RECOMMENDATIONS

OF THE

OFFICE OF REGULATORY REINVENTION

REGARDING

OCCUPATIONAL LICENSING

February 17, 2012

Office of Regulatory Reinvention
Occupational Licensing Advisory Rules Committee

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1. EXECUTIVE SUMMARY

a. Background

This report contains the recommendations of the Office of Regulatory Reinvention (ORR) for changes to Michigan's occupational licensing regulations. These recommendations consist of the final recommendations from the Occupational Licensing Advisory Rules Committee (ARC), and additional recommendations by ORR, developed in conjunction with the Department of Licensing and Regulatory Affairs (LARA).

The Occupational Licensing Advisory Rules Committee was created by the Office of Regulatory Reinvention, in accordance with Executive Order 2011-5. The mission of the ORR is to ensure that Michigan's regulatory environment is simple, fair, efficient, and conducive to business growth and job creation. The purpose of the Occupational Licensing ARC was to produce advisory recommendations to the ORR for changes to Michigan's existing occupational regulatory climate.

NOTE: This document is not part of the rulemaking process. While this report makes recommendations for rule and statutory changes, the implementation of any such changes would be through the rulemaking process for administrative rule changes and through the legislative process for changes to statute.

b. Scope

The Occupational Licensing ARC was tasked with evaluating Michigan's occupational licensing regulations. After evaluating the regulations, the ARC was to make recommendations for changes to improve the regulatory environment. Such changes could include proposed revisions to existing administrative rules, non-rule regulatory actions, regulatory processes, and statutes. Evaluations and recommendations were based on the application of the seven factors described in Executive Order 2011-5 to existing rules. Those seven factors are as follows:

1. Health or safety benefits of the rules;
2. Whether the rules are mandated by any applicable constitutional or statutory provision;
3. The cost of compliance with the rules, taking into account their complexity, reporting requirements and other factors;
4. The extent to which the rules conflict with or duplicate similar rules or regulations adopted by the state or federal government;
5. Extent to which the regulations exceed national or regional compliance requirements or other standards;
6. Date of last evaluation of the rules and the degree, if any, to which technology, economic conditions or other factors have changed regulatory activity covered by the rules since the last evaluation; and
7. Other changes or developments since implementation that demonstrate there is no continued need for the rules.

Recommendations range from the general (e.g., identification of administrative processes which need improvement) to the specific (e.g., language changes to existing statutes).

c. Process

The Occupational Licensing ARC met for the first time on August 18, 2011, and began evaluating the breadth of occupations currently licensed in Michigan. The ARC received information about how Michigan compared to the other 49 states in terms of whether and how licensed occupations are regulated in those other jurisdictions. The Committee then established the mechanism by which they would evaluate the regulation of each individual licensed occupation. The Committee chose to utilize the seven criteria from Executive Order 2011-5, along with several other factors such as number of complaints filed against the members of an occupation, and number of other states that also licensed the particular occupation. The Committee determined that the evaluation of each occupation would result in a recommendation to retain licensing, de-regulate the occupation, or recommend particular modifications to the regulation of the occupation. The Committee also drafted a form to be shared with interested parties (including trade groups, chambers of commerce, companies, regulators, and local governments) to assist in identifying existing Michigan regulations that are duplicative, obsolete, or unduly burdensome.

Over the course of the next few months, the Committee members reviewed 87 occupations, collected feedback from numerous stakeholders, and developed recommendations regarding appropriate regulations for all licensed individuals in the state. Between August 18 and December 20, the Occupational Licensing ARC held 14 full meetings.

2. RECOMMENDATIONS

The following pages contain the final recommendations of the Occupational Licensing ARC and some additional recommendations by the ORR. The recommendations are categorized by topic area, starting with overall recommendations for more efficient and effective regulation of occupations, followed by recommendations for specific occupations arranged according to the bureau or office which regulates the occupation. Copies of the final Issue Papers, providing background and rationale for each recommendation, are included in Appendix A to this report.

a. Overall Recommendations

<u>Recommendation #A1</u>

Subject: Self-supporting Regulation of Occupations

Recommendation: The occupational fee structure for all licensees or registrants should be financially self-supporting so that fees cover the cost of regulatory oversight.

The Public Health Code, State Licensing Fee Act, and all other appropriate statutory language should be amended to allow for licensing and application fees to cover the actual administrative costs of regulating the occupation.

