a license issued under this subsection, each officer, partner, member, or managing agent, whether or not he or she is the qualifying officer, shall provide a copy of his or her operator's license or state personal identification card to the department for use by the department only for identification purposes. A licensee granted inactive status under section 2404b is not eligible to serve as a qualifying officer.

(2) The license of a corporation, partnership, association, limited liability company, or other entity shall be suspended when a license or license application of a qualifying officer, partner, trustee, director, officer, member, or a person exercising control of the corporation, partnership, association, limited liability company, or other entity is suspended, revoked, or denied. The suspension shall remain in force until the board determines that the disability created by the suspension, revocation, or denial has been removed.

(3) A suspension, revocation, or denial of a license of an individual shall suspend, revoke, or deny any other license held or applied for by that individual issued under this article. A suspension, revocation, or

denial of a license by the department shall suspend, revoke, or deny any other license held or applied for under this article by the qualifying officer of a corporation, partnership, association, limited liability company, or other entity whose license is suspended, revoked, or denied.

(4) If the qualifying officer of a licensee ceases to be its qualifying officer, the license is suspended. However, upon request, the department may permit the license to remain in force for a reasonable time to permit the qualification of a new qualifying officer.

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980 ;-- Am. 2007, Act 155, Eff. June 1, 2008 ;-- Am. 2007, Act 157, Eff. June 1, 2008

339.2406 Nonresident licensee; issuing license to foreign corporation; irrevocable consent to service of process; resolution authorizing consent; service of process or pleading.

Sec. 2406. A nonresident of this state may become a licensee under this article by conforming with this article. A license shall not be issued to a foreign corporation unless the corporation is authorized to do business in this state by the corporation and securities commission. The nonresident shall file an irrevocable consent to service of process. The consent shall be signed by the applicant or by an authorized officer, member, or partner of the applicant and shall be notarized. If the applicant is a corporation, consent shall be accompanied by a certified copy of the resolution of the corporation authorizing the consent. A process or pleading served upon the department shall be sufficient service upon the licensee. A process or pleading served upon the department under this section shall be in duplicate. The department immediately shall forward by registered mail 1 copy of the process or pleading to the main office of the licensee served.

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980

339.2407 Licensing salesperson in employ of 1 builder or contractor; application for transfer and issuance of new license; submission of salesperson's license application.

Sec. 2407. (1) A salesperson shall be licensed in the employ of only 1 residential builder or maintenance and alteration contractor. If a salesperson desires to change employment from 1 residential builder or maintenance and alteration contractor to another, the license shall be forwarded to the department and application made for a transfer and the issuance of a new license under the salesperson's new employer.

(2) An application for a salesperson's license shall be submitted by the employing residential builder or residential maintenance and alteration contractor.

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980 ;-- Am. 1988, Act 463, Eff. Sept. 1, 1989

339.2408 Repealed. 1988, Act 463, Eff. Sept. 1, 1989.

Compiler's Notes: The repealed section pertained to disposition of license fee after failure to pass examination.

339.2409 Reporting certain changes.

Sec. 2409. A licensee shall report to the department a change of name or address or a change of members or addresses of the partnership, association, or corporation holding a license under this article within 30 days after the change occurs.

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980 ;-- Am. 1980, Act 496, Eff. Mar. 31, 1981 ;-- Am. 1982, Act 410, Imd. Eff. Dec. 28, 1982 ;-- Am. 1988, Act 463, Eff. Sept. 1, 1989 ;-- Am. 2010, Act 151, Imd. Eff. Aug. 23, 2010

339.2410 Repeating examination not required when making application for additional license.

Sec. 2410. A person or qualifying officer for a corporation or member of a partnership or other business association who currently holds a residential builder or maintenance and alteration contractor license shall not be required to repeat an examination for that license when making application for an additional license. However, a maintenance and alteration contractor who currently holds a license and makes application for a residential builders' license shall be required to take an examination for that license.

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980

339.2411 Complaint; conduct subject to penalty; violations; review; administrative proceedings regarding workmanship; order of default; "verified complaint" defined.

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

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

(i) Completion.

(ii) Occupancy.

(iii) Purchase.

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

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

(ii) Closing.

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

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

(b) Diversion of funds or property received for prosecution or completion of a specific construction project or operation, or for a

specified purpose in the prosecution or completion of a construction project or operation, and the funds or property application or use for any other construction project or operation, obligation, or purposes.

(c) Failure to account for or remit money coming into the person's possession that belongs to others.

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

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

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

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

(h) Failure to deliver to the purchaser the entire agreement of the parties including any finance or other charge arising out of or incidental to the agreement if the agreement involves repair, alteration, or addition to, subtraction from, improvement of, wrecking of, or demolition of a residential structure or combination of residential and commercial structure, building of a garage, laying of concrete on residential property, or manufacture, assembly, construction, sale, or distribution of a residential or combination residential and commercial structure that is prefabricated, preassembled, precut, packaged, or shell housing.

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

(j) Aiding or abetting an unlicensed person to evade this article, or knowingly combining or conspiring with, or acting as agent, partner, or associate for an unlicensed person, allowing one's license to be used by an unlicensed person, or acting as or being an ostensible licensed residential builder or licensed residential maintenance and alteration contractor for an undisclosed person who does or shall control or direct, or who may have the right to control or direct, directly or indirectly, the operations of a licensee.

(k) Acceptance of a commission, bonus, or other valuable consideration by a salesperson for the sale of goods or the performance

of service specified in the article from a person other than the residential builder or residential maintenance and alteration contractor under whom the person is licensed.

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

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

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

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

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

(b) The department shall presume the innocence of the licensee throughout the proceeding until the administrative law hearing examiner finds otherwise in a determination of findings of fact and conclusions of law under article 5. The licensee has the burden of refuting evidence submitted by a person during the administrative hearing. The licensee also has the burden of proof regarding the reason deficiencies were not corrected.

(c) Upon receipt of a building inspection report issued to the department by a state or local building enforcement official authorized to do so under the Stille-DeRossett-Hale single state construction code act, 1972 PA 230, MCL 125.1501 to 125.1531, which report verifies or confirms the substance of the complaint, the department shall send by certified mail a copy of the verified complaint to the licensee. If the department does not send a copy of the verified complaint within 30 days after receipt of the building inspection report, the department shall not assess a fine against the licensee under article 6, but the department may pursue restitution, license suspension, or other remedies provided under this act.

(d) A licensee may contractually provide for an alternative dispute resolution procedure to resolve complaints filed with the department. The procedure shall be conducted by a neutral third party for determining the rights and responsibilities of the parties and shall be initiated by the licensee, who shall provide notice of the initiation of the procedure to the

complainant by certified mail not less than 30 days before the commencement of that procedure. The procedure shall be conducted at a location mutually agreed to by the parties.

(e) The department shall not initiate a proceeding against a licensee under this subsection if the licensee has contractually provided for an alternative dispute resolution procedure that has not been utilized and completed unless it is determined that the licensee has not complied with a decision or order issued as a result of that alternative dispute resolution procedure, that alternative dispute resolution procedure was not fully completed within 90 days after the filing of the complaint with the department, or an alternative dispute resolution procedure meeting the requirements of subdivision (d) is not available to the complainant.

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

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

(5) If the licensee or respondent fails to appear or participate in or defend any action, the board shall issue an order granting by default the relief requested, based upon proofs submitted to and findings made by the hearing examiner after a contested case.

(6) As used in this section, "verified complaint" means a complaint in which all or a portion of the allegations have been confirmed by an affidavit of the state or local building official.

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980 ;-- Am. 1980, Act 496, Eff. Mar. 31, 1981 ;-- Am. 1982, Act 410, Imd. Eff. Dec. 28, 1982 ;-- Am. 1990, Act 6, Imd. Eff. Feb. 12, 1990 ;-- Am. 1991, Act 166, Imd. Eff. Dec. 19, 1991 ;-- Am. 2001, Act 113, Imd. Eff. July 31, 2001 ;-- Am. 2007, Act 155, Eff. June 1, 2008 ;-- Am. 2007, Act 157, Eff. June 1, 2008 ;-- Am. 2010, Act 151, Imd. Eff. Aug. 23, 2010

339.2411a Final order of board; posting on website.

Sec. 2411a. (1) The department shall post on its website any final order of the board and the date it was issued. The posting shall occur within 30 days after the final order is issued.

(2) The department shall annually post on its website the number of final orders of the board.

History: Add. 2007, Act 157, Eff. June 1, 2008

339.2412 Action for collection of compensation for performance of act or contract; alleging and proving licensure; failure to use alternative dispute resolution; other legal action; civil violation.

Sec. 2412. (1) A person or qualifying officer for a corporation or member of a residential builder or residential maintenance and alteration contractor shall not bring or maintain an action in a court of this state for the collection of compensation for the performance of an act or contract for which a license is required by this article without alleging and proving that the person was licensed under this article during the performance of the act or contract.

(2) Failure of the person bringing a complaint against a licensee to utilize a contractually provided alternative dispute resolution procedure shall be an affirmative defense to an action brought in a court of this state against a licensee under this article.

(3) A person or qualifying officer for a corporation or a member of a residential builder or residential maintenance and alteration contractor shall not impose or take any legal or other action to impose a lien on real property unless that person was licensed under this article during the performance of the act or contract.

(4) A prosecuting attorney and the attorney general may bring an action for a civil violation in a court of competent jurisdiction against a person not licensed under this article that has violated section 601(1) or (2). The court shall assess a civil fine, to be paid to the prosecuting attorney or the attorney general bringing the action, of not less than \$5,000.00 and not more than \$25,000.00, aside from any civil damages or restitution.

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980 ;-- Am. 1980, Act 496, Eff. Mar. 31, 1981 ;-- Am. 2001, Act 113, Imd. Eff. July 31, 2001 ;-- Am. 2007, Act 155, Eff. June 1, 2008

DEPARTMENT OF LABOR AND ECONOMIC GROWTH

**ADMINISTRATIVE RULES
RESIDENTIAL BUILDERS AND
MAINTENANCE AND ALTERATION CONTRACTORS**

(By authority conferred on the director of the department of labor and economic growth by section 308 of 1980 Act 299, MCL 339.308, and Executive Reorganization Orders No. 1996-2, MCL 445.2001 and 2003-1, MCL 445.2011)

PART 1. GENERAL

R 338.1511 Definitions.

Rule 11. As used in these rules:

(1) "Act" means 1980 PA 299, MCL 339.101, known as the occupational code.

(b) "Board" means the state residential builders and maintenance and alteration contractors board.

(c) "Builder" means a residential builder as defined by the act.

(d) "Contractor" means a residential maintenance and alteration contractor as defined by the act.

(e) "Department" means the department of labor and economic growth.

(f) "Director" means the director of labor and economic growth.

History: 1979 AC; 2006 AACCS.

R 338.1512 Rescinded.

History: 1979 AC; 1998-2000 AACCS.

R 338.1519 Rescission.

Rule 19. R 451.501 to R 451.538 of the Michigan Administrative Code, appearing on pages 4594 to 4597 of the 1979 Michigan Administrative Code, are rescinded.

History: 1990 AACCS.

PART 2. LICENSES AND BONDS

R 338.1521 Applications for licenses

Rule 21. (1) An application for a license shall include the residence

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address of all individuals, partners, officers and/or members, as requested by the department, and the address of the principal place of business in Michigan. A nonresident applicant for licensure shall maintain a place of business in Michigan, and the application shall include the address of the Michigan place of business and the address of the applicant's principal place of business outside of Michigan. A nonresident applicant shall file a consent to service with the application. A foreign corporation or a foreign limited liability company shall submit evidence of qualification to do business in Michigan.

(2) Applicants shall furnish documentation as determined acceptable by the department to verify the applicant's current business structure. Documents include, but are not limited to, the following:

(a) For an application for an individual license using an assumed name, a copy of the current filed assumed name certificate issued by the county clerk.

(b) For an application for a partnership license, a copy of the current filed certificate of co-partnership issued by the county clerk.

(c) For an application for a limited liability company, a filed copy of the filed articles of organization, certificate of assumed name, if applicable, and current certificate of good standing.

(d) For an application for a corporation license a filed copy of the articles of incorporation, certificate of assumed name, if applicable, and current certificate of good standing.

(e) Any other documentation requested by the department to determine the applicant's business structure and current authorization to do business in Michigan.

(3) A foreign company shall submit evidence of current authority to do business in Michigan.

(4) If an applicant is a Michigan corporation, but is a wholly owned subsidiary of a foreign corporation not admitted to do business in Michigan, then the parent company shall file an affidavit of assumption of liability and a consent to jurisdiction. The director shall be the proper party to receive service of process and shall immediately forward a copy of the process to the corporation's last known address.

(5) At the request of the department, an applicant shall submit a credit report furnished by a credit reporting service which is acceptable to the department. The applicant may be required to direct the credit reporting service to send the credit report directly to the department, which shall determine the adequacy or sufficiency of the report.

(6) At the request of the department or board, an applicant shall submit within 60 days of a written request, either of the following:

(a) A cash or surety bond acceptable to the department.

(b) A financial statement showing the current financial condition of the applicant, for a builder's or contractor's license, in accordance with

established accounting practices which shall be completed in detail, properly signed, and submitted.

(7) If an applicant fails to complete all application requirements, including information requested by the department, and any required examination, within 1 year from date of first making application to the department, then the application shall be void and the application processing fee shall be forfeited.

(8) A contractor who desires to add additional trade or trades to those indicated on the contractor's license shall do all of the following:

(a) Pass an examination for the additional trade or trades.

(b) Submit an application form to add the trade or trades to the existing license.

(c) Furnish a current credit report upon request by the department.

(d) Upon receipt of the new license, the licensee shall return the old identification card and wall license.

(9) A passing score on an examination, or on a portion of an examination if the examination is given in separate parts, shall be valid for 1 year from the date the examination or portion of the examination was passed.

History: 1954 ACS 49, Eff. Feb. 14, 1967; 1979 AC; 2006 AACS.

R 338.1521a Requirements for examination.

Rule 21a. As a condition for approval to take the residential builder or maintenance and alteration contractor examination, applicants for licensure shall meet all other licensing requirements, including successful completion of the prelicensure education requirements.

History: 2008 AACS.

R 338.1522 Rescinded.

History: 1979 AC; 1990 AACS.

R 338.1523 Rescinded.

History: 1979 AC; 1990 AACS.

R 338.1523a Rescinded.

History: 1979 AC; 1998-2000 AACS.

R 338.1524 Licenses; issuance or denial.

Rule 24. (1) The department shall issue a license including an identification card after an applicant has successfully completed all requirements

(2) The physical office location shall be printed on the license.

(3) The department may deny an application for a license for good and sufficient cause. The notice of denial shall advise the applicant of reasons for denial and of his or her right to submit a petition for review of the denial.

History: 1979 AC; 2006 AACCS.

R 338.1525 Salesperson's license; identification card; discharge; termination or transfer of salesperson; temporary license for salesperson or salesperson license applicant.

Rule 25. (1) A salesperson shall be licensed under a person holding a license as a builder or contractor, but shall not be licensed under more than 1 builder or contractor during the same period of time.

(2) An application for a salesperson license shall be submitted by the employing builder or contractor. An applicant for a salesperson license who is currently licensed as a residential builder or maintenance and alteration contractor, or has been licensed as a residential builder or maintenance and alteration contractor within the past 3 years, shall not be required to take the salesperson examination.

(3) Upon approval, the department shall issue a license and an identification card containing the name and business address of the salesperson. The card shall be carried by the salesperson and shall be shown as identification to every prospective customer. A salesperson shall not commence work until the builder or contractor under whom the salesperson is licensed receives the salesperson's license and identification card from the department.

(4) When a salesperson licensed under this act is discharged or otherwise terminates employment with the builder or contractor under whom he or she is licensed, the builder or contractor shall return the salesperson's license, and the salesperson shall return the identification card to the department within 5 days from the date of discharge or termination.

(5) When a licensed salesperson transfers employment from the builder or contractor under which he or she is presently licensed to a new employer, the new employer shall submit to the department an application for transfer of the salesperson's license to the new employer.

History: 1979 AC; 2006 AACCS.

R 338.1526 Termination of licenses.

Rule 26. (1) If a bond is cancelled, a license predicated upon such a bond shall be suspended effective upon the date of cancellation, if the licensee has not replaced the surety or cash bond.

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(2) Upon final order of license suspension or revocation, the licensee shall surrender the license to the department within 10 days of the date of suspension or revocation. If the license of a builder or contractor is suspended or revoked, the licenses of salespersons issued under the license of that builder or contractor shall lapse, and licenses shall be surrendered at the same time. Any salesperson may have his or her license transferred to another licensed builder or contractor before the expiration date of the salesperson's license.

(3) If the qualifying officer of a corporation, association, partnership, limited liability company or organization consisting of more than 1 person is a party to events that led to suspension or revocation, any license issued to any other organization where the individual is the qualifying officer shall be suspended or revoked and any license issued to the qualifying officer in an individual capacity shall be suspended or revoked.

(4) A qualifying officer of a company shall notify the department in writing within 10 days of ceasing to be the qualifying officer, and shall return the wall license and pocket card of the company.

(5) When a qualifying officer ceases to act as the qualifying officer, and the company intends to continue to operate, the remaining officer, owner, member or partner of the company shall submit a written request to the department to allow the company time to obtain a new qualifying officer.

History: 1979 AC; 2006 AACs.

PART 3. OPERATIONS OF LICENSEES

R 338.1531 Place of business.

Rule 31. (1) A builder or contractor shall maintain a place of business in this state, which is an actual, established physical location from which the builder or contractor conducts business and where applicable books and records are maintained. A post office box, secretarial service, mailbox rental, receiving service, resident agent address, or telephone answering service alone is not sufficient.

(2) A builder or contractor shall display the license and the licenses of all salespersons in a conspicuous position in the builder's or contractor's place of business.

History: 1979 AC; 2006 AACs.

R 338.1532 Advertising.

Rule 32. (1) Advertising shall not misrepresent material facts.

(2) A licensee shall include the name, license number, and actual business address, as shown on the license, in all advertising. The use of a telephone or post office box number alone is prohibited. When sales of

new homes are being made by a licensed builder, through a licensed real estate broker, advertisements may indicate the broker's name or both the names of the builder and broker.

(3) A licensee shall not solicit any contract for home improvements by a promise to the purchaser or the prospective purchaser of a bonus, whether of merchandise or cash, which is contingent upon the purchaser's or prospective purchaser's using or displaying a dwelling to a third person or upon the licensee's obtaining an order or orders for merchandise or service from a third person.

(4) A licensee making or attempting to make sales through the use of displays, models or model installations, shall accurately portray the goods and services being offered so as to not mislead or deceive the public.

History: 1979 AC; 2006 AACS.

R 338.1533 Purchase and sales agreements.

Rule 33. (1) All agreements and changes to the agreements between a builder, or contractor, and the customer shall be in writing and signed by the parties. Copies of all agreements and changes to agreements shall be in writing, and provided to the customer.

(2) The builder or contractor shall make certain that the written agreements clearly state the terms of the transaction, including specifications, and when construction is involved, both plans and specifications, including cost, the type and amount of work to be done, and the type and quality of materials to be used.

(3) If a purchase or sales agreement is for a new structure which is either substantially completed or in substantial conformance with a model, plans and specifications need not be furnished if the structure is specifically identified or related to the model and any changes, additions to or subtractions from the model are specifically agreed to and noted in writing.

History: 1979 AC; 2006 AACS.

R 338.1534 Books and records.

Rule 34. A builder or contractor shall keep and maintain a complete, accurate set of books and records which disclose the licensee's current financial condition. The books and records shall be open to inspection by the department or any person duly authorized by it for good and sufficient cause during regular business hours after reasonable notice and for stated reasons.

History: 1979 AC; 2006 AACS.

R 338.1535 Financial statements.

Rule 35. Upon notice by the department, a licensee shall submit within 30 days sworn financial statement showing the licensee's current financial status. The notice for a financial statement may be based upon an unsatisfied judgment, a lien filed against the licensee or the department's reasonable belief that the licensee does not have the financial resources to meet contractual obligations. The department's notice shall be in writing and may be served personally on the licensee or by certified mail sent to the licensee's last known business address on file with the department. A request for an extension of time shall be in writing and may be granted for good and sufficient cause.

History: 1979 AC; 2006 AACs.

R 338.1536 Brokerage.

Rule 36. Acceptance or performance of a contract procured by a salesperson not licensed under a builder or contractor, or acceptance or performance of a contract, other than the sale of real property, procured by anyone not licensed under the act, is prohibited.

History: 1979 AC; 2006 AACs.

PART 5. COMPLAINTS AND HEARINGS

R 338.1551 Complaints; filing.

Rule 51. (1) A complaint shall be submitted in a form specified by the department.

(2) Upon receipt of a valid and written complaint, the department shall assign a complaint number, acknowledge the complaint and forward a copy of the complaint to the licensee. The licensee shall reply to the department within 15 days from receipt of the complaint and shall confirm or deny the justification of the complaint. A complaint acknowledged as justified shall be corrected within a reasonable time. If a complaint or a portion of the complaint is not acknowledged by the licensee as being justified, then the department shall notify the complainant of the area of disagreement.

(3) If the complaint or the information submitted by the complaining party is incomplete or disputed by the licensee, the department may require the complaining party to furnish additional information. The report shall indicate what steps, if any, have been taken by the complaining party before any other governmental agency or any other pertinent information regarding the subject matter of the complaint. Before the department takes any further action it shall obtain a report from local building officials or proper local authorities, and if the

department cannot obtain a report from the local building official or proper local authorities, then a person authorized by the department shall make an inspection to determine if the complaint is justified.

(4) If a complaint is justified by the local building inspector or by a person authorized by the department to make inspections, the builder or contractor shall correct the complaint within a reasonable time. Failure or refusal by the licensee to correct a structural matter that is materially deficient, dangerous, or hazardous to the owners shall be presumed to be dishonest or unfair dealing.

(5) Standards of construction shall be in accordance with the local building code, or in the absence of a code in accordance with the building code of the nearest political subdivision having a building code.

History: 1979 AC; 2006 AACS.

R 338.1552 Investigative conferences.

Rule 52. The department, after investigation, may request a licensee to appear at such investigative conference as is necessary to determine whether there is cause for complaint which would require a hearing on, or dismissal of, the complaint. Notice of a request for a conference shall be in writing and mailed to the address appearing on the license not less than 10 days before the conference and shall set the time and place of the conference. The notice shall be recorded in the file at the time of mailing. Persons interested shall have the right to appear and be represented by counsel. Failure by an individual licensee or qualifying officer of a licensee to appear for the conference may be a basis for suspension, revocation or denial of a license. The department may grant an adjournment if requested by any party to the complaint if the request is made at least 5 days prior to the date assigned for the conference.

History: 1979 AC.

R 338.1553 Disposition of complaints; resolution or settlement.

Rule 53. (1) A complaint may be resolved or settled prior to a conference and the complaint may be closed by the department. If a complaint is resolved or settled by agreement, the licensee shall notify the department in writing thereof. The department shall then notify the complainant that it has received information that the complaint has been resolved or settled. If the complainant takes issue with the licensee's contention the department may investigate further. Resolution or settlement of a complaint shall not be construed as a waiver by the department of its statutory right to take disciplinary action.

(2) The department may dismiss a complaint on its own motion if it determines that the complaint has been resolved, settled, is without merit, or that there is insufficient evidence of a violation of the act.

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(3) If the department, after investigation of a complaint, has reason to believe that a licensee is in violation of the statute or the rules, it may recommend to the director that a hearing be held to show cause why the license should not be suspended or revoked.

History: 1979 AC.

R 338.1554 Rescinded.

History: 1979 AC; 1990 AACS.

R 338.1555 Preservation of contract rights.

Rule 55. The affirmative defense for failure to utilize a contractually provided alternative dispute resolution procedure authorized in 2001 PA 113, MCL 339.2412(2) shall only be available in actions brought under a contract entered into and executed after July 31, 2001.

History: 2002 AACS.

PART 6. EDUCATION

R 338.1560 Instructor qualifications.

Rule 60. An instructor of prelicensure or continuing competency courses shall possess either of the following qualifications:

(a) Be qualified under the requirements of MCL 339.2404b(4).

(b) Be qualified by experience, education, or both, to supervise and instruct a prelicensure or continuing competency course required under MCL 339.2404b, including at least 1 of the following:

(i) Properly licensed, certified or approved instructor at a high school, intermediate school district, community college, university, the bureau of construction codes, the Michigan occupational safety and health administration, other government agency, or a proprietary school licensed by the department.

(ii) Currently licensed as a residential builder or maintenance and alteration contractor with at least 3 years of experience in the subject matter being taught.

(iii) Possess equivalent qualifications or relevant expertise in the subject matter being taught.

History: 2008 AACS; 2011 MR 3, Eff. Feb, 16, 2011

R 338.1562 Prelicensure; school, institution, sponsor, or instructor responsibilities.

Rule 62. (1) The school, institution, sponsor, or instructor, as determined appropriate by the department, shall do all of the following:

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(a) Submit to the department the qualifications of each instructor to be used in an approved prelicensure course not fewer than 60 days before the instructor is scheduled to begin instruction. The department may waive this deadline at its discretion.

(b) Issue a certificate of completion to an applicant who successfully completes an approved residential builder or residential maintenance and alteration course. The certificate shall include all of the following information:

- (i) Sponsor name.
 - (ii) Name of the participant.
 - (iii) Date course was completed.
 - (iv) Course name, course approval number, and number of hours approved for each area of competency listed in MCL 339.2404b(1) when applicable.
 - (v) Signature of course instructor.
- (c) Retain all course attendance records for a period of 5 years.
- (2) Instructors shall be responsible for all of the following:
- (a) Compliance with all laws and rules relating to prelicensure and continuing competency courses under the act.
 - (b) Providing students with current and accurate information.
 - (c) Maintaining an environment conducive to learning.
 - (d) Assuring and certifying attendance of students enrolled in courses.
 - (e) Providing assistance to students and responding to questions relating to course materials.

History: 2008 AACs; 2011 MR 3, Eff. Feb. 16, 2011

R 338.1564. Continuing competency; activities; courses; alternate activities; proof of compliance.

Rule 64. (1) Activities demonstrating continuing competency as required under MCL 339.2404b, such as courses and alternate activities, may include any of the following:

- (a) Courses referenced in MCL 339.2404b(4).
- (b) Successful completion of a college course.
- (c) Successful completion of a comprehensive test being administered by the department or by a third party under contract with the department to offer prelicensure examinations.
- (d) Participation in a school-sponsored mentoring program.
- (e) Presenting or attending a seminar, in-house course, workshop, or technical presentation made at a meeting, convention, or conference by a trade association, research institute, risk management entity, manufacturer, supplier, governmental agency, consulting agency, or other entity.

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(f) Publication of an article in a trade journal or a regional magazine as an expert in the field.

(g) Active participation in an occupational or technical society, state advisory or review committee.

(h) Serving as a member or attending a state residential builders' and maintenance and alteration contractors' board meeting.

(i) Serving as a member or attending a state construction code commission meeting.

(j) Participating in a company sponsored seminar or training to enhance professional development.

(k) Participating in a code hearing conducted by the international code council or bureau of construction codes.

(l) Participating in research conducted in conjunction with a college or university, trade association, or manufacturer.

(2) The subject matter of courses and alternate activities shall meet the minimum requirements of MCL 339.2404b(2), and any additional requirements shall be relevant to the licensed occupation and may include any of the following:

(a) Prelicensure course areas listed in MCL 339.2404b(1).

(b) The residential maintenance and alteration contractor crafts and trades listed in MCL 339.2404(3).

(c) Accounting and safekeeping for monies received from a customer, including requirements of 1931 PA 259, MCL 570.151, regarding building contract fund.

(d) Accounting, finance, and taxes.

(e) Personnel management.

(f) Communication and customer service.

(g) Environmental or land use analysis.

(h) Life safety.

(i) "Green" building.

(j) Zoning and governance policies and procedures.

(k) Mold, lead, asbestos, or other hazardous material mitigation.

(3) Under MCL 339.2404(6), the licensee shall maintain documentation that is sufficient to verify participation in a course or activity, and time spent in meeting the continuing competency requirements under the act.

History: 2011 MR 3, Eff. Feb. 16, 2011

R 338.1566 Distance learning; prelicensure; continuing competency.

Rule 66. (1) A distance learning course shall contain all of the following:

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(a) A course where instructor and student may be apart and instruction takes place through on-line or electronic media.

(b) A course which includes, but is not limited to, instruction presented through an interactive classroom, job site, computer conferencing, or an interactive computer system and which fulfills the requirements in section 2404b of the act.

(c) Individual modules of interactive instruction which provide access to an instructor, offered through on-line or electronic media.

(d) A list of at least 1 learning objective for each module of instruction.

The learning objective or objectives shall ensure the entire content of the course is understood.

(e) A structured learning method that enables the student to attain each learning objective.

(f) A method of assessment of the student's performance during each module of instruction.

(g) A remediation of any student who is deficient in the assessment to repeat the module until the student understands the course content material.

(h) An acceptable method of ensuring that the student achieves the approved hours in the course.

(i) An acceptable method of remedying hardware and software failures.

(j) Documentation demonstrating successful completion of a course.

(2) A prelicensure course may be earned through distance learning.

(3) A continuing competency course or an alternate activity may be earned through distance learning.

History: 2011 MR 3, Eff. Feb. 16, 2011

DEPARTMENT OF CONSUMER AND INDUSTRY SERVICES

OCCUPATIONAL BOARDS

(By authority conferred on the director of the department of labor and economic growth by section 205 of 1980 PA 299, as amended, and Executive Reorganization Order No.1996-2, MCL 339.205 and 445.2001.)

PART 1. LICENSE AND REGISTRATION RENEWALS

R 339.1001 Definitions.

(1) As used in these rules:

(a) "Act" means 1980 PA 299 as amended, MCL 339.101 et seq, and known as the occupational code.

(b) "State license fee act" means 1979 PA 152 as amended, MCL 338.2201 et seq.

(2) The terms defined in article 1 of the act have the same meanings when used in these rules.

History: 1981 AACCS; 1998-2000 AACCS.

R 339.1002 Certain occupations; license and license renewal expiration.

Rule 2. (1) License and license renewals that are issued for the collection practices board, athletic board of control, private employment board, real estate board, cosmetology establishments and schools, and mortuary science trainees shall expire annually on the following dates and shall be renewed every year thereafter:

Collection practices.....	6/30.
Athletic board of control.....	8/31.
Private employment.....	12/31.
Real estate.....	10/31.
Cosmetology establishments and schools.....	8/31.
Mortuary science trainees.....	1/31.

(2) Licenses and license renewals that are issued for barber apprentices and student instructors shall be valid for a period of 1 year from the date of issue and may be renewed on the same date thereafter.

History: 1981 AACCS; 1993 AACCS; 1998-2000 AACCS.

R 339.1003 Certain occupations, license or registration renewals; expiration.

Rule 3. (1) Except as provided in R 339.1002 and subrule (2) of this rule, licenses or registrations and license or registration renewals that are issued for foresters, landscape architects, cosmetology, barbers,

ADMINISTRATIVE RULES, OCCUPATIONAL BOARDS

community planners, mortuary science, nursing home administrators, architects, professional surveyors, professional engineers, hearing aid dealers, accountancy, real estate appraisers, and residential builders and maintenance and alteration contractors shall expire biennially on the following dates and shall be renewed every 2 years thereafter:

Foresters.....	5/31.
Residential builders and maintenance and alteration contractors.....	5/31.
Landscape architects.....	7/31.
Real estate appraisers.....	7/31.
Cosmetology.....	8/31.
Barbers.....	9/30.
Community planners.....	10/31.
Mortuary science.....	10/31.
Nursing home administrators.....	10/31.
Architects.....	10/31.
Professional surveyors.....	10/31.
Professional engineers.....	10/31.
Hearing aid dealers.....	11/30.
Accountancy.....	12/31.

(2) Licenses and license renewals that are issued for barber students shall be valid for a period of 2 years from the date of issue and may be renewed on the same date thereafter.

(3) A person, firm, or corporation that has been issued a license or registration pursuant to the provisions of article 7 of the act shall renew the license or registration on or before July 31 and shall renew it every 2 years thereafter.

(4) A license or registration that has a limitation may be renewed for a term that is less than the biennial period.

(5) For licenses that are to be renewed biennially, the department may initially renew half of the licenses for 1 year and half of the licenses for 2 years to provide equal numbers of renewals in each fiscal year.

History: 1981 AACs; 1989 AACs; 1998-2000 AACs.

R 339.1004 Biennial renewal fees.

Rule 4. (1) Biennial renewal fees shall be double the license or registration renewal fees that are prescribed in the state license fee act.

(2) The department shall prorate fees for initial licenses and registrations issued during a biennial period.

History: 1981 AACs; 1993 AACs.

R 339.1005 Rescinded.

History: 1981 AACs; 1993 AACs.

DEPARTMENT OF LABOR AND ECONOMIC GROWTH

OCCUPATIONAL BOARDS

(By authority conferred on the director of the department of labor and economic growth by section 308 of 1980 Act 299, MCL 339.308, and Executive Reorganization Orders No. 1996-2, MCL 445.2001 and No. 2003-1, MCL 445.2011)

PART 7. DISCIPLINARY PROCEEDINGS

R 339.1701 Definitions.

Rule 701. (1) As used in these rules:

(a) "Adjournment" means an adjournment, stay, continuation, or delay of a contested case hearing at any time after the issuance of a formal complaint.

(b) "Administrative procedures act" means 1969 PA 306, MCL 24.201, et seq.

(c) "Compliance conference" means the conference provided for in accordance with section 92 of the administrative procedures act, MCL 24.292.

(d) "Days" means calendar days.

(e) "Department" means the department of labor and economic growth.

(f) "Informal conference" means the conference defined in section 504 of the occupational code, MCL 339.504, but does not mean a compliance conference provided in accordance with section 92(1) of the administrative procedures act, MCL 24.292.

(g) "Licensing law" means a law under which the department issues a license, registration, or other authorization to practice an occupation or profession or render other services, and includes the occupational code.

(h) "Occupational code" means 1980 PA 299, as amended, MCL 339.101 et seq.

(i) "Party" means a person, agency, or designated agent of the department named, admitted, or properly seeking and entitled of right to be admitted, as a party in a contested case.

(j) "Presiding officer" means an administrative law judge who is employed by the state office of administrative hearings and rules (SOAHR) who is designated by SOAHR to conduct a contested case hearing.

(k) "Respondent" means a person against whom a formal complaint has been issued.

ADMINISTRATIVE RULES, OCCUPATIONAL BOARDS

(l) "Lapsed" license or registration means a license or registration a person did not renew, as defined in section 411 of the occupational code, MCL 339.411.

(m) "Expired" license or registration means a license or registration a person failed to renew on or before the expiration date.

(n) "Revoked" license or registration means that a person's authorization or privilege to engage in an occupation or profession regulated under the occupational code is terminated and shall not be restored, reinstated, or renewed, except that an application for a new license or reinstatement of a license may be considered by the department and board as permitted under the occupational code.

(o) "Suspended" license or registration means that a person's authorization or privilege to engage in an occupation or profession regulated under the occupational code is temporarily withdrawn and shall not be restored, reinstated, or renewed until a term, condition, or requirement imposed upon the person by the department or board has been met or until a specified period of time has elapsed.

(p) "Surrendered" license or registration means a license or registration that a person voluntarily returns to the department, or a license or registration that was returned to the department before, during, or after an investigation as defined in article 5 of the occupational code, MCL 339.501 to MCL 339.559.

(2) Except as provided in subrule (1) of this rule, a term defined in the administrative procedures act or the occupational code shall have the same meaning when used in these rules.

History: 1990 AACCS; 1997 AACCS; 2006 AACCS.

R 339.1703 Applicability of law and rules.

Rule 703. Compliance conferences, the processing of complaints, contested case hearings, and other related proceedings shall be conducted in accordance with the provisions of the licensing law, these rules, rules promulgated by a board or the department governing specific circumstances unique to the occupation, profession, facility, or service being regulated, and the administrative procedures act.

History: 1990 AACCS.

R 339.1705 Issuance of license or change in licensure status not a bar to discipline.

Rule 705. (1) The board or department may take disciplinary action based upon conduct which occurred before the issuance of a license without regard to whether the department or a board had notice of the alleged grounds for discipline at the time the license was issued.