Justification: See Issue Paper "Recommendation #A1" in Appendix A on Pg. A-3.

Recommendation #A2

Subject: Occupational Licensing Boards

Recommendation: All licensing boards should be reviewed for necessity, authority and proper functions.

Justification: See Issue Paper "Recommendation #A2" in Appendix A on Pg. A-4.

Recommendation #A3

Subject: Communications

Recommendation: Statutes should be amended to allow for increased opportunities to communicate with licensees and occupational board members using new technology and acceptable professional practices.

Justification: See Issue Paper "Recommendation #A3" in Appendix A on Pg. A-6.

Recommendation #A4

Subject: Continuing Education & Continuing Professional Development

Recommendation: All new continuing education and continuing professional development requirements should be authorized in statute for the specific occupation.

Before a department supports the creation of continuing education or continuing professional development requirements in statute for an occupation, consideration should be given to these guiding principles:

1. The focus of continuing education and continuing professional development requirements must be the protection and safety of the public.
2. Continuing education and continuing professional development requirements must have the effect of enabling our regulated workforce to be competitive in this and other states.
3. The cost of implementation and on-going operation of a continuing education or continuing professional development program may necessitate a fee increase for the regulated occupation and should be considered before any program is adopted.
4. Any continuing education or continuing professional development program should be customized by the appropriate board to meet the needs of the regulated occupation. If delineated in statute, parameters for the continuing education or continuing competency program should consider the following:

a. The requirements should reflect performance objectives that can be measured.
b. Any courses or classes should include an evaluative component that measures what has been learned.
c. Some activities considered of value to the regulated occupation that do not include evaluative components may be deemed acceptable by the respective board.
d. Activities of value that cannot be easily evaluated must be accompanied by the criteria that must be met for credit to be granted.

Justification: See Issue Paper "Recommendation #A4" in Appendix A on Pg. A-7.

Recommendation #A5

Subject: Guidelines & Criteria for Licensing Occupations

Recommendation: LARA and other departments should continue to use the criteria in the document, Guidelines & Criteria for Evaluation of Proposed Regulatory Initiatives in Michigan to review potential new licensed occupations. (See Attachment 1 on page A-11 in Appendix A to this report.)

All proposals to license an occupation should be reviewed on a case by case basis; meeting the criteria does not mean the Department will endorse licensing the occupation.

Justification: See Issue Paper "Recommendation #A5" in Appendix A on Pg. A-9.

Recommendation #A6

Subject: Sufficient Resources for New Regulations

Recommendation: All new legislative requirements and or mandates relating to occupational licensing should provide for sufficient resources to carry out the new regulation.

Justification: See Issue Paper "Recommendation #A6" in Appendix A on Pg. A-20.

Recommendation #A7

Subject: Non-required Mailings

Recommendation: All non-required mailings by agencies to licensees or registrants should be reviewed for cost-effectiveness and necessity.

Justification: See Issue Paper "Recommendation #A7" in Appendix A on Pg. A-21.

Recommendation #A8

Subject: Licensing Reciprocity

Recommendation: Evaluate the appropriateness of reciprocity of licensed occupations across states, and where appropriate, subject to ensuring appropriate safeguards in other states, encourage reciprocity.

Justification: See Issue Paper "Recommendation #A8" in Appendix A on Pg. A-22.

Recommendation #A9

Subject: Licensee Change of Address

Recommendation: Statutory changes should be implemented to require all regulated licensees and registrants to notify the agencies of changes in address.

Justification: See Issue Paper "Recommendation #A9" in Appendix A on Pg. A-23.

Recommendation #A10

Subject: Future Regulations

Recommendation: Future statutes and regulations affecting the practice and conduct of occupational licensees or registrants should be fair, efficient, and transparent, so as not to unreasonably diminish competition or exceed the minimum level of regulation necessary to protect the public, yet be conducive to business growth and job creation.

Statutory language should be enacted to ensure that the following tenets are considered prior to enacting legislation for a new occupation:

1. All regulatory programs should be fair, efficient, transparent and conducive to business growth and job creation.
2. Regulation of an occupation should only be considered if it will offer added protection for the health and safety of the public.
3. Provisions of the law should not exceed the minimum level of regulation necessary to protect the public.
4. Regulation should not unduly limit competition.
5. The cost of the regulatory process should not be overly burdensome for the regulated individuals but it should be adequate for administration of the program. Program cost increases should be anticipated and expected as the cost of business increases.
6. The focus of the regulatory program should be to regulate the practice of the occupation by licensing eligible individuals.