(2) The expiration, surrender, lapse, suspension, or revocation of a

license or registration does not terminate the department's authority to proceed against a person under article 5 of the occupational code or a board's authority under articles 5 and 6 of the occupational code to impose sanctions on a person whose license has expired, lapsed, or been surrendered, suspended, or revoked for the following, whichever occurs later:

(a) For a period of 7 years after the license or registration status change occurs.

(b) For a period of 3 years after all complaints against the license or registration filed with the department have been closed.

(c) Until the licensee or registrant, qualifying officer, or manager of a licensee is in full compliance with all final orders issued to the licensee or registrant, qualifying officer or manager of a licensee.

(3) A "person" has the same meaning as defined in section 105 of the occupational code, MCL 339.105(5).

History: 1990 AACCS; 2006 AACCS.

R 339.1706 Reporting changes.

Rule 706 (1) A licensee or registrant, or qualifying officer, or manager of a licensee shall report to the department a change of name or address within 30 days after the change occurs.

(2) If a license or registration has expired, is surrendered, lapsed, suspended, or revoked, then the licensee or registrant, qualifying officer, or manager of a licensee shall report a change of name or address to the department within 30 days until 1 of the following, whichever occurs later:

(a) For a period of 7 years after the license or registration status change occurs.

(b) For a period of 3 years after all complaints against the license or registration filed with the department have been closed.

(c) Until the licensee or registrant, qualifying officer, or manager of a licensee is in full compliance with all final orders issued to the licensee or registrant, qualifying officer, or manager of a licensee.

History: 2006 AACCS.

R 339.1707 Rescinded.

History: 1990 AACCS; 1997 AACCS.

R 339.1709 Determination of compliance with, or violation of, licensing law, rule, or order.

Rule 709. In determining a violation of, or compliance with, the licensing law, a rule promulgated pursuant to the licensing law, or an order issued pursuant to the licensing law, the determination shall be made on the basis of compliance or violation at the time of the alleged violation.

History: 1990 AACCS.

R 339.1711 Rescinded.

History: 1990 AACS; 1997 AACS.

R 339.1713 Time computations.

Rule 713. In computing a period of days prescribed or allowed by these rules, by order of a board or the department or the director, or by any applicable statute, the first day is excluded and the last day is included. If the last day of any period or a fixed or final day is a Saturday, Sunday, or legal holiday, the period or day is extended to include the next day which is not a Saturday, Sunday, or legal holiday.

History: 1990 AACS.

R 339.1715 Rescinded.

History: 1990 AACS; 1997 AACS.

R 339.1721 Complaints; consolidation; withdrawal.

Rule 721. (1) The department may consolidate multiple complaints against a single respondent in 1 formal complaint.

(2) The department may withdraw a formal complaint at any time.

History: 1990 AACS.

R 339.1725 Rescinded.

History: 1990 AACS; 1997 AACS.

R 339.1726 Settlement of complaints.

Rule 726. (1) Parties may confer informally at any time to attempt to settle a complaint.

(2) A settlement shall be in the form of a proposed stipulation signed by all parties. The proposed stipulation shall be transmitted to the appropriate board for acceptance. If the board accepts the stipulation, a final order shall be issued. If the board does not accept the stipulation, the matter shall proceed to a contested case hearing.

History: 1990 AACS.

R 339.1727 Rescinded.

History: 1990 AACS; 1997 AACS.

R 339.1728 Rescinded.

History: 1990 MR 7, Eff. Aug. 1, 1990; rescinded 1997 MR 11, Eff. Dec. 4, 1997.

R 339.1731 Written statement in place of compliance conference; conduct and adjournment of compliance conference; failure to demonstrate compliance.

Rule 731. (1) If a respondent selects a compliance conference, the respondent may submit a written statement with a request that the statement be considered in place of appearing for a compliance conference.

(2) A compliance conference shall be conducted informally by the department and shall not be conducted as an evidentiary hearing.

(3) A compliance conference may be adjourned by the department for good cause shown.

(4) If the department determines that the respondent has not demonstrated compliance, or if the respondent has waived his or her opportunity to show compliance, the matter shall proceed to a contested case hearing.

History: 1990 AACs.

R 339.1741 Answers and amendments to formal complaint.

Rule 741. (1) A party may file an answer to a formal complaint.

(2) A formal complaint may be amended. If a formal complaint is amended, a presiding officer may find that the charges have been sufficiently altered as to warrant granting a respondent additional time to prepare a defense.

History: 1990 AACs; 1997 AACs.

R 339.1743 Consolidation of cases; procedure.

Rule 743. (1) Upon the request of a party or upon the presiding officer's own motion, the presiding officer may order a joint hearing of pending cases that involve substantial and controlling common questions of law or fact involving 1 or more respondents and 1 or more boards or other agencies of government.

(2) A party's request for the consolidation of cases shall be filed not more than 15 days after service of the notice of hearing. Copies of the request shall be served upon each party to the cases that would be consolidated. Not more than 10 days after service of the request for consolidation, the other parties may file a response. Unless a request for oral argument is made and granted, a determination on consolidation shall be made solely upon the written pleadings.

(3) Cases consolidated under this rule shall be joined for hearing to address the common questions of law and fact and to receive commonly relevant testimony and other evidence. Testimony or evidence that does not pertain to all of the consolidated cases may be received with an appropriate limitation on its use.

History: 1990 AACs; 1997 AACs.

R 339.1745 Appearance by counsel and service.

Rule 745. (1) The department may be represented by an assistant attorney general or by a duly authorized agent. A respondent may be represented by an attorney or may appear on his or her own behalf.

(2) After a notice of hearing has been served, an attorney or agent who represents the department or an attorney representing the respondent shall file a written appearance indicating that he or she represents a party. Thereafter, service made upon an attorney or agent of record who has filed an appearance shall be deemed service upon a party. If a written appearance is not filed, then service shall be made upon the party.

History: 1990 AACS; 1997 AACS.

R 339.1746 Rescinded.

History: 1990 AACS; 1997 AACS.

R 339.1747 Prehearing conference.

Rule 747. (1) After a notice of hearing has been served and upon the request of a party, or upon his or her own authority, a presiding officer may order the parties to conduct a prehearing conference for the purpose of facilitating the disposition of a contested case.

(2) At the prehearing conference, the parties shall attempt, through agreement, to do all of the following:

- (a) State and simplify the factual and legal issues to be litigated.
- (b) Admit matters of fact and the authenticity of documents and resolve other evidentiary matters to avoid unnecessary proof.
- (c) Exchange lists of witnesses.
- (d) Estimate the time required for the hearing.
- (e) Resolve other matters that may aid in the disposition of the case.

(3) The presiding officer shall participate in the prehearing conference unless the order scheduling the conference indicates otherwise. The parties may request rulings pertaining to matters of evidence, law, and procedure to the extent that such rulings may be made without the presentation of testimony, except that testimony may be presented upon agreement by the parties. A presiding officer's rulings at a prehearing conference shall govern the proceedings to the same extent as rulings made during a hearing. A record of requests for rulings, the response by the parties to requests for rulings, and the decisions thereon shall be made and shall become a part of the hearing record.

(4) The parties to a contested case are encouraged to voluntarily confer for the purpose of facilitating the disposition of the case.

(5) Upon the request of a party, or upon his or her own authority, a presiding officer may order a hearing reporter to attend and record a prehearing conference.

History: 1990 AACS.

R 339.1751 Official notice of facts; notice; objection.

Rule 751. (1) The presiding officer may take official notice of facts pursuant to section 77 of the administrative procedures act upon the request of a party or on his or her own authority in accordance with this rule.

(2) If a noticed fact pertains to a material, disputed issue which is being adjudicated, the party who requested that official notice be taken shall notify all parties of the request not less than 15 days before the hearing, unless good cause is shown for the failure to give notice. A party may file objections to the taking of official notice not less than 10 days before the hearing if the party disputes the fact or its materiality. The objections shall set forth the basis for the dispute. Upon expiration of the time for the filing of objections, the presiding officer shall rule on the request and give notice thereof to the parties.

(3) If the presiding officer takes official notice of a fact on his or her own initiative, the parties shall be so notified if the fact pertains to a material disputed issue which is being adjudicated. A party may file objections to the taking of official notice within 10 days after service of the notice thereof if the party disputes the fact or its materiality. The objection shall set forth the basis for the dispute. Upon the expiration of the time for the filing of objections, the presiding officer shall sustain or overrule the objections and give notice thereof to the parties, at which time the decision becomes final.

(4) If an objection to the taking of official notice is not filed in a timely manner, official notice may be taken.

History: 1990 AACS.

R 339.1753 Rescinded.

History: 1990 AACS; 1997 AACS.

R 339.1755 Format of hearing; opening statement; closing statement.

Rule 755. (1) The format of a hearing in a contested case shall be as set forth in this rule.

(2) The parties shall be provided an opportunity to make an opening statement before the presentation of proofs. Either party may decline the opportunity and the respondent may defer the opening statement until after the proofs of the complaining party are presented.

(3) At the conclusion of the presentation of proofs by the respondent, the complaining party may present rebuttal evidence.

(4) At the conclusion of the presentation of proofs, the parties may present closing arguments. The party who bears the burden of proof shall present the first argument and may present rebuttal argument. If so stipulated by the parties or required by the presiding officer, closing arguments may be submitted in writing if submitted within 10 days of the conclusion of the presentation of proofs.

(5) The parties may submit briefs within such time as may be agreed upon or as determined by the presiding officer.

History: 1990 AACCS.

R 339.1757 Hearing decorum.

Rule 757. At a hearing, the presiding officer shall insure decorum within the confines of legitimate advocacy and the assertion of opposing views. A person may be excluded or the hearing adjourned, when necessary, to avoid undue disruption of the proceedings.

History: 1990 AACCS.

R 339.1759 Evidence; objections; rulings.

Rule 759. (1) Evidence may be retained in the custody of a person who is designated by the presiding officer if the retention is deemed necessary to preserve the evidence without undue interference with other legal proceedings.

(2) Objections to the admissibility of evidence shall be made solely by the parties and on stated grounds. The proponent of the evidence shall be afforded an opportunity to respond.

(3) The presiding officer shall rule on objections with respect to the admissibility of evidence. A ruling on an evidentiary question shall be made on the record or reduced to a written opinion.

History: 1990 AACCS; 1997 AACCS.

R 339.1761 Evidence; prior adjudication of misconduct.

Rule 761. Proof of an adjudication of misconduct in a civil or disciplinary proceeding or of a judgment of guilt in a criminal proceeding may be used as evidence when relevant to establishing a violation of the licensing law, a rule promulgated pursuant to the licensing law, or an order issued pursuant to the licensing law. A copy of the court or agency record that verifies the adjudication of misconduct or judgment of guilt shall be admitted as evidence where there is no objection to its accuracy or authenticity.

History: 1990 AACCS.

R 339.1763 Formal complaint allegations; burden of proof.

Rule 763. The complaining party shall have the burden of proving, by a preponderance of the evidence, the matters alleged in the formal complaint.

History: 1990 AACS.

R 339.1765 Stipulations.

Rule 765. (1) The parties may enter into stipulations on questions of fact and issues of law, subject to the approval of the presiding officer.

(2) The parties may enter into stipulations on matters of procedure, subject to approval by the presiding officer.

History: 1990 AACS; 1997 AACS.

R 339.1767 Witnesses.

Rule 767. (1) Upon a request and a showing of good cause, a prospective witness other than a party may be excluded from a hearing.

(2) Upon a request and a showing of good cause, a witness who has testified may be instructed not to communicate with a prospective witness regarding that testimony.

History: 1990 AACS.

R 339.1771 Findings of fact and conclusions of law; submission; recommendations.

Rule 771. (1) Unless the parties have otherwise agreed to a disposition of the matter or as otherwise provided in the licensing law, the presiding officer, at the close of the record on the matter, shall make findings of fact and conclusions of law. The presiding officer shall submit the findings to the appropriate board for the assessment of penalties if a violation of the code is found.

(2) If the presiding officer finds that the department has failed to meet its burden of proof or has otherwise not complied with the law or rules pertaining to the matter, he or she shall make findings of fact and conclusions of law to that effect.

History: 1990 AACS; 1997 AACS.

DEPARTMENT OF CONSUMER AND INDUSTRY SERVICES

REFUND OF FEES

(By authority conferred on the department of consumer and industry services by section 5 of 1979 PA 152 and Executive Reorganization Order No. 1996-2, MCL 338.2205 and 445.2001.)

R 338.941 Definitions.

Rule 1. As used in these rules:

(a) "Department" means the department of consumer and industry services.

(b) "Fee" means a fee for a permit, license, registration, examination, reexamination, certificate, verification, transfer, publication, or change of address.

(c) "Incapacitated" means an illness or injury which prevents a person from performing the occupation for which the person is licensed, registered, or certified.

(d) "Partial refund" means a refund of the fee paid minus a service charge of \$15.00.

History: 1980 AACCS; 1998-2000 AACCS.

R 338.942 Applicability.

Rule 2. These rules apply to all fees collected pursuant to Act No. 152 of the Public Acts of 1979, being S338.2201 et seq. of the Michigan Compiled Laws.

History: 1980 AACCS; 1981 AACCS.

R 338.943 Issuance of full refunds.

Rule 3. (1) The department shall, upon its own initiative or upon a request made within 1 year of a fee validation date, issue a full refund for all of the following:

(a) A duplicate payment.

(b) Payment of a fee when none is required.

(c) Payment of an amount in excess of the required fee.

(d) A renewal fee, if a licensee dies or is incapacitated before the first day of a new license period.

(e) A license, registration, or certification fee if the fee was collected at the same time as a separate examination fee and the applicant has failed the examination.

(2) A copy of a death certificate or a doctor's statement is required before the department shall issue a refund pursuant to subdivision (d) of subrule (1) of this rule.

History: 1980 AACCS; 1981 AACCS.

R 338.944 Issuance of partial refunds.

Rule 4. (1) Except as provided in subrule (2) of this rule, the department shall issue a partial refund to a person whose application to take an examination or reexamination is withdrawn or denied 7 days before the date the examination is scheduled to be administered by the department.

(2) A partial refund shall not be issued to a person whose application has been denied after a formal hearing and shall not be issued if the examination fee is less than the \$15.00 service charge.

History: 1980 AACs.

STATE LICENSE FEE ACT (Excerpts)

P.A. 152 of 1979

AN ACT to provide for the establishment and collection of fees for the regulation of certain occupations and professions, and for certain agencies and businesses; to create certain funds; and to prescribe certain powers and duties of certain state agencies and departments.

The People of the State of Michigan enact:

338.2201 Short title.

Sec. 1. This act shall be known and may be cited as the "state license fee act".

History: 1979, Act 152, Eff. Jan. 1, 1980. Amended 1988, Act 461, Eff. Sept. 1, 1989. Amended 1990, Act 268, Eff. Oct. 17, 1990. Amended 1999, Act 171, Eff. Nov. 10, 1999.

338.2202 Definitions.

Sec. 2. As used in this act:

(a) "Department" means the department of consumer and industry services.

(b) "Occupational code" means 1980 PA 299, MCL 339.101 to 339.2721 of the Michigan Compiled Laws.

History: Add. 1988, Act 461, Eff. Sept. 1, 1989. Amended 1999, Act 171, Eff. Nov. 10, 1999.

338.2203 Fees; use; disposition.

Sec. 3. (1) The fees prescribed by this act shall be used only to offset the cost of operating the department.

(2) Except as otherwise provided in sections 37, 38, and 51, the fees collected pursuant to this act shall be credited to the general fund of the state.

History: 1979, Act 152, Eff. Jan. 1, 1980; — Am. 1988, Act 461, Eff. Sept. 1, 1989; — Am. 1990, Act 268, Imd. Eff. Oct. 17, 1990; — Am. 1993, Act 139, Imd. Eff. Aug. 2, 1993.

338.2205 Refund of fees; rules.

Sec. 5. (1) Except under rules promulgated by the department pursuant to this section or other applicable statute, a fee collected by the department, when paid pursuant to this act, shall not be refunded.

(2) The department shall promulgate rules concerning the refund of fees, pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, as amended, being sections 24.201 to 24.328 of the Michigan Compiled Laws.

History: 1979, Act 152, Eff. Jan. 1, 1980; — Am. 1988, Act 461, Eff. Sept. 1, 1989.

338.2206 Late renewal fee.

Sec. 6. The department shall charge a \$20.00 late renewal fee if a person fails to renew a license or registration on or before the expiration date prescribed by the department by rule as authorized under the occupational code.

History: Add. 1988, Act 461, Eff. Sept. 1, 1989. Amended 1999, Act 171. Eff. Nov. 10, 1999.

338.2207 Duplicate license or registration; signed statement; fee.

Sec. 7. The department may charge a fee for the issuance of a duplicate license or registration. The duplicate shall not be issued unless the person applying for the duplicate signs a statement that the original document has been lost, stolen, or destroyed. The fee for the duplicate shall be \$10.00.

History: 1979, Act 152, Eff. Jan. 1, 1980; — Am. 1988, Act 461, Eff. Sept. 1, 1989.

338.2208 Written verification that person not licensed or registered; fee; charge for specific detailed information.

Sec. 8. (1) The department may charge a \$5.00 fee for providing written verification that a person is or is not licensed or registered at the time of the request for verification.

(2) If the person requesting written verification seeks specific detailed information beyond the information described in subsection (1), the charge for verification shall be \$15.00.

History: Add. 1988, Act 461, Eff. Sept. 1, 1989.

338.2209 Publication and distribution of public act and rules; fee.

Sec. 9. The department may charge a fee for the publication and distribution of the public act from which a board's authority is derived and the rules promulgated under that act. The fee shall be \$2.00 or the cost of the publication, whichever is greater.

History: 1979, Act 152, Eff. Jan. 1, 1980; -- Am. 1988, Act 461, Eff. Sept. 1, 1989.

338.2210 Correcting records and issuing new document; fee.

Sec. 10. The department may charge a \$10.00 fee for correcting its records and issuing a new document when a person notifies the department of a change of name, address, or employer. If the change does not require the issuance of a new document, no charge shall be made for correcting the department's records.

History: Add. 1988, Act 461, Eff. Sept. 1, 1989.

STATE LICENSE FEE ACT (EXCERPTS)
P.A. 152 OF 1979

338.2239 Residential builder, residential maintenance and alteration contractor, salesperson, or branch office; fees.

Sec. 39. Fees for a person licensed or seeking licensure as a residential builder or residential maintenance and alteration contractor, salesperson, or branch office under article 24 of the occupational code, MCL 339.2401 to 339.2412, are as follows:

- (a) Application processing fee \$15.00
- (b) Examination fees:
 - (i) Complete builder or maintenance and alteration contractor examination 50.00
 - (ii) Law and rules portion 30.00
 - (iii) Practice or trades portion 30.00
 - (iv) Salesperson examination 30.00
- (c) Examination review 20.00
- (d) License fee, per year as follows:
 - (i) If paid through September 30, 2003 or after September 30, 2007 30.00
 - (ii) Beginning October 1, 2003 through September 30, 2007 40.00

History: 1979, Act 152, Eff. Jan. 1, 1980; --Am. 1980, Act 295, Eff. Jan. 1, 1981; --Am. 1988, Act 461, Eff. Sept. 1, 1989; --Am. 2003, Act 87, Imd. Eff. July 23, 2003.

**OCCUPATIONAL LICENSE FOR FORMER OFFENDERS
P.A. 381 of 1974**

AN ACT to encourage and contribute to the rehabilitation of former offenders and to assist them in the assumption of the responsibilities of citizenship; to prescribe the use of the term “good moral character” or similar term as a requirement for an occupational or professional license or when used as a requirement to establish or operate an organization or facility regulated by this state; and to provide administrative and judicial procedures to contest licensing board or agency rulings thereon.

History: 1974, Act 381, Eff. Apr. 1, 1975 ;-- Am. 1978, Act 294, Imd. Eff. July 10, 1978

Compiler's Notes: For transfer of powers and duties of adult foster care licensing from the department of social services to the director of the department of commerce, see E.R.O. No. 1996-1, compiled at MCL 330.3101 of the Michigan Compiled Laws.

The People of the State of Michigan enact:

338.41 “Good moral character” and “principal department” defined.

Sec. 1. (1) The phrase “good moral character”, or words of similar import, when used as a requirement for an occupational or professional license or when used as a requirement to establish or operate an organization or facility regulated by this state in the Michigan Compiled Laws or administrative rules promulgated under those laws shall be construed to mean the propensity on the part of the person to serve the public in the licensed area in a fair, honest, and open manner.

(2) As used in this act, “principal department” means the department which has jurisdiction over the board or agency issuing the license.

History: 1974, Act 381, Eff. Apr. 1, 1975 ;-- Am. 1978, Act 294, Imd. Eff. July 10, 1978

Compiler's Notes: For transfer of powers and duties of adult foster care licensing from the department of social services to the director of the department of commerce, see E.R.O. No. 1996-1, compiled at MCL 330.3101 of the Michigan Compiled Laws. For transfer of powers and duties of the bureau of family services from the department of consumer and industry services to the family independence agency by Type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

338.42 Judgment of guilt in criminal prosecution or judgment in civil action as evidence in determining good moral character; notice; rebuttal.

Sec. 2. A judgment of guilt in a criminal prosecution or a judgment in a civil action shall not be used, in and of itself, by a licensing board or agency as proof of a person's lack of good moral character. It may be used as evidence in the determination, and when so used the person shall be notified and shall be permitted to rebut the evidence by showing that at the current time he or she has the ability to, and is likely to, serve the public in a fair, honest, and open manner, that he or she is rehabilitated, or that the substance of the former offense is not reasonably related to the occupation or profession for which he or she seeks to be licensed.

History: 1974, Act 381, Eff. Apr. 1, 1975 ;-- Am. 1978, Act 294, Imd. Eff. July 10, 1978

Compiler's Notes: For transfer of powers and duties of the bureau of family services from the department of consumer and industry services to the family independence agency by Type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

338.43 Using, examining, or requesting certain criminal records prohibited; prerequisites for furnishing criminal records; rules.

Sec. 3. (1) The following criminal records shall not be used, examined, or requested by a licensing board or agency in a determination of good moral character when used as a requirement to establish or operate an organization or facility regulated by this state, or pursuant to occupational or professional licensure:

(a) Records of an arrest not followed by a conviction.

(b) Records of a conviction which has been reversed or vacated, including the arrest records relevant to that conviction.

(c) Records of an arrest or conviction for a misdemeanor or a felony unrelated to the person's likelihood to serve the public in a fair, honest, and open manner.

(d) Records of an arrest or conviction for a misdemeanor for the conviction of which a person may not be incarcerated in a jail or prison.

(2) A criminal record shall not be furnished to a licensing board or agency except by the principal department, and shall be furnished only after the director of the principal department or a person designated by the director has determined that the information to be provided to the board or agency meets the criteria set forth in this section.

(3) The director or a person designated by the director of the principal department shall promulgate rules for each licensing board or agency under that department's jurisdiction which prescribe the offenses or categories of offenses which the department considers indicate a person is not likely to serve the public as a licensee in a fair, honest, and open manner. Each licensing board or agency may make recommendations to the director regarding the rules to be promulgated. The rules shall be consistent with this act and promulgated pursuant to Act No. 306 of the Public Acts of 1969, as amended, being sections 24.201 to 24.315 of the Michigan Compiled Laws. Prior to the promulgation of the rules pertaining to a board or agency, all felonies shall be considered by the board or agency to be relevant to the ability or likelihood the person will serve the public in a fair, honest and open manner.

History: 1974, Act 381, Eff. Apr. 1, 1975 ;-- Am. 1978, Act 294, Imd. Eff. July 10, 1978

Compiler's Notes: For transfer of powers and duties of the bureau of family services from the department of consumer and industry services to the family independence agency by Type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

338.44 Use of public records or other sources to determine person's fitness.

Sec. 4. This act shall not bar the use by a licensing board or agency in its determination of a person's fitness, of any other public record, not related to arrest or prosecution, or of any other source of unbiased and accurate information.

History: 1974, Act 381, Eff. Apr. 1, 1975 ;-- Am. 1978, Act 294, Imd. Eff. July 10, 1978

Compiler's Notes: For transfer of powers and duties of the bureau of family services from the department of consumer and industry services to the family independence agency by Type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

338.45 Finding person unqualified; statement; rehearing.

Sec. 5. When a person is found to be unqualified for a license because of a lack of good moral character, or similar criteria, the person shall be furnished by the board or agency with a statement to this effect. The statement shall contain a complete record of the evidence upon which the determination was based. The person shall be entitled, as of right, to a rehearing on the issue before the board if he or she has relevant evidence not previously considered, regarding his or her qualifications.

History: 1974, Act 381, Eff. Apr. 1, 1975 ;-- Am. 1978, Act 294, Imd. Eff. July 10, 1978

Compiler's Notes: For transfer of powers and duties of the bureau of family services from the department of consumer and industry services to the family independence agency by Type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

338.46 Judicial review; statement; order.

Sec. 6. A person, aggrieved by a licensing agency or board determination regarding the person's possession of good moral character, if unsatisfied by his or her administrative appeal as provided in section 5, may bring an action in circuit court for a review of the record. If, in the opinion of the circuit court, the record does not disclose a lack of good moral character, as defined in this act, the court shall so state and shall order the board to issue the license, when all other licensing requirements are complied with.

History: 1974, Act 381, Eff. Apr. 1, 1975 ;-- Am. 1978, Act 294, Imd. Eff. July 10, 1978

Compiler's Notes: For transfer of powers and duties of the bureau of family services from the department of consumer and industry services to the family independence agency by Type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

338.47 Power to discipline licensees not affected.

Sec. 7. This act does not affect the power of a licensing agency to discipline licensees under its jurisdiction for prohibited acts of professional misconduct or dishonesty.

History: 1974, Act 381, Eff. Apr. 1, 1975

Compiler's Notes: For transfer of powers and duties of the bureau of family services from the department of consumer and industry services to the family independence agency by Type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

BUILDING CONTRACT FUND
P.A. 259 OF 1931

BUILDING CONTRACT FUND

P.A. 259 of 1931

AN ACT to protect the people of the state from imposition and fraud in the building construction industry and to provide penalties for the violation of this act.

The People of the State of Michigan enact:

570.151 Building contract fund; status as a trust fund.

Sec. 1. In the building construction industry, the building contract fund paid by any person to a contractor, or by such person or contractor to a subcontractor, shall be considered by this act to be a trust fund, for the benefit of the person making the payment, contractors, laborers, subcontractors or materialmen, and the contractor or subcontractor shall be considered the trustee of all funds so paid to him for building construction purposes.

History: 1931, Act 259, Eff. Sept. 18, 1931;— CL 1948, 570.151;— Am. 1966, Act 104, Eff. Oct. 1, 1966.

570.152 Building contract fund; fraudulent detention or use by contractor or subcontractor, penalty.

Sec. 2. Any contractor or subcontractor engaged in the building construction business, who, with intent to defraud, shall retain or use the proceeds or any part therefor, of any payment made to him, for any other purpose than to first pay laborers, subcontractors and materialmen, engaged by him to perform labor or furnish material for the specific improvement, shall be guilty of a felony in appropriating such funds to his own use while any amount for which he may be liable or become liable under the terms of his contract for such labor or material remains unpaid, and may be prosecuted upon the complaint of any persons so defrauded, and, upon conviction, shall be punished by a fine of not less than 100 dollars or more than 5,000 dollars and/or not less than 6 months nor more than 3 years imprisonment in a state prison at the discretion of the court.

History: 1931, Act 259, Eff. Sept. 18, 1931;—CL 1948, 570.152.

BUILDING CONTRACT FUND
P.A. 259 OF 1931

570.153 Building contract fund; evidence of fraudulent detention or use.

Sec. 3. The appropriation by a contractor, or any subcontractor, of any moneys paid to him for building operations before the payment by him of all moneys due or so to become due laborers, subcontractors, materialmen or others entitled to payment, shall be evidence of intent to defraud.

History: 1931, Act 259, Eff. Sept. 18, 1931;—CL 1948, 570.153.

CONSTRUCTION LIEN ACT
P.A. 497 OF 1980

CONSTRUCTION LIEN ACT

P.A. 497 of 1980

AN ACT to establish, protect, and enforce by lien the rights of persons performing labor or providing material or equipment for the improvement of real property; to provide for defenses to construction liens; to provide remedies and prescribe penalties; and to repeal acts and parts of acts.

History: 1980, Act 497, Eff. Jan. 1, 1982 ;-- Am. 2006, Act 497, Eff. Jan. 3, 2007 ;-- Am. 2010, Act 147, Imd. Eff. Aug. 23, 2010

The People of the State of Michigan enact:
Part 1

570.1101 Short title.

Sec. 101. This act shall be known and may be cited as the “construction lien act”.

History: 1980, Act 497, Eff. Jan. 1, 1982

570.1102 Meanings of words and phrases.

Sec. 102. For the purposes of this act, the words and phrases defined in sections 103 to 106 have the meanings ascribed to them in those sections.

History: 1980, Act 497, Eff. Jan. 1, 1982

570.1103 Definitions.

Sec. 103. (1) “Actual physical improvement” means the actual physical change in, or alteration of, real property as a result of labor provided, pursuant to a contract, by a contractor, subcontractor, or laborer which is readily visible and of a kind that would alert a person upon reasonable inspection of the existence of an improvement. Actual physical improvement does not include that labor which is provided in preparation for that change or alteration, such as surveying, soil boring and testing, architectural or engineering planning, or the preparation of other plans or drawings of any kind or nature. Actual physical improvement does not include supplies delivered to or stored at the real property.

(2) “Co-lessee” means a person having an interest in real property, the nature of which is identical to that of the interest of the lessee who contracted for the improvement to the real property, whether the extent of such interest is identical or not.

(3) “Construction lien” means the lien of a contractor, subcontractor, supplier, or laborer, as described in section 107.

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(4) "Contract" means a contract, of whatever nature, for the providing of improvements to real property, including any and all additions to, deletions from, and amendments to the contract.

(5) "Contractor" means a person who, pursuant to a contract with the owner or lessee of real property, provides an improvement to real property.

(6) "Co-owner" means a person having an interest in real property, the nature of which is identical to that of the interest of the owner who contracted for the improvement to the real property, whether the extent of such interest is identical or not.

History: 1980, Act 497, Eff. Jan. 1, 1982 ;-- Am. 1981, Act 191, Eff. Jan. 1, 1982 ;-- Am. 1982, Act 17, Eff. Mar. 1, 1982

570.1104 Additional definitions.

Sec. 104. (1) "Court" means the circuit court in which an action to enforce a construction lien through foreclosure is pending.

(2) "Designee" means the person named by an owner or lessee to receive, on behalf of the owner or lessee, all notices or other instruments required to be furnished under this act. The owner or lessee may name himself or herself as designee. The owner or lessee may not name the contractor as designee. However, a contractor who is providing only architectural or engineering services may be named as designee.

(3) "Fringe benefits and withholdings" means compensation due an employee pursuant to a written contract or written policy for holiday, time off for sickness or injury, time off for personal reasons or vacation, bonuses, authorized expenses incurred during the course of employment, and any other contributions made to or on behalf of an employee.

(4) "General contractor" means a contractor who contracts with an owner or lessee to provide, directly or indirectly through contracts with subcontractors, suppliers, or laborers, substantially all of the improvements to the property described in the notice of commencement.

(5) "Improvement" means the result of labor or material provided by a contractor, subcontractor, supplier, or laborer, including, but not limited to, surveying, engineering and architectural planning, construction management, clearing, demolishing, excavating, filling, building, erecting, constructing, altering, repairing, ornamenting, landscaping, paving, leasing equipment, or installing or affixing a fixture or material, pursuant to a contract.

(6) "Laborer" means an individual who, pursuant to a contract with a contractor or subcontractor, provides an improvement to real property through the individual's personal labor.

History: 1980, Act 497, Eff. Jan. 1, 1982 ;-- Am. 1982, Act 17, Eff. Mar. 1, 1982 ;-- Am. 2006, Act 497, Eff. Jan. 3, 2007 ;-- Am. 2010, Act 147, Imd. Eff. Aug. 23, 2010

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570.1105 Additional definitions.

Sec. 105. (1) "Lessee" means a person, other than the owner, who holds an interest, other than a security interest, in real property.

(2) "Lien claimant" means a person having a right to a construction lien under this act.

(3) "Owner" means a person holding a fee interest in real property or an equitable interest arising out of a land contract.

History: 1980, Act 497, Eff. Jan. 1, 1982 ;-- Am. 1981, Act 191, Eff. Jan. 1, 1982 ;-- Am. 1982, Act 17, Eff. Mar. 1, 1982

570.1106 Additional definitions.

Sec. 106. (1) "Person" means an individual, corporation, partnership, sole proprietorship, association, other legal entity, or any combination thereof.

(2) "Project" means the aggregate of improvements contracted for by the contracting owner.

(3) "Residential structure" means an individual residential condominium unit or a residential building containing not more than 2 residential units, the land on which it is or will be located, and all appurtenances, in which the owner or lessee contracting for the improvement is residing or will reside upon completion of the improvement.

(4) "Subcontractor" means a person, other than a laborer or supplier, who pursuant to a contract between himself or herself and a person other than the owner or lessee performs any part of a contractor's contract for an improvement.

(5) "Supplier" means a person who, pursuant to a contract with a contractor or a subcontractor, leases, rents, or in any other manner provides material or equipment that is used in the improvement of real property.

(6) "Wages" means all earnings of an employee, whether determined on the basis of time, task, piece, commission, or other method of calculation, for labor or services, except fringe benefits and withholdings.

History: 1980, Act 497, Eff. Jan. 1, 1982 ;-- Am. 1981, Act 191, Eff. Jan. 1, 1982 ;-- Am. 1982, Act 17, Eff. Mar. 1, 1982 ;-- Am. 2006, Act 497, Eff. Jan. 3, 2007 ;-- Am. 2010, Act 147, Imd. Eff. Aug. 23, 2010

570.1107 Construction lien generally.

Sec. 107. (1) Each contractor, subcontractor, supplier, or laborer who provides an improvement to real property has a construction lien upon the interest of the owner or lessee who contracted for the improvement to the real property, as described in the notice of commencement given under section 108 or 108a, the interest of an owner who has subordinated his or her interest to the mortgage for the improvement of the real property, and the interest of an owner who has required the

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improvement. A construction lien acquired pursuant to this act shall not exceed the amount of the lien claimant's contract less payments made on the contract.

(2) A construction lien under this act attaches to the entire interest of the owner or lessee who contracted for the improvement, including any subsequently acquired legal or equitable interest.

(3) Each contractor, subcontractor, supplier, or laborer who provides an improvement to real property to which the person contracting for the improvement had no legal title has a construction lien upon the improvement for which the contractor, subcontractor, supplier, or laborer provided labor, material, or equipment. The forfeiture, surrender, or termination of any title or interest held by an owner or lessee who contracted for an improvement to the property, an owner who subordinated his or her interest to the mortgage for the improvement, or an owner who has required the improvement does not defeat the lien of the contractor, subcontractor, supplier, or laborer upon the improvement.

(4) If the rights of a person contracting for an improvement as a land contract vendee or a lessee are forfeited, surrendered, or otherwise terminated, any lien claimant who has provided a notice of furnishing or is excused from providing a notice of furnishing under section 108, 108a, or 109 and who performs the covenants contained in the land contract or lease within 30 days after receiving actual notice of the forfeiture, surrender, or termination is subrogated to the rights of the contracting vendee or lessee as those rights existed immediately before the forfeiture, surrender, or termination.

(5) For purposes of this act, if the real property is owned or leased by more than 1 person, there is a rebuttable presumption that an improvement to real property under a contract with an owner or lessee was consented to by any other co-owner or co-lessee. If enforcement of a construction lien through foreclosure is sought and the court finds that the improvement was consented to by a co-owner or co-lessee who did not contract for the improvement, the court shall order the entire interest of that co-owner or co-lessee, including any subsequently acquired legal or equitable interest, to be subject to the construction lien. A deficiency judgment shall not be entered against a noncontracting owner, co-owner, lessee, or co-lessee.

(6) If the real property of an owner or lessee is subject to multiple construction liens, the sum of the construction liens shall not exceed the amount the owner or lessee agreed to pay the person with whom he or she contracted for the improvement as modified by all additions, deletions, and other amendments, less payments made by or on behalf of the owner or lessee, pursuant to either a contractor's sworn statement or a waiver of lien, in accordance with this act.

(7) After the effective date of the amendatory act that added this subsection, a construction lien of a subcontractor or supplier for an

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improvement to a residential structure shall only include an amount for interest, including, but not limited to, a time-price differential or a finance charge, if the amount is in accordance with the terms of the contract between the subcontractor or supplier and the contractor or subcontractor and does not include any interest that accrues after 90 days after the claim of lien is recorded.

History: 1980, Act 497, Eff. Jan. 1, 1982 ;-- Am. 1981, Act 191, Eff. Jan. 1, 1982 ;-- Am. 1982, Act 17, Eff. Mar. 1, 1982 ;-- Am. 2006, Act 497, Eff. Jan. 3, 2007

570.1108 Physical improvements to real property; notice of commencement; form; recording; contents of notice; blank notice of furnishing; incorrect information in notice; providing copy of notice and blank notice of furnishing form to subcontractor, supplier, or laborer upon request; posting copy of notice; failure of owner, lessee, or designee to record, provide, or post required notice; failure of contractor or subcontractor to provide notice; section inapplicable to residential structure improvement.

Sec. 108. (1) Before the commencement of any actual physical improvements to real property, the owner or lessee contracting for the improvements shall record in the office of the register of deeds for each county in which the real property to be improved is located a notice of commencement, in the form set forth in this section. If all improvements relate to a single project only 1 notice of commencement need be recorded. A subsequent notice of commencement need not be recorded for an improvement to any real property which currently has a notice of commencement recorded in the office of the register of deeds if that recorded notice of commencement contains the same information as the subsequent notice of commencement.

(2) The notice of commencement shall contain the following information:

(a) The legal description of the real property on which the improvement is to be made. A description conforming to section 212 or 255 of Act No. 288 of the Public Acts of 1967, being sections 560.212 and 560.255 of the Michigan Compiled Laws, shall be a sufficient legal description.

(b) The name, address, and capacity of the owner or lessee of the real property contracting for the improvement.

(c) The name and address of the fee owner of the real property, if the person contracting for the improvement is a land contract vendee or lessee.

(d) The name and address of the owner's or lessee's designee.

(e) The name and address of the general contractor, if any.

(f) The following statement:

"To lien claimants and subsequent purchasers:

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Take notice that work is about to commence on an improvement to the real property described in this instrument. A person having a construction lien may preserve the lien by providing a notice of furnishing to the above named designee and the general contractor, if any, and by timely recording a claim of lien, in accordance with law.

A person having a construction lien arising by virtue of work performed on this improvement should refer to the name of the owner or lessee and the legal description appearing in this notice. A person subsequently acquiring an interest in the land described is not required to be named in a claim of lien.

A copy of this notice with an attached form for notice of furnishing may be obtained upon making a written request by certified mail to the above named owner or lessee; the designee; or the person with whom you have contracted.”

(g) The name and address of the person preparing the notice.

(h) An affidavit of the owner or lessee or the agent of the owner or lessee which verifies the notice.

(3) Each copy of the notice of commencement shall have a blank notice of furnishing as described in section 109 attached to it. The blank notice of furnishing shall be easily detachable from the copy of the notice and need not be recorded.

(4) Incorrect information contained in the notice of commencement furnished by or for an owner or lessee shall not affect adversely the rights of a lien claimant as against the property of that owner or lessee.

(5) The owner, lessee, or designee, within 10 days after the date of mailing of a written request by certified mail from a subcontractor, supplier, or laborer, shall provide a copy of the notice of commencement, together with an attached blank notice of furnishing form, to the subcontractor, supplier, or laborer requesting a copy of the notice of commencement.

(6) A contractor who has been provided with a notice of commencement from the owner, lessee, or designee, within 10 days after the date of mailing of a written request by certified mail from a subcontractor, supplier, or laborer who has a direct contract with the contractor, shall provide a copy of the notice of commencement, together with an attached blank notice of furnishing form, to the subcontractor, supplier, or laborer requesting a copy of the notice of commencement.

(7) A subcontractor who has been provided with a notice of commencement from the owner, lessee, designee, contractor, or subcontractor, within 10 days after the date of mailing of a written request by certified mail from a subcontractor, supplier, or laborer who has a direct contract with the subcontractor, shall provide a copy of the notice of commencement, together with an attached blank notice of furnishing form, to the subcontractor, supplier, or laborer requesting a copy of the notice of commencement.

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(8) The owner, lessee, or designee shall post and keep posted a copy of the notice of commencement in a conspicuous place on the real property described in the notice during the course of the actual physical improvement to the real property.

(9) The owner, lessee, or designee shall provide a copy of the notice of commencement to the general contractor, if any. Failure of the owner, lessee, or designee to provide the notice of commencement to the general contractor shall render the owner or lessee liable to the general contractor for all actual expenses sustained by the general contractor in obtaining the information otherwise provided by the notice of commencement.

(10) Failure of the owner, lessee, or designee to record the notice of commencement, in accordance with this section, shall operate to extend the time within which a subcontractor or supplier may provide a notice of furnishing, as described in section 109, until 20 days after the notice of commencement has been recorded.

(11) Failure of the owner, lessee, or designee to provide, upon written request, the notice of commencement, in accordance with this section, shall operate to extend the time within which a subcontractor or supplier may provide a notice of furnishing, as described in section 109, until 20 days after the notice of commencement actually has been furnished to the subcontractor or supplier.

(12) Failure of the owner, lessee, or designee to record the notice of commencement, in accordance with this section, shall operate to extend the time within which a laborer may provide a notice of furnishing, as described in section 109, until 30 days after the notice of commencement has been recorded, or until the time in which to provide the notice of furnishing in accordance with section 109 expires, whichever is later.

(13) Failure of the owner, lessee, or designee to provide the notice of commencement, in accordance with this section, shall operate to extend the time within which a laborer may provide a notice of furnishing, as described in section 109, until 30 days after the notice of commencement has been provided, or until the time in which to provide the notice of furnishing in accordance with section 109 expires, whichever is later.

(14) Failure of the owner, lessee, or designee to post or keep posted a copy of the notice of commencement as provided in subsection (8) shall render the owner or lessee liable to a subcontractor, supplier, or laborer who becomes a lien claimant for all actual expenses sustained by the lien claimant in obtaining the information otherwise provided by the posting.

(15) Failure of a contractor, who has been provided with a notice of commencement from the owner, lessee, or designee, to provide the notice of commencement upon the request of a lien claimant who has a direct contract with the contractor for an improvement to property shall render the contractor liable to the lien claimant for all actual expenses

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sustained by the lien claimant in obtaining the information otherwise provided by the notice of commencement.

(16) Failure of a subcontractor, who has been provided with a notice of commencement from the owner, lessee, designee, contractor, or subcontractor to provide the notice of commencement upon the request of a subcontractor, supplier, or laborer who has a direct contract with the subcontractor shall render the subcontractor liable to such subcontractor, supplier, or laborer for all actual expenses sustained by the subcontractor, supplier, or laborer in obtaining the information otherwise provided by the notice of commencement.

(17) If the owner, lessee, or designee fails to provide, record, and post the notice of commencement as provided in this act and if, after the first actual physical improvement, the contractor by certified mail makes a written request to the owner, lessee, or designee to provide, record, and post the notice of commencement and the owner, lessee, or designee fails within 10 days after receipt of the request to do so, the owner or lessee shall be barred from requiring the contractor to hold the owner or lessee harmless from liens of lien claimants to the extent such lien claims could have otherwise been avoided through proper payment, had such request been complied with. If the contractor pays a valid lien claim at the direction of the owner, lessee, or designee after the owner, lessee, or designee has failed to comply with this section, the owner or lessee shall be liable to the contractor to the extent the lien claim could have otherwise been avoided through proper payment had such request been complied with. This subsection shall not apply if the lien claimant appears on a sworn statement provided to the contractor and the claim of the lien claimant appearing on the sworn statement could have been avoided had payment been made in accordance with the sworn statement.

(18) This section shall not apply to an improvement to a residential structure.

History: 1980, Act 497, Eff. Jan. 1, 1982 ;-- Am. 1981, Act 191, Eff. Jan. 1, 1982 ;-- Am. 1982, Act 17, Eff. Mar. 1, 1982

570.1108a Improvement to residential structure; notice of commencement; contents of notice; blank notice of furnishing; incorrect information in notice; providing copy of notice and blank notice of furnishing to contractor, subcontractor, supplier, or laborer upon request; posting copy of notice; failure of owner, lessee, or designee to provide or post notice; failure of contractor or subcontractor to provide notice and name and address of owner or lessee; liability to lien claimant; section applicable to residential structure improvement.

Sec. 108a. (1) An owner or lessee contracting for an improvement to a residential structure shall prepare and provide a notice of commencement to a contractor, subcontractor, supplier, or laborer who has made a written request for the notice pursuant to this section.

(2) The notice of commencement shall contain the following information:

(a) The legal description of the real property on which the improvement is to be made. A description conforming to section 212 or 255 of Act No. 288 of the Public Acts of 1967, being sections 560.212 and 560.255 of the Michigan Compiled Laws, shall be a sufficient legal description.

(b) The name, address, and capacity of the owner or lessee of the real property contracting for the improvement.

(c) The name and address of the fee owner of the real property, if the person contracting for the improvement is a land contract vendee or lessee.

(d) The name and address of the owner's or lessee's designee.

(e) The name and address of the general contractor, if any. The notice of commencement form shall contain the following caption below the line for the general contractor's name and address: (the name of the person with whom you have contracted to provide substantially all the improvements to the property.)

(f) The following statement in boldface type on the front of the form:

WARNING TO HOMEOWNER

Michigan law requires that you do the following:

1. Complete and return this form to the person who asked for it within 10 days after the date of the postmark on the request.

2. If you do not complete and return this form within the 10 days you may have to pay the expenses incurred in getting the information.

3. If you do not live at the site of the improvement, you must post a copy of this form in a conspicuous place at that site.

You are not required to but should do the following:

1. Complete and post a copy of this form at the place where the improvement is being made, even if you live there.

2. Make and keep a copy of this form for your own records.

(g) The following statement:

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“To lien claimants and subsequent purchasers:

Take notice that work is about to commence on an improvement to the real property described in this instrument. A person having a construction lien may preserve the lien by providing a notice of furnishing to the above named designee and the general contractor, if any, and by timely recording a claim of lien, in accordance with law.

A person having a construction lien arising by virtue of work performed on this improvement should refer to the name of the owner or lessee and the legal description appearing in this notice. A person subsequently acquiring an interest in the land described is not required to be named in a claim of lien.

A copy of this notice with an attached form for notice of furnishing may be obtained upon making a written request by certified mail to the above named owner or lessee; the designee; or the person with whom you have contracted.”

(h) The name and address of the person preparing the notice.

(i) An affidavit of the owner or lessee or the agent of the owner or lessee which verifies the notice.

(3) Each copy of the notice of commencement shall have a blank notice of furnishing as described in section 109 attached to it. The blank notice of furnishing shall be easily detachable from the copy of the notice and need not be recorded.

(4) Incorrect information contained in the notice of commencement furnished by or for an owner or lessee shall not affect adversely the rights of a lien claimant as against the property of that owner or lessee.

(5) The owner, lessee, or designee, within 10 days after the date of mailing of a written request by certified mail from a contractor, subcontractor, supplier, or laborer, shall prepare and provide a copy of the notice of commencement, together with an attached blank notice of furnishing form, to the contractor, subcontractor, supplier, or laborer requesting a copy of the notice of commencement. A contractor, subcontractor, supplier, or laborer who requests a notice of commencement from an owner or lessee of a residential structure shall supply a blank notice of commencement form together with the attached blank notice of furnishing to the owner or lessee at the time the request is made.

(6) A contractor who has been provided with a notice of commencement from the owner, lessee, or designee, within 10 days after the date of mailing of a written request by certified mail from a subcontractor, supplier, or laborer who has a direct contract with the contractor, shall provide a copy of the notice of commencement, together with an attached blank notice of furnishing form, to the subcontractor, supplier, or laborer requesting a copy of the notice of commencement. If the contractor has not been provided a notice of commencement, the

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contractor shall provide such subcontractor, supplier, or laborer the name and address of the owner or lessee.

(7) A subcontractor who has been provided with a notice of commencement from the owner, lessee, designee, contractor, or subcontractor, within 10 days after the date of mailing of a written request by certified mail from a subcontractor, supplier, or laborer who has a direct contract with the subcontractor, shall provide a copy of the notice of commencement, together with an attached blank notice of furnishing form, to the subcontractor, supplier, or laborer requesting a copy of the notice of commencement. If the subcontractor has not been provided a notice of commencement, the subcontractor shall provide to such subcontractor, supplier, or laborer, the name and address of the owner or lessee.

(8) If the owner, lessee, or designee has received a blank notice of commencement form pursuant to subsection (5) and if the owner or lessee does not currently reside at the real property described in the notice of commencement, the owner, lessee, or designee shall post a copy of the notice of commencement in a conspicuous place on the real property during the course of the actual physical improvement to the real property.

(9) Failure of the owner, lessee, or designee to provide, upon written request, the notice of commencement, in accordance with this section, shall operate to extend the time within which a subcontractor or supplier may provide a notice of furnishing, as described in section 109, until 20 days after the notice of commencement actually has been furnished to the subcontractor or laborer.

(10) Failure of the owner, lessee, or designee to provide the notice of commencement, in accordance with this section, shall operate to extend the time within which a laborer may provide a notice of furnishing, as described in section 109, until 30 days after the notice of commencement actually has been furnished to the laborer, or until the time in which to provide the notice of furnishing in accordance with section 109 expires, whichever is later.

(11) Failure of the owner, lessee, or designee to post or keep posted a copy of the notice of commencement as provided in subsection (8) shall render the owner or lessee liable to a subcontractor, supplier, or laborer who becomes a lien claimant for all actual expenses sustained by the lien claimant in obtaining the information otherwise provided by the posting.

(12) Failure of a contractor, who has been provided with a notice of commencement from the owner, lessee, or designee, to provide the notice of commencement upon the request of a lien claimant who has a contract with the contractor for an improvement to the property shall render the contractor liable to the lien claimant for all actual expenses sustained by the lien claimant in obtaining the information otherwise

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provided by the notice of commencement. Failure of a contractor to provide the name and address of the owner or lessee in accordance with subsection (6) shall render the contractor liable to the lien claimant for all actual expenses sustained by the lien claimant in obtaining the name and address of the owner or lessee.

(13) Failure of a subcontractor, who has been provided with a notice of commencement from the owner, lessee, designee, contractor, or subcontractor, to provide the notice of commencement upon the request of a subcontractor, supplier, or laborer who has a direct contract with the subcontractor shall render the subcontractor liable to such subcontractor, supplier, or laborer for all actual expenses sustained by the subcontractor, supplier, or laborer in obtaining the information otherwise provided by the notice of commencement. Failure of a subcontractor to provide the name and address of the owner or lessee in accordance with subsection (6) shall render the subcontractor liable to the lien claimant for all actual expenses sustained by the lien claimant in obtaining the name and address of the owner or lessee.

(14) This section shall only apply to an improvement to a residential structure.

History: Add. 1982, Act 17, Eff. Mar. 1, 1982

570.1109 Subcontractor, supplier, or laborer contracting to provide improvement to real property; service of notice of furnishing; form of notice; effect of failure by lien claimant to provide notice within time specified; failure of laborer to provide notice of furnishing; authorization of agent by laborers to prepare and serve notice.

Sec. 109. (1) Except as otherwise provided in sections 108, 108a, and 301, a subcontractor or supplier who contracts to provide an improvement to real property shall provide a notice of furnishing to the designee and the general contractor, if any, as named in the notice of commencement at the address shown in the notice of commencement, either personally or by certified mail, within 20 days after furnishing the first labor or material. If a designee has not been named in the notice of commencement, or if the designee has died, service shall be made upon the owner or lessee named in the notice of commencement. If service of the notice of furnishing is made by certified mail, service is complete upon mailing. A contractor is not required to provide a notice of furnishing to preserve lien rights arising from his or her contract directly with an owner or lessee.

(2) Except as otherwise provided in sections 108 and 108a, a laborer who contracts to provide an improvement to real property shall provide a notice of furnishing to the designee and the general contractor, if any, as named in the notice of commencement at the address shown in the notice of commencement, either personally or by mail, within 30 days

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after wages were contractually due but were not paid. If a designee has not been named in the notice of commencement, or if the designee has died, service shall be made upon the owner or lessee named in the notice of commencement. If service of the notice of furnishing is made by mail, service is complete upon mailing by first class mail with postage prepaid.

(3) Except as otherwise provided in sections 108 and 108a, a laborer who provides an improvement to real property shall provide a notice of furnishing to the designee and the general contractor, if any, named in the notice of commencement at the address shown in the notice of commencement, either personally or by certified mail, by the fifth day of the second month following the month in which fringe benefits or withholdings from wages were contractually due but were not paid. If a designee has not been named in the notice of commencement, or if the designee has died, service shall be made upon the owner or lessee named in the notice of commencement. If service of the notice of furnishing is made by certified mail, service is complete upon mailing.

(4) The notice of furnishing, if not given on the form attached to the notice of commencement, shall be in substantially the following form:

NOTICE OF FURNISHING

To: _____
(name of designee (or owner or lessee) from notice of commencement)

(address from notice of commencement)

Please take notice that the undersigned is furnishing to _____

(name and address of other contracting party)

certain labor or material for _____,

(describe type of work)

in connection with the improvements to the real property described

in the notice of commencement recorded in liber _____, on

page _____, _____ records,

(name of county)

or (a copy of which is attached hereto)

WARNING TO OWNER: THIS NOTICE IS REQUIRED BY THE MICHIGAN CONSTRUCTION LIEN ACT. IF YOU HAVE QUESTIONS ABOUT YOUR RIGHTS AND DUTIES UNDER THIS ACT, YOU SHOULD CONTACT AN ATTORNEY TO PROTECT YOU FROM THE POSSIBILITY OF PAYING TWICE FOR THE IMPROVEMENTS TO YOUR PROPERTY.

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(name and address of lien claimant)

by _____
(name and capacity of party
signing for lien claimant)

(address of party signing)

Date: _____.

(5) The failure of a lien claimant to provide a notice of furnishing within the time specified in this section shall not defeat the lien claimant's right to a construction lien for work performed or materials furnished by the lien claimant after the service of the notice of furnishing.

(6) The failure of a lien claimant, to provide a notice of furnishing within the time specified in this section shall not defeat the lien claimant's right to a construction lien for work performed or materials furnished by the lien claimant before the service of the notice of furnishing except to the extent that payments were made by or on behalf of the owner or lessee to the contractor pursuant to either a contractor's sworn statement or a waiver of lien in accordance with this act for work performed or material delivered by the lien claimant. This subsection does not apply to a laborer.

(7) The failure of a laborer to provide a notice of furnishing to the designee as required by subsection (2) shall defeat the laborer's lien for those wages for which the notice of furnishing is required.

(8) The failure of a laborer to provide a notice of furnishing to the designee as required by subsection (3) shall defeat the laborer's lien for those fringe benefits and withholdings for which the notice of furnishing is required.

(9) The failure of a laborer to provide a notice of furnishing to the general contractor within the time specified in subsection (2) or (3) shall not defeat the laborer's right to a construction lien, but the laborer shall be liable for any actual damages sustained by the general contractor as a result of the failure.

(10) One or more laborers may authorize an agent to prepare and serve a notice of furnishing in the manner provided in this section. Notice of furnishing under this section may contain the notice of furnishing of more than 1 laborer and shall contain the information required in subsection (4) as to each laborer for whom it is prepared. The notice of furnishing of each lien claimant under this subsection shall be considered by the court on its own merits.

History: 1980, Act 497, Eff. Jan. 1, 1982 ;-- Am. 1981, Act 191, Eff. Jan. 1, 1982 ;-- Am. 1982, Act 17, Eff. Mar. 1, 1982

Compiler's Notes: In the second sentence of subsection (10), the word "subsection" evidently should read "subsection".

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570.1110 Sworn statement by contractor or subcontractor; contents; form; notice of receipt; withholding from contractor or subcontractor amount due subcontractors, suppliers, laborers, or lien claimants; direct payments to lien claimants; notice; itemized statement; reliance on sworn statement to avoid claim; failure of contractor or subcontractor to provide sworn statement to owner or lessee prior to recording claim of lien; giving false sworn statement to owner or lessee as crime; total amount; prior convictions; prohibited use.

Sec. 110. (1) A contractor shall provide a sworn statement to the owner or lessee in each of the following circumstances:

(a) When payment is due to the contractor from the owner or lessee or when the contractor requests payment from the owner or lessee.

(b) When a demand for the sworn statement has been made by or on behalf of the owner or lessee.

(2) A subcontractor shall provide a sworn statement to the owner or lessee when a demand for the sworn statement has been made by or on behalf of the owner or lessee and, if applicable, the owner or lessee has complied with the requirements of subsection (6).

(3) A subcontractor shall provide a sworn statement to the contractor when payment is due to the subcontractor from the contractor or when the subcontractor requests payment from the contractor.

(4) A sworn statement shall list each subcontractor and supplier with whom the person issuing the sworn statement has contracted relative to the improvement to the real property. The sworn statement shall contain a list of laborers with whom the person issuing the sworn statement has contracted relative to the improvement to the real property and for whom payment for wages or fringe benefits and withholdings are due but unpaid and the itemized amount of such wages or fringe benefits and withholdings. The sworn statement shall be in substantially the following form:

SWORN STATEMENT

State of Michigan)

) ss.

County of _____)

_____ (deponent), being sworn, states the following:

_____ is the (contractor) (subcontractor)

for an improvement to the following real property in

_____ County, Michigan, described as follows:

(insert legal description of property)

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The following is a statement of each subcontractor and supplier, and laborer for whom payment of wages or fringe benefits and withholdings is due but unpaid, with whom the (contractor) (subcontractor) has (contracted) (subcontracted) for performance under the contract with the owner or lessee of the property, and the amounts due to the persons as of the date of this statement are correctly and fully set forth opposite their names:

Name, Address, and telephone number of sub-contractor, supplier, or laborer	Type of improvement furnished	Total contract price	Amount already paid	Amount currently owing	Balance to complete (optional)	Amount of laborer wages due but unpaid	Amount of laborer fringe benefits and withholdings due but unpaid
TOTALS							

(Some columns are not applicable to all persons listed)

The contractor has not procured material from, or subcontracted with, any person other than those set forth and owes no money for the improvement other than the sums set forth.

I make this statement as the (contractor) (subcontractor) or as _____ of the (contractor) (subcontractor) to represent to the owner or lessee of the property and his or her agents that the property is free from claims of construction liens, or the possibility of construction liens, except as specifically set forth in this statement and except for claims of construction liens by laborers that may be provided under section 109 of the construction lien act, 1980 PA 497, MCL 570.1109.

WARNING TO OWNER OR LESSEE: AN OWNER OR LESSEE OF THE PROPERTY SHALL NOT RELY ON THIS SWORN STATEMENT TO AVOID THE CLAIM OF A SUBCONTRACTOR, SUPPLIER, OR LABORER WHO HAS PROVIDED A NOTICE OF FURNISHING OR A LABORER WHO MAY PROVIDE A NOTICE OF FURNISHING UNDER SECTION 109 OF THE CONSTRUCTION LIEN ACT, 1980 PA 497, MCL 570.1109, TO THE DESIGNEE OR TO THE OWNER OR LESSEE IF THE DESIGNEE IS NOT NAMED OR HAS DIED.

IF THIS SWORN STATEMENT IS IN REGARD TO A RESIDENTIAL STRUCTURE, ON RECEIPT OF THE SWORN STATEMENT, THE OWNER OR LESSEE, OR THE OWNER'S OR LESSEE'S DESIGNEE,

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MUST GIVE NOTICE OF ITS RECEIPT, EITHER IN WRITING, BY TELEPHONE, OR PERSONALLY, TO EACH SUBCONTRACTOR, SUPPLIER, AND LABORER WHO HAS PROVIDED A NOTICE OF FURNISHING UNDER SECTION 109 OR, IF A NOTICE OF FURNISHING IS EXCUSED UNDER SECTION 108 OR 108A, TO EACH SUBCONTRACTOR, SUPPLIER, AND LABORER NAMED IN THE SWORN STATEMENT. IF A SUBCONTRACTOR, SUPPLIER, OR LABORER WHO IS ENTITLED TO NOTICE OF RECEIPT OF THE SWORN STATEMENT MAKES A REQUEST, THE OWNER, LESSEE, OR DESIGNEE SHALL PROVIDE THE REQUESTER A COPY OF THE SWORN STATEMENT WITHIN 10 BUSINESS DAYS AFTER RECEIVING THE REQUEST.

Deponent

WARNING TO DEPONENT: A PERSON WHO GIVES A FALSE SWORN STATEMENT WITH INTENT TO DEFRAUD IS SUBJECT TO CRIMINAL PENALTIES AS PROVIDED IN SECTION 110 OF THE CONSTRUCTION LIEN ACT, 1980 PA 497, MCL 570.1110.

Subscribed and sworn to before me on _____(DATE)

Notary Public, _____ County, Michigan.

My commission expires: _____.

(5) The contractor or subcontractor is not required to list in the sworn statement material furnished by the contractor or subcontractor out of his or her own inventory that was not purchased specifically for performing the contract.

(6) On receipt of a sworn statement regarding an improvement to a residential structure, the owner, lessee, or designee shall give notice of its receipt, either in writing, by telephone, or personally, to each subcontractor, supplier, and laborer who has provided a notice of furnishing under section 109 or, if a notice of furnishing is excused under section 108 or 108a, to each subcontractor, supplier, and laborer named in the sworn statement. If a subcontractor, supplier, or laborer entitled to notice under this subsection requests a copy of the sworn statement, the owner, lessee, or designee shall provide the requester a copy within 10 business days after receiving the request.

(7) After the contractor or subcontractor provides the sworn statement, the owner or lessee may withhold or, upon written demand from the contractor, shall withhold from the amount due or to become due to the contractor or to the subcontractor for work already performed an amount sufficient to pay all sums due to subcontractors, suppliers, or laborers, as shown by the sworn statement, or due to lien claimants who have provided a notice of furnishing under section 109. From the amount

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withheld, the owner or lessee may directly pay subcontractors, suppliers, or laborers the amount they are due as shown by the sworn statement. If the contract provides for payments by the owner to the general contractor in the normal course of construction, but the owner elects to pay lien claimants directly under this section, the first time the owner elects to make payment directly to a lien claimant, he or she shall provide at least 5 business days' notice to the general contractor of the intention to make direct payment. Subsequent direct disbursements to lien claimants need not be preceded by the 5-day notice provided in this section unless the owner first returns to the practice of paying all sums to the general contractor. As between the owner or lessee and the contractor or subcontractor, all payments made under this subsection are considered the same as if paid directly to the contractor or subcontractor. If an amount is withheld under this subsection from the contractor or subcontractor, the owner or lessee, upon request, shall prepare and provide to the contractor or subcontractor an itemized statement of the sums withheld. If an amount is paid directly to a lien claimant under this section, the owner or lessee shall, if requested by the contractor or subcontractor, provide to the contractor or subcontractor an itemized statement of the sums paid.

(8) An owner, lessee, designee, mortgagee, or contractor may rely on a sworn statement prepared by a party other than himself or herself to avoid the claim of a subcontractor, supplier, or laborer unless the subcontractor, supplier, or laborer has provided a notice of furnishing as required under section 109 or unless the notice of furnishing is excused under section 108 or 108a.

(9) If a contractor fails to provide a sworn statement to the owner or lessee before recording the contractor's claim of lien, the contractor's construction lien is not invalid. However, the contractor is not entitled to any payment, and a complaint, cross-claim, or counterclaim may not be filed to enforce the construction lien, until the sworn statement has been provided.

(10) If a subcontractor fails to provide a sworn statement under subsection (2) to the owner or lessee before recording the subcontractor's claim of lien, the subcontractor's construction lien is valid. However, a complaint, cross-claim, or counterclaim may not be filed to enforce the construction lien until the sworn statement has been provided.

(11) A contractor or subcontractor who desires to draw money and gives or causes to be given to any owner or lessee a sworn statement required by this section that is false, with intent to defraud, is guilty of a crime as follows:

(a) If the statement involved is for less than \$200.00, the contractor or subcontractor is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$500.00 or 3 times the

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statement amount, whichever is greater, or both imprisonment and a fine.

(b) If any of the following apply, the contractor or subcontractor is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$2,000.00 or 3 times the statement amount, whichever is greater, or both imprisonment and a fine:

(i) The statement involved is for \$200.00 or more but less than \$1,000.00.

(ii) The statement involved is for less than \$200.00 and the contractor or subcontractor has 1 or more prior convictions for committing or attempting to commit an offense under this act.

(c) If any of the following apply, the contractor or subcontractor is guilty of a felony punishable by imprisonment for not more than 5 years or a fine of not more than \$10,000.00 or 3 times the statement amount, whichever is greater, or both imprisonment and a fine:

(i) The statement involved is for \$1,000.00 or more but less than \$20,000.00.

(ii) The statement involved is for more than \$200.00 but less than \$1,000.00 and the contractor or subcontractor has 1 or more prior convictions for violating or attempting to violate this act. For purposes of this subparagraph, however, a prior conviction does not include a conviction for a violation or attempted violation described in subdivision (a) or (b)(ii).

(d) If any of the following apply, the contractor or subcontractor is guilty of a felony punishable by imprisonment for not more than 10 years or a fine of not more than \$15,000.00 or 3 times the statement amount, whichever is greater, or both imprisonment and a fine:

(i) The statement involved is for \$20,000.00 or more.

(ii) The statement involved is for \$1,000.00 or more but less than \$20,000.00 and the contractor or subcontractor has 2 or more prior convictions for committing or attempting to commit an offense under this act. For purposes of this subparagraph, however, a prior conviction does not include a conviction for a violation or attempted violation described in subdivision (a) or (b)(ii).

(12) For purposes of subsection (11), statements involved in separate incidents pursuant to a scheme or course of conduct within any 12-month period may be aggregated to determine the total amount involved in the statements.

(13) If the prosecuting attorney intends to seek an enhanced sentence for a violation under this section based upon the defendant having 1 or more prior convictions, the prosecuting attorney shall include in the complaint and information a statement listing the prior conviction or convictions. The existence of the defendant's prior conviction or convictions shall be determined by the court, without a jury, at sentencing or at a separate hearing for that purpose before sentencing.

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The existence of a prior conviction may be established by any evidence relevant for that purpose, including, but not limited to, 1 or more of the following:

- (a) A copy of the judgment of conviction.
- (b) A transcript of a prior trial, plea-taking, or sentencing.
- (c) Information contained in a presentence report.
- (d) The defendant's statement.

(14) If the sentence for a conviction under this section is enhanced by 1 or more convictions, those prior convictions shall not be used to further enhance the sentence for the conviction pursuant to section 10, 11, or 12 of chapter IX of the code of criminal procedure, 1927 PA 175, MCL 769.10, 769.11, and 769.12.

History: 1980, Act 497, Eff. Jan. 1, 1982 ;-- Am. 1981, Act 191, Eff. Jan. 1, 1982 ;-- Am. 1982, Act 17, Eff. Mar. 1, 1982 ;-- Am. 2001, Act 151, Eff. Jan. 1, 2002 ;-- Am. 2006, Act 572, Imd. Eff. Jan. 3, 2007 ;-- Am. 2007, Act 28, Imd. Eff. June 28, 2007

570.1111 Claim of lien; recording; validity; form; assignment; statement; proof of service of notice of furnishing; serving copy of claim of lien and recorded proof of service on designee, owner, or lessee; claim of lien of more than 1 laborer; consideration by court.

Sec. 111. (1) Notwithstanding section 109, the right of a contractor, subcontractor, laborer, or supplier to a construction lien created by this act shall cease to exist unless, within 90 days after the lien claimant's last furnishing of labor or material for the improvement, pursuant to the lien claimant's contract, a claim of lien is recorded in the office of the register of deeds for each county where the real property to which the improvement was made is located. A claim of lien shall be valid only as to the real property described in the claim of lien and located within the county where the claim of lien has been recorded.

(2) A claim of lien shall be in substantially the following form:

CLAIM OF LIEN

Notice is hereby given that on the _____ day of _____, 19____.

(name)

(address)

first provided labor or material for an improvement to

_____,
(legal description of real property from notice of commencement)

The (owner) (lessee) of which property s _____
(name of owner or lessee from notice of commencement)

The last day of providing the labor or material was the _____ day of _____, 19____

TO BE COMPLETED BY A LIEN CLAIMANT WHO IS A CONTRACTOR,
SUBCONTRACTOR, OR SUPPLIER:

The lien claimant's contract amount, including extras, is \$._____. The lien

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claimant has received payment thereon in the total amount of \$_____ and therefore claims a construction lien upon the above-described real property in the amount of \$_____

TO BE COMPLETED BY A LIEN CLAIMANT WHO IS A LABORER:

The lien claimant's hourly rate, including fringe benefits and withholdings, is \$_____. There is due and owing to or on behalf of the laborer the sum of \$_____ for which the laborer claims a construction lien upon the above-described real property.

(lien claimant)

By _____
(signature of lien claimant, agent, or attorney)

(address of party signing claim of lien)

Date _____

State of _____)

Michigan

_____)ss.

County

Of _____)

Subscribed and sworn to before me this _____ day _____, 19_____

Signature of Notary Public

My commission expires _____

Prepared by: _____
(name and address of party)

(3) If the claim of lien has been assigned, the claim of lien shall state: "The construction lien having been assigned, this claim of lien is made by _____ as assignee thereof".

(4) A claim of lien by a subcontractor, supplier, or laborer shall have attached to it a proof of service of a notice of furnishing described in section 109.

(5) Each contractor, subcontractor, supplier, laborer, or agent of a group of laborers authorized under subsection (6) recording a claim of lien, within 15 days after the date of the recording, shall serve on the designee personally or by certified mail, return receipt requested, at the address shown on the notice of commencement, a copy of the claim of lien and a copy of any proof of service recorded in connection with the claim of lien. If a designee has not been named in the notice of commencement, or if the designee has died, service shall be made upon the owner or lessee named in the notice of commencement. If the service is made by certified mail, service is complete upon mailing. Proof of making the service shall be attached to any complaint, cross-claim, or counterclaim filed to enforce a construction lien.

(6) One or more laborers may authorize an agent to prepare, record, and serve a claim of lien in the manner provided in this section. A claim of lien under this section may contain the claim of lien of more than 1

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laborer and shall contain the information required in subsection (2) as to each laborer for whom it is prepared. The claim of lien of each lien claimant under this subsection shall be considered by the court on its own merits.

History: 1980, Act 497, Eff. Jan. 1, 1982 ;-- Am. 1982, Act 17, Eff. Mar. 1, 1982

570.1112 Endorsing and indexing instrument by register of deeds; recording fee; constructive notice.

Sec. 112. (1) If a notice of commencement, claim of lien, certificate of discharge of lien, or a certificate of a county clerk that no proceedings to enforce a statement or claim of lien have been commenced within the period provided by law is recorded in the office of a register of deeds, the register shall endorse thereon the date of its recording and shall properly index the instrument.

(2) The fee for recording an instrument described in subsection (1) shall be the same as the fee that is provided by law for the recording of a real estate mortgage.

(3) The recording of a notice of commencement or a claim of lien shall operate as constructive notice to subsequent purchasers or encumbrancers in the same manner as the recording of a real estate mortgage.

History: 1980, Act 497, Eff. Jan. 1, 1982

570.1113 Making available to lien claimant copy of contract and statement of amount due and unpaid; liability of owner or lessee; providing to owner, lessee, or designee statement of labor and material furnished; liability of lien claimant failing to provide statement; honoring request for payment by lien claimant.

Sec. 113. (1) An owner or lessee who contracts for an improvement, upon receipt of a written demand by a lien claimant, shall make available for inspection and copying to the lien claimant, within 10 days after receipt of the written demand, a copy of the contract for the improvement between the owner or lessee and the contractor, and a written statement of the amount due and unpaid on that date on the contract. Any owner or lessee who fails to make available for inspection and copying a copy of the contract and the written statement of the amount due and unpaid, within 10 days after receipt of a written demand, shall be liable to the lien claimant for all actual damages sustained by the lien claimant due to the failure.

(2) Each lien claimant, upon receipt of a written demand by an owner, lessee, designee, or contractor, shall provide to the owner, lessee, designee, or contractor, within 10 days after receipt of the written demand, a written statement of the amount of labor and material

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furnished to the date of the statement in connection with the improvement for which a construction lien is claimed, any amount remaining due for the labor and material furnished, and the contractual amount of any work remaining to be performed. A lien claimant who fails to provide a statement within 10 days after receipt of a written demand shall be liable to the owner, lessee, or contractor for actual damages sustained by the owner, lessee, or contractor due to the failure. In addition, the owner, lessee, or contractor, after the expiration of the 10-day period without receipt of the requested statement, shall not be required to honor a request for payment by the lien claimant until the statement has been received by the person who requested it.

History: 1980, Act 497, Eff. Jan. 1, 1982 ;-- Am. 1982, Act 17, Eff. Mar. 1, 1982

570.1114 Construction lien upon interest of owner or lessee in residential structure; providing improvement pursuant to written contract required; statement; contents.

Sec. 114. A contractor does not have a right to a construction lien on the interest of an owner or lessee in a residential structure unless the contractor has provided an improvement to the residential structure pursuant to a written contract between the owner or lessee and the contractor and any amendments or additions to the contract are also in writing. The contract required by this section shall contain a statement, in type no smaller than that of the body of the contract, stating all of the following:

(a) That a residential builder or a residential maintenance and alteration contractor is required to be licensed under article 24 of the occupational code, 1980 PA 299, MCL 339.2401 to 339.2412. That an electrician is required to be licensed under the electrical administrative act, 1956 PA 217, MCL 338.881 to 338.892. That a plumbing contractor is required to be licensed under the state plumbing act, 2002 PA 733, MCL 338.3511 to 338.3569. That a mechanical contractor is required to be licensed under the Forbes mechanical contractors act, 1984 PA 192, MCL 338.971 to 338.988.

(b) If the contractor is required to be licensed to provide the contracted improvement, that the contractor is licensed and the contractor's license number.

History: 1980, Act 497, Eff. Jan. 1, 1982 ;-- Am. 1981, Act 191, Eff. Jan. 1, 1982 ;-- Am. 1982, Act 17, Eff. Mar. 1, 1982 ;-- Am. 2006, Act 497, Eff. Jan. 3, 2007

570.1114a Construction lien recorded by unlicensed person.

Sec. 114a. (1) The owner of residential property on which a construction lien has been recorded by a person who was not licensed as described in section 114, or any person affected by the lien, may bring an action to discharge the lien.

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(2) If the court in an action under subsection (1) determines that the person who recorded the lien was not licensed as required, the person is liable to the person who brought the action for all damages that result from the recording and any attempts to enforce the lien, including actual costs and attorney fees.

(3) A person who brings an action to recover for the performance of an act or contract for which a license is required as described in section 114 shall allege in the complaint and has the burden of proving that he or she was properly licensed.

History: Add. 2006, Act 497, Eff. Jan. 3, 2007

570.1115 Waiver of construction lien.

Sec. 115. (1) A person shall not require, as part of any contract for an improvement, that the right to a construction lien be waived in advance of work performed. A waiver obtained as part of a contract for an improvement is contrary to public policy, and shall be invalid, except to the extent that payment for labor and material furnished was actually made to the person giving the waiver. Acceptance by a lien claimant of a promissory note or other evidence of indebtedness from an owner, lessee, or contractor shall not of itself serve to waive or discharge otherwise valid construction lien rights.

(2) A lien claimant who receives full payment for his or her contract shall provide to the owner, lessee, or designee a full unconditional waiver of lien.

(3) A lien claimant who receives partial payment for his or her contract shall provide to the owner, lessee, or designee a partial unconditional waiver of the lien for the amount which the lien claimant has received, if the owner, lessee, or designee requests the partial unconditional waiver.

(4) A partial conditional waiver of lien or a full conditional waiver of lien shall be effective upon payment of the amount indicated in the waiver.

(5) For purposes of this act, retainage that is not payable under a contract until the happening of a certain event in addition to the providing of an improvement is not due as of the date of the providing of the improvement.

(6) A waiver of a lien under this section shall be effective when a person makes payment relying on the waiver unless at the time payment was made the person making the payment has written notice that the consideration for the waiver has failed.

(7) Subject to subsection (8), if the improvement is provided to property that is a residential structure, an owner, lessee, or designee shall not rely on a full or partial unconditional or conditional waiver of lien provided by a person other than the lien claimant named in the waiver if the lien claimant has either filed a notice of furnishing under section 109 or is excused from filing a notice of furnishing under section 108 or 108a

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unless the owner, lessee, or designee has first verified the authenticity of the lien waiver with the lien claimant either in writing, by telephone, or personally.

(8) An agent who is authorized to prepare and serve a notice of furnishing or to prepare, record, and serve a claim of lien on behalf of a laborer or group of laborers is automatically authorized to provide and responsible for providing waivers of lien, unless or until the laborer or group of laborers notifies the designee in writing that someone other than the agent is authorized to provide appropriate waivers. An individual laborer may also provide waivers under this section instead of the agent.

(9) The following forms shall be used in substantially the following format to execute waivers of construction liens:

(a) **PARTIAL UNCONDITIONAL WAIVER**

I/we have a contract with _____ to
(other contracting party)
provide _____ for the improvement to the property
described as _____, and
by signing this waiver waive my/our construction lien to the
amount of \$_____, for labor/materials provided
through _____.
(date)

This waiver, together with all previous waivers, if any, (circle one)
does does not cover all amounts due to me/us for contract improvement
provided through the date shown above. If the improvement provided
to property that is a residential structure and if the owner or lessee of the
property owner's lessee's designee has received a notice of furnishings
from me/one of us or if I/we are not required to provide one, and the owner,
lessee, or designee has not received this waiver directly from me/one of us,
the owner, lessee, or designee may not rely upon it without contacting me/one
of us, either in writing, by telephone, or personally, to verify it is authentic.

(signature of lien claimant)

Signed on: _____ Address: _____
(date)

Telephone: _____

DO NOT SIGN BLANK OR INCOMPLETE FORMS. RETAIN A COPY.

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(b) **PARTIAL CONDITIONAL WAIVER**

I/we have a contract with _____ to
(other contracting party)
provide _____ for the improvement to the property
described as: _____, and
by signing this waiver waive my/our construction lien to the amount of \$ _____
for labor/materials provided through _____.
(date)

This waiver, together with all previous waivers, if any, (circle one) does does
not cover all amounts due to me/us for contract improvement provided through
the date shown above. This waiver is conditioned on actual payment of the
amount shown above.

If the improvement is provided to property that is a residential structure and if
the owner or lessee of the property or the owner's or lessee's designee has
received a notice of furnishing from me/one of us or if I/we are not required to
provide one, and the owner, lessee, or designee has not received this waiver
directly from me/one of us, the owner, lessee, or designee may not rely
upon it without contacting me/one of us, either in writing, by telephone, or
personally, to verify that it is authentic.

(signature of lien claimant)

Signed on: _____ Address: _____
(date)

Telephone: _____

DO NOT SIGN BLANK OR INCOMPLETE FORMS. RETAIN A COPY.

(c) **FULL UNCONDITIONAL WAIVER**

My/our contract with _____ to
(other contracting party)
provide _____ for the improvement of the property
described as: _____ has been
fully paid and satisfied. By signing this waiver, all my/our construction lien
rights against the described property are waived and released.

If the improvement is provided to property that is a residential structure and
if the owner or lessee of the property or the owner's or lessee's designee has
received a notice of furnishing from me/one of us or if I/we are not required to
provide one, and the owner, lessee, or designee has not received this waiver
directly from me/one of us, the owner, lessee, or designee may not rely upon it

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without contacting me/one of us, either in writing, by telephone, or personally,
to verify that it is authentic.

(signature of lien claimant)

Signed on: _____ Address: _____
(date)

Telephone: _____

DO NOT SIGN BLANK OR INCOMPLETE FORMS. RETAIN A COPY.

(d) **FULL CONDITIONAL WAIVER**

My/our contract with _____ to
(other contracting party)

provide _____ for the improvement of the property
described as: _____ has been

fully paid and satisfied. By signing this waiver, all my/our construction lien
rights against the described property are waived and released.

This waiver is conditioned on actual payment of _____

If the improvement is provided to property that is a residential structure
and if the owner or lessee of the property or the owner's or lessee's designee
has received a notice of furnishing from me/one of us or if I/we are not required
to provide one, and the owner, lessee, or designee has not received this
waiver directly from me/one of us, the owner, lessee, or designee may not
rely upon it without contacting me/one of us, either in writing, by telephone, or
personally, to verify that it is authentic.

(signature of lien claimant)

Signed on: _____ Address: _____
(date)

Telephone: _____

DO NOT SIGN BLANK OR INCOMPLETE FORMS. RETAIN A COPY.

History: 1980, Act 497, Eff. Jan. 1, 1982 ;-- Am. 1981, Act 191, Eff. Jan. 1, 1982 ;-- Am. 1982, Act 17,
Eff. Mar. 1, 1982 ;-- Am. 2006, Act 572, Imd. Eff. Jan. 3, 2007 ;-- Am. 2007, Act 28, Imd. Eff. June 28,
2007

570.1116 Claim of lien; vacation and discharge; bond; penal sum; filing; notification of lien claimant; objection to sufficiency of surety; appearance by surety; approval of bond; certificate; recordation; discharge of claim of lien and notice of lis pendens; action by obligee; court order or other relief.

Sec. 116. (1) The claim of lien of a contractor, subcontractor, supplier, or laborer may at any time be vacated and discharged if a bond, with the lien claimant as obligee, is filed with the county clerk for the county in which the property covered by the lien is located and a copy is given to the obligee lien claimant. The bond shall be in the penal sum of twice the amount for which the lien is claimed and shall be conditioned on the payment of any sum for which the obligee in the bond may obtain judgment on the claim for which the claim of lien was filed. The bond may be either a cash bond executed by a principal, or a surety bond executed by a principal and a surety company authorized to do business in this state.

(2) Within 10 days after receiving the bond, the county clerk shall notify each lien claimant that a bond has been filed and indicate the amount of the bond and the name of the surety on the bond. The lien claimants shall have 10 days after being notified of the bond within which to file an objection to the sufficiency of the surety on the bond, in which case the county clerk shall not approve the bond until the surety has appeared before the county clerk and answered under oath those questions asked by or on behalf of the lien claimant touching on the surety's financial responsibility. If an objection to the surety is not filed within the 10 days after being notified of the bond or if the county clerk approves the bond after the questioning of the surety, the county clerk shall at once give to the principal and the obligee named in the bond a certificate that a good and sufficient bond has been filed in accordance with this act. The certificate shall state the names of the obligor and obligee, the amount of the bond, and the description of the property covered by the claim of lien being discharged. Upon the recording of the certificate in the office of the register of deeds where the claim of lien was recorded, the claim of lien of the obligee lien claimant named in the claim of lien shall be discharged. If because of the pendency of proceedings to enforce the claim of lien, a notice of lis pendens has been recorded, the recording of the certificate shall also operate as a discharge of the notice of lis pendens. The obligee may make any obligor on the bond a party to an action to enforce a claim under the bond, and a judgment may be recovered in the action against all or any of the obligors.

(3) In an action brought in connection with the claim of the obligee, the court may do 1 or more of the following:

- (a) Order the amount of the bond to be reduced.
- (b) Order other or additional surety to be provided.

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(c) Grant any other relief the court considers to be equitable.

History: 1980, Act 497, Eff. Jan. 1, 1982

570.1117 Action for enforcement of construction lien through foreclosure; notice of lis pendens; agent appointed to represent laborers; parties; action on contract by lien claimant; enforcement of lien by cross-claim or counterclaim where lien claimant party; sworn statement.

Sec. 117. (1) Proceedings for the enforcement of a construction lien and the foreclosure of any interests subject to the construction lien shall not be brought later than 1 year after the date the claim of lien was recorded.

(2) At the time of commencing an action for the enforcement of a construction lien through foreclosure, the plaintiff shall record a notice of lis pendens with respect to the action in the office of the register of deeds for the county in which the real property involved in the action is located.

(3) As provided in section 111(6), an action to foreclose on a construction lien may be maintained by an agent appointed to represent laborers.

(4) Each person who, at the time of filing the action, has an interest in the real property involved in the action which would be divested or otherwise impaired by the foreclosure of the lien, shall be made a party to the action.

(5) In connection with an action for foreclosure of a construction lien, the lien claimant also may maintain an action on any contract from which the lien arose.

(6) Except as otherwise provided in subsection (1), a lien claimant who has been made a party to an action for foreclosure of a construction lien may enforce his or her own construction lien in the action by a cross-claim or counterclaim, and the owner or lessee may timely join other or potential lien claimants in the action.

(7) In an action brought by a contractor or subcontractor to enforce a construction lien through foreclosure, the complaint, cross-claim, or counterclaim must show that the owner or lessee was provided a sworn statement, if a sworn statement was requested or required, pursuant to section 110.

History: 1980, Act 497, Eff. Jan. 1, 1982 ;-- Am. 1981, Act 191, Eff. Jan. 1, 1982

570.1118 Action to enforce construction lien through foreclosure; circuit court; equitable nature of action; enforcement of lien by cross-claim or counterclaim filed in pending action; duties of court; attorneys' fees.

Sec. 118. (1) An action to enforce a construction lien through foreclosure shall be brought in the circuit court for the county where the real property described in the claim of lien is located. If the real property is located in more than 1 county or judicial circuit, the action may be brought in any of the counties where the real property is located. An action to enforce a construction lien through foreclosure is equitable in nature. A construction lien also may be enforced by a cross-claim or counterclaim timely filed in a pending action involving title to, or foreclosure of mortgages or encumbrances on, real property.

(2) In an action to enforce a construction lien through foreclosure, the court shall examine each claim and defense that is presented and determine the amount, if any, due to each lien claimant or to any mortgagee or holder of an encumbrance and their respective priorities. The court may allow reasonable attorneys' fees to a lien claimant who is the prevailing party. The court also may allow reasonable attorneys' fees to a prevailing defendant if the court determines the lien claimant's action to enforce a construction lien under this section was vexatious.

History: 1980, Act 497, Eff. Jan. 1, 1982 ;-- Am. 1982, Act 17, Eff. Mar. 1, 1982 ;-- Am. 2010, Act 147, Imd. Eff. Aug. 23, 2010

*******570.118a added THIS ADDED SECTION IS EFFECTIVE AUGUST 23, 2010 *******

570.1118a Attachment of claim to residential structure; affidavit; rebuttable presumption of payment by owner or lessee to contractor.

Sec. 118a. (1) A claim of construction lien does not attach to a residential structure, to the extent payments have been made, if the owner or lessee files an affidavit with the court stating that the owner or lessee has paid the contractor for the improvement to the residential structure according to the contract, indicating in the affidavit the amount of the payment. The owner or lessee shall attach to the affidavit copies of the contract, any change orders, and any evidence of the payment that the owner or lessee has, including, but not limited to, a canceled check or a credit card or other receipt.

(2) If there is no written contract between the owner or lessee and the contractor as required by section 114, the filing of an affidavit under this section creates a rebuttable presumption that the owner or lessee has paid the contractor for the improvement. The presumption may be overcome only by a showing of clear and convincing evidence to the contrary.

History: Add. 2010, Act 147, Imd. Eff. Aug. 23, 2010

570.1119 Claims of lien having equal priority; priority of construction lien over garnishments and over other interests, liens, or encumbrances; attachment; effect of recording; priority of recorded mortgage, lien, encumbrance, or other interest over construction lien; advances; retainage.

Sec. 119. (1) Except as otherwise provided by subsection (4), as between parties entitled to claim construction liens under this act, their claims of lien shall be treated as having equal priority.

(2) A construction lien under this act shall take priority over all garnishments for the contract debt made after commencement of the first actual physical improvement, without regard to the date of recording of the claim of lien.

(3) A construction lien arising under this act shall take priority over all other interests, liens, or encumbrances which may attach to the building, structure, or improvement, or upon the real property on which the building, structure, or improvement is erected when the other interests, liens, or encumbrances are recorded subsequent to the first actual physical improvement.

(4) A mortgage, lien, encumbrance, or other interest recorded before the first actual physical improvement to real property shall have priority over a construction lien arising under this act. The priority of the mortgage shall exist as to all obligations secured by the mortgage except for indebtedness arising out of advances made subsequent to the first actual physical improvement. An advance made pursuant to the mortgage, but subsequent to the first actual physical improvement shall have priority over a construction lien if, for that advance, the mortgagee has received a contractor's sworn statement as provided in section 110, has made disbursements pursuant to the contractor's sworn statement, and has received waivers of lien from the contractor and all subcontractors, laborers, and suppliers who have provided notices of furnishing. The construction lien of any lien claimant not set forth on the sworn statement upon which an advance was made shall be subordinate to the lien of the mortgage, including the advance, unless prior to the advance the lien claimant has provided the designee with a notice of furnishing if required by section 109 or has recorded a claim of lien. Any advance made after a notice of furnishing has been provided or has been excused as provided in sections 108, 108a, and 109 or a claim of lien has been recorded shall be subordinate to the construction lien of that lien claimant unless prior to the advance the mortgagee has received from that lien claimant either a full unconditional waiver of lien or a partial unconditional waiver of lien for the full amount due the lien claimant as of the date through which the lien is waived as shown on the lien waiver and the date through which the lien is waived as shown on the partial unconditional waiver is within 30 days prior to the advance.

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(5) For purposes of this section, retainage which is not payable under a contract until the happening of a certain event in addition to the providing of an improvement, is not due as of the date of the providing of the improvement.

History: 1980, Act 497, Eff. Jan. 1, 1982 ;-- Am. 1981, Act 191, Eff. Jan. 1, 1982 ;-- Am. 1982, Act 17, Eff. Mar. 1, 1982

570.1120 Failure of owner or lessee to perform contract; compensation and additional damages.

Sec. 120. If a lien claimant, by reason of the failure of an owner or lessee to perform the contract, and without fault on the part of the lien claimant, has been prevented from completely performing the contract, the lien claimant shall be entitled to compensation for as much as was performed by the claimant under the contract, in proportion to the price stipulated for complete performance of the whole contract, less any payments made to the lien claimant and also to any additional damages which the lien claimant may be entitled to as a matter of law.

History: 1980, Act 497, Eff. Jan. 1, 1982

570.1121 Judgment of foreclosure; sale of real property or improvement; satisfaction of lien from rents, profits, and income; adding tax and insurance premium payments; affidavit; redemption period; conduct of sale; right, title, and interest vested in grantee; final order; deficiency judgment; surplus; bringing sale proceeds into court; redemption.

Sec. 121. (1) If the court finds that a lien claimant is entitled to a construction lien upon the real property to which he or she furnished an improvement, and the amount adjudged to be due has not been paid, the court may enter a judgment ordering the sale of any interest in the real property, or a part of the real property, to which the construction lien attaches. If the construction lien attaches only to the improvement furnished, the court may order a sale of the improvement. If the court finds that there is an interest in or encumbrance against the real property which is superior to the construction lien being foreclosed, the order for sale shall indicate that fact. The court may order a construction lien satisfied out of the rents, profits, and income from the real property to which the construction lien has attached.

(2) In a judgment of foreclosure, the court may provide for adding to the amount determined to be due any amount paid by any lien claimant, mortgagee, or receiver appointed by the court, after the foreclosure sale and before the expiration of the period of redemption, for taxes assessed against the real property sold or for that portion of the premium of an insurance policy covering the building located on the real property, which premium portion is required to keep the policy in force until the expiration

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of the period of redemption. After the making of any tax or premium payments, an affidavit with respect to the payments shall be recorded immediately in the office of the register of deeds for the county in which the deed on foreclosure sale was recorded.

(3) In the order for the foreclosure sale, the court shall fix a period for redemption. The period of redemption shall not exceed 4 months. The sale shall be conducted in the same manner as a sale on execution. The sale shall become final, subject to the period of redemption, upon the entry of an order of confirmation by the court. Pursuant to section 119(3) and subject to subsection (1), the foreclosure, upon becoming final, shall vest in the grantee named in the deed all the right, title, and interest in the real property which the owner, co-owner, lessee, or co-lessee whose interest is being foreclosed had at the date of the execution of the contract or at any time thereafter.

(4) The court shall enter a final order directing the distribution of all of the funds obtained from the foreclosure sale in accordance with the priorities of the parties as determined by the court. The court shall adjudicate the rights, if any, of lien claimants to a deficiency judgment against any owner or lessee contracting for an improvement. After the making of all payments directed by the court, any surplus from the proceeds of the sale of property on the foreclosure of a construction lien under this act shall be paid over to the owner, co-owner, lessee, co-lessee, or such other person as may be entitled to the surplus. However, the surplus shall be subject to a subsequent judgment or execution under this act in the same manner as if the surplus was derived from a sale made under the subsequent execution.

(5) If all claims of lien are not ascertained when a sale is ordered, or if for any other reason it is deemed proper to postpone the order of distribution of the proceeds of a sale on foreclosure, the court may direct the party making the sale to bring the proceeds of the sale into court, to be disposed of according to order of the court.

(6) Redemption from a foreclosure sale is complete upon payment of all sums set forth in the judgment of foreclosure, together with any sums due for the payment of taxes or insurance premiums as provided in subsection (2). If there is not a redemption from the foreclosure sale, taxes and insurance premiums paid after the sale shall not be included in any deficiency judgment.

History: 1980, Act 497, Eff. Jan. 1, 1982 ;-- Am. 1981, Act 191, Eff. Jan. 1, 1982

570.1122 Appointing receiver in action to enforce construction lien through foreclosure or in action to foreclose mortgage; petition; motion; finding; appointment; nominations by mortgagee and lien claimant; fiduciary responsibility; appointment of receiver for residential structure or certain apartment buildings prohibited; power of receiver.

Sec. 122. (1) If the improvement to the real property is not completed as of the date of commencement of an action in which enforcement of a construction lien through foreclosure is sought or in any action to foreclose a mortgage on the real property on which the incomplete improvement exists, any lien claimant or mortgagee may petition the court for the appointment of a receiver. The petition shall be heard as a motion. A receiver may be appointed by the court upon finding that a substantial unpaid construction lien exists, or that the mortgage on the real property is in default and that the lien claimant, the mortgagee, or both, are likely to sustain substantial loss if the improvement is not completed.

(2) When making an appointment of a receiver under this section, the court shall give consideration to the nominations of the mortgagee and the lien claimant. Any receiver appointed under this section shall be deemed a fiduciary for the benefit of all persons having or claiming interests in the real property, and shall exercise his or her office accordingly.

(3) A receiver shall not be appointed under this section for any residential structure, nor for any apartment building containing 4 or less apartments.

(4) The receiver shall be entitled to possession of the real property upon his or her appointment. Unless otherwise limited by the court, and subject to his or her fiduciary responsibility as provided in this act, the receiver shall have all powers generally exercised by a receiver in a court of equity, including the right to be compensated for his or her services and those of his or her agents and attorneys.

History: 1980, Act 497, Eff. Jan. 1, 1982 ;-- Am. 1981, Act 191, Eff. Jan. 1, 1982

570.1123 Petition by receiver for authority to complete construction of improvements, borrow money, grant security, or sell real property under foreclosure; sale; redemption period; purchase of real property by lien claimant or mortgagee; right, title, and interest vested in grantee.

Sec. 123. (1) The receiver may petition the court for authority to complete construction of improvements to the real property in full or in part, to borrow money to complete the construction, and to grant security, by way of mortgage or otherwise, for the borrowings. The priority of the security shall be determined by the court. A petition for

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authority to complete construction of improvements shall not be granted unless the court finds that the value added to the real property which will result from the construction is likely to exceed the cost of the additional construction, including all estimated overhead and administrative costs, together with interest on any funds that are to be borrowed for the construction. The receiver also may be authorized by the court to borrow funds for other purposes, including such purposes as preserving and operating the real property.

(2) The receiver may petition the court for authority to sell the real property interest under foreclosure for cash or on other terms as may be ordered by the court. The sale may be by private or public sale and shall be held in the manner directed by the court. A sale under this subsection shall become final upon the entry of an order of confirmation by the court, unless the court allows a period for redemption. The redemption period, if allowed, shall not exceed 4 months.

(3) Any lien claimant or mortgagee may purchase the real property at a sale on foreclosure or a sale by the receiver, and may apply on the purchase price any sums which would be payable to him or her from the proceeds of the sale.

(4) Pursuant to section 119(3) and subject to section 121(1), a sale by the receiver, upon becoming final, shall vest in the grantee named in the deed all the right, title, and interest in the real property which the owner, co-owner, lessee, or co-lessee whose interest is being foreclosed had at the date of the execution of the contract for the improvement or at any time thereafter.

History: 1980, Act 497, Eff. Jan. 1, 1982 ;-- Am. 1981, Act 191, Eff. Jan. 1, 1982

570.1124 Final account of receiver; final order directing distribution of assets; order of priority; deficiency judgment; notice of hearing.

Sec. 124. (1) Upon the completion of the sale of the real property, the receiver shall prepare and submit a final account for examination and approval by the court. The court shall enter a final order directing the distribution of all funds or other assets held by the receiver. Repayment of funds borrowed by the receiver, under court authority, for the completion of improvements, or for any other purpose shall have priority in the distribution, unless a different priority has been ordered by the court. The next priority shall be that of funds expended by the receiver, including his or her fees and those of his or her attorneys and agents. The remaining funds shall be distributed to the parties in the order of the priority of their respective liens, encumbrances, or other rights as determined by the court. The court shall adjudicate the right, if any, to a deficiency judgment against any contracting party.

(2) Each person who appeared in the foreclosure action shall receive a notice of hearing on any court action concerning the receivership.

History: 1980, Act 497, Eff. Jan. 1, 1982

570.1125 Assignability of construction lien; powers and obligations of assignee.

Sec. 125. A construction lien which arises under this act is assignable. Proceedings for the enforcement of the lien may be maintained by, and in the name of, the assignee. In that case, the assignee shall have the same power to enforce the construction lien, and shall be subject to the same obligations, as if the proceedings were being taken by, and in the name of, the lien claimant.

History: 1980, Act 497, Eff. Jan. 1, 1982

570.1126 Construction lien concerning condominium; limitations; definitions.

Sec. 126. (1) A construction lien, concerning a condominium, arising under this act is subject to the following limitations:

(a) Except as otherwise provided in this section, a construction lien for an improvement furnished to a condominium unit or to a limited common element shall attach only to the condominium unit to which the improvement was furnished.

(b) A construction lien for an improvement authorized by the developer of a condominium project and performed upon the common elements shall attach only to condominium units owned by the developer at the time of recording of the claim of lien.

(c) A construction lien for an improvement authorized by the association of coowners of condominium units shall attach to each condominium unit only to the proportional extent that the coowner of the condominium unit is required to contribute to the expenses of administration, as provided by the condominium documents.

(d) A construction lien shall not arise or attach to a condominium unit for work performed on the common elements, if the work was not contracted for by the developer or the association of coowners of condominium units.

(2) This section shall be subject to the definitions and limitations of Act No. 59 of the Public Acts of 1978, being sections 559.101 to 559.272 of the Michigan Compiled Laws.

History: 1980, Act 497, Eff. Jan. 1, 1982

570.1127 Full payment of claim of lien; certificate; discontinuance or dismissal of action to enforce lien through foreclosure and to discharge notice of lis pendens; documents; providing discharges of lien and other documents.

Sec. 127. (1) When any claim of lien has been fully paid, the lien claimant shall deliver to the owner, lessee, or other person making payment a certificate, witnessed and acknowledged in the same manner

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as a discharge of mortgage, that the claim has been paid and is now discharged. If an action to enforce the construction lien through foreclosure is pending, the lien claimant also shall furnish, upon request, those documents which are necessary to effect a discontinuance or dismissal of the action and a discharge of any notice of lis pendens filed in connection with the action.

(2) An agent who is authorized to prepare and serve a notice of furnishing on behalf of a laborer or group of laborers or an agent who is authorized to prepare, record, and serve a claim of lien on behalf of a laborer or group of laborers is automatically authorized to provide discharges of lien and other documents described in subsection (1), unless or until the laborer or group of laborers notifies the designee in writing that someone other than a previously authorized agent is duly authorized to provide the appropriate documents. An agent who is authorized to prepare and serve a notice of furnishing or a claim of lien on behalf of a laborer or group of laborers shall be responsible for providing discharges of lien and the other documents described in subsection (1) on behalf of such laborer or laborers pursuant to this section. An agent who is authorized to prepare and serve a claim of lien on behalf of a laborer or group of laborers shall be responsible for providing discharges of lien and the other documents described in subsection (1) on behalf of such laborer or laborers pursuant to this section. An individual laborer may also provide discharges of lien and the other documents described in subsection (1) pursuant to this section instead of the agent.

History: 1980, Act 497, Eff. Jan. 1, 1982 ;-- Am. 1982, Act 17, Eff. Mar. 1, 1982

570.1128 Failure to commence proceedings to enforce lien within time provided by law; certificate; recording; affidavit showing time statement or claim of lien recorded.

Sec. 128. If any statement or claim of lien has been recorded in the office of a register of deeds, and the time within which proceedings to enforce the lien through foreclosure has elapsed without commencement of the proceedings, a person with an interest in the real property affected by the lien, or that person's agent or attorney, may make and present to the county clerk of the county in which the statement or claim of lien was recorded, an affidavit showing the time when the statement or claim of lien was recorded and the names of the parties to the statement or claim of lien. The county clerk shall examine the records of his or her office, and if it appears that proceedings to enforce the lien have not been commenced with the time provided by law, the county clerk shall execute and deliver to the owner a certificate of that fact, bearing the seal of the circuit court. The certificate may be recorded in the office of the register

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of deeds for the county where the statement or claim of lien was recorded, after which the statement or claim of lien shall have no effect.

History: 1980, Act 497, Eff. Jan. 1, 1982

Part 2

570.1201-570.1207 Repealed. 2010, Act 147, Imd. Eff. Aug. 23, 2010.

Compiler's Notes: The repealed sections pertained to the homeowner construction lien recovery fund.

Part 3

570.1301 Laws controlling rights to lien and construction lien; requesting statement of date of owner's first contract with contractor; response; effect of failure to respond to request; definitions.

Sec. 301. (1) With respect to residential structures, this act shall control all rights to a construction lien arising from any project for which the contracting owner entered the first contract with a contractor on or after January 1, 1982.

(2) With respect to residential structures, Act No. 179 of the Public Acts of 1891, as amended, being sections 570.1 to 570.30 of the Michigan Compiled Laws, shall control all rights to a lien arising from any project for which the contracting owner entered the first contract with a contractor before January 1, 1982.

(3) Except as provided in subsection (1), this act shall control all rights to a construction lien arising from any project for which the contracting owner entered the first contract with a contractor on or after March 1, 1982.

(4) Except as provided in subsection (2), Act No. 179 of the Public Acts of 1891, as amended, being sections 570.1 to 570.30 of the Michigan Compiled Laws, shall control all rights to a lien arising from any project for which the contracting owner entered the first contract with a contractor before March 1, 1982.

(5) A contractor, subcontractor, supplier, or laborer may, by certified mail to the owner or designee, request in writing a statement as to the date of the owner's first contract with a contractor on the project. The owner or designee addressed shall respond by return mail within 10 days of the postmark of such request. The lien claimant may rely upon the information so provided in determining the applicable and controlling state law. Failure of the owner, lessee, or designee to respond to the request within the 10 days shall operate to extend the time within which:

(a) A subcontractor or supplier may provide a notice of furnishing, as described in section 109, until 20 days after the information actually has been furnished to the subcontractor or supplier.

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(b) A laborer may provide a notice of furnishing, as described in section 109, until 90 days after the information actually has been furnished to the laborer.

(6) As used in this section:

(a) "Contactor" does not include a supplier, nor relate to a contract solely for preparation for the actual physical improvement such as surveying, soil boring and testing, architectural or engineering planning, or the preparation of other plans or drawings of any kind or nature.

(b) "Project" means the aggregate of improvements contracted for by the contracting owner.

History: 1980, Act 497, Eff. Jan. 1, 1982 ;-- Am. 1981, Act 191, Eff. Jan. 1, 1982

Compiler's Notes: At the beginning of subsection (6)(a), "Contactor" evidently should read "Contractor".

570.1302 Construction of act.

Sec. 302. (1) This act is declared to be a remedial statute, and shall be liberally construed to secure the beneficial results, intents, and purposes of this act. Substantial compliance with the provisions of this act shall be sufficient for the validity of the construction liens provided for in this act, and to give jurisdiction to the court to enforce them.

(2) This act shall not be construed to prevent a lien claimant from maintaining a separate action on a contract.

History: 1980, Act 497, Eff. Jan. 1, 1982 ;-- Am. 1982, Act 17, Eff. Mar. 1, 1982

570.1303, 570.1304 Repealed. 2010, Act 147, Imd. Eff. Aug. 23, 2010.

Compiler's Notes: The repealed sections pertained to the repeal of certain acts and creation of a joint review committee in the legislative council.

570.1305 Effective date of act; effective date of MCL 570.1303.

Sec. 305. (1) Except as provided in subsection (2), this act shall take effect January 1, 1982.

(2) Section 303 takes effect March 1, 1982.

History: 1980, Act 497, Eff. Jan. 1, 1982 ;-- Am. 1981, Act 191, Eff. Jan. 1, 1982

REGISTER OF DEEDS -- RECORDING REQUIREMENTS (EXCERPT)

Act 103 of 1937 as amended

565.201 Requirements for recording with register of deeds.

Sec. 1. (1) An instrument executed after October 29, 1937 by which the title to or any interest in real estate is conveyed, assigned, encumbered, or otherwise disposed of shall not be received for record by the register of deeds of any county of this state unless that instrument complies with each of the following requirements:

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(a) The name of each person purporting to execute the instrument is legibly printed, typewritten, or stamped beneath the original signature or mark of the person.

(b) A discrepancy does not exist between the name of each person as printed, typewritten, or stamped beneath their signature and the name as recited in the acknowledgment or jurat on the instrument.

(c) The name of any notary public whose signature appears upon the instrument is legibly printed, typewritten, or stamped upon the instrument immediately beneath the signature of that notary public.

(d) The address of each of the grantees in each deed of conveyance or assignment of real estate, including the street number address if located within territory where street number addresses are in common use, or, if not, the post office address, is legibly printed, typewritten, or stamped on the instrument.

(e) If the instrument is executed before April 1, 1997, each sheet of the instrument is all of the following:

(i) Typewritten or printed in type not smaller than 8-point size.

(ii) Not more than 8-1/2 by 14 inches.

(iii) Legible.

(iv) On paper of not less than 13 (17x22—500) pound weight.

(f) If the instrument is executed after April 1, 1997, each sheet of the instrument complies with all of the following requirements:

(i) Has a margin of unprinted space that is at least 2-1/2 inches at the top of the first page and at least 1/2 inch on all remaining sides of each page.

(ii) Subject to subsection (3), displays on the first line of print on the first page of the instrument a single statement identifying the recordable event that the instrument evidences.

(iii) Is electronically, mechanically, or hand printed in 10-point type or the equivalent of 10-point type.

(iv) Is legibly printed in black ink on white paper that is not less than 20-pound weight.

(v) Is not less than 8-1/2 inches wide and 11 inches long or more than 8-1/2 inches wide and 14 inches long.

(vi) Contains no attachment that is less than 8-1/2 inches wide and 11 inches long or more than 8-1/2 inches wide and 14 inches long.

(g) Unless state or federal law, rule, regulation, or court order or rule requires that all or more than 4 sequential digits of the social security number appear in the instrument, beginning on 1 of the following dates the first 5 digits of any social security number appearing in or on the instrument are obscured or removed:

(i) Except as provided in subparagraph (ii), the effective date of the amendatory act that added this subdivision.

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(2) Subsection (1)(e) and (f) do not apply to instruments executed outside this state or to the filing or recording of a plat or other instrument, the size of which is regulated by law.

(3) A register of deeds shall not record an instrument executed after April 1, 1997 if the instrument purports to evidence more than 1 recordable event.

(4) Any instrument received and recorded by a register of deeds shall be conclusively presumed to comply with this act. The requirements contained in this act are cumulative to the requirements imposed by any other act relating to the recording of instruments.

(5) An instrument that complies with the provisions of this act and any other act relating to the recording of instruments shall not be rejected for recording because of the content of the instrument.

History: 1937, Act 103, Eff. Oct. 29, 1937; — Am. 1941, Act 179, Eff. Jan. 10, 1942; — Am. 1945, Act 213, Eff. Sept. 6, 1945; — CL 1948, 565.201; — Am. 1963, Act 150, Eff. Sept. 6, 1963; — Am. 1964, Act 196, Eff. Jan. 1, 1965; — Am. 1996, Act 459, Eff. Apr. 1, 1997; — Am. 2002, Act 19, Imd. Eff. Mar. 4, 2002; — Am. 2007, Act 56, Imd. Eff. Sept. 12, 2007.