Justification: See Issue Paper "Recommendation #A10" in Appendix A on Pg. A-24.

Recommendation #A11

Subject: Licensed Occupations Only

Recommendation: Future regulation of occupations should be by licensing only, not registration or listings.

Justification: See Issue Paper "Recommendation #A11" in Appendix A on Pg. A-25.

b. Bureau of Commercial Services

Recommendation #B1

Subject: Auctioneers

Recommendation: The occupation of auctioneers should be de-regulated.

Justification: See Issue Paper "Recommendation #B1" in Appendix A on Pg. A-26.

Recommendation #B2

Subject: Barbers & Cosmetologists

Recommendation: Barbers and cosmetologists should be combined under one statutory article with one occupational board, but separate occupational licenses.

Justification: See Issue Paper "Recommendation #B2" in Appendix A on Pg. A-27.

Recommendation #B3

Subject: Carnival Amusement Safety Board

Recommendation: The Carnival Amusement Safety Board should be abolished. However, licensing should continue and fees should be increased to be sufficient to cover administrative costs of regulation, such as processing applications and issuing permits. Additional charges for the actual costs of the inspections should be assessed.

Justification: See Issue Paper "Recommendation #B3" in Appendix A on Pg. A-28.

Recommendation #B4

Subject: Cemeteries, Funeral Directors, and Pre-paid Funeral and Cemetery Contract Providers

Recommendation: The regulation of cemeteries, funeral directors, and prepaid sellers of

cemetery and funeral goods and services should be combined under one occupational board with separate licenses.

Justification: See Issue Paper "Recommendation #B4" in Appendix A on Pg. A-29.

Recommendation #B5

Subject: Community Planners

Recommendation: The occupation of community planners should be de-regulated.

Justification: See Issue Paper "Recommendation #B5" in Appendix A on Pg. A-30.

Recommendation #B6

Subject: Forensic Polygraph Examiners

Recommendation: The occupation of forensic polygraph examiners should be de-regulated.

Justification: See Issue Paper "Recommendation #B6" in Appendix A on Pg. A-31.

Recommendation #B7

Subject: Foresters

Recommendation: The occupation of foresters should be de-regulated.

Justification: See Issue Paper "Recommendation #B7" in Appendix A on Pg. A-32.

Recommendation #B8

Subject: Hearing Aid Dealers

Recommendation: The regulation of hearing aid dealers should be administered by the Bureau of Health Professions and reviewed for public health necessity.

Justification: See Issue Paper "Recommendation #B8" in Appendix A on Pg. A-33.

Recommendation #B9

Subject: Immigration Clerical Assistant

Recommendation: The occupation of immigration clerical assistant should be de-regulated.

Justification: See Issue Paper "Recommendation #B9" in Appendix A on Pg. A-34.

Recommendation #B10

Subject: Interior Designers

Recommendation: The state should no longer maintain a list of interior designers.

Justification: See Issue Paper "Recommendation #B10" in Appendix A on Pg. A-35.

Recommendation #B11

Subject: Landscape Architects

Recommendation: The occupation of landscape architects should be de-regulated.

Justification: See Issue Paper "Recommendation #B11" in Appendix A on Pg. A-36.

Recommendation #B12

Subject: Ocularist

Recommendation: The occupation of ocularist should be de-regulated.

Justification: See Issue Paper "Recommendation #B12" in Appendix A on Pg. A-37.

Recommendation #B13

Subject: Personnel Agencies

Recommendation: The licensing of personnel agencies should be de-regulated. Prohibited conduct by personnel agencies should remain in statute as a means of consumer protection.

Justification: See Issue Paper "Recommendation #B13" in Appendix A on Pg. A-38.

Recommendation #B14

Subject: Private Security Guards

Recommendation: The license for private security guards should be eliminated; however

statutory requirements meant to protect the public by distinguishing private security guards from police officers should be implemented to regulate professional activities.

The Michigan State Police should be consulted regarding appropriate statutory requirements.

Justification: See Issue Paper "Recommendation #B14" in Appendix A on Pg. A-40.

Recommendation #B15

Subject: Professional Employer Organizations

Recommendation: The practice of professional employer organizations should be de-regulated.

Justification: See Issue Paper "Recommendation #B15" in Appendix A on Pg. A-41.

Recommendation #B16

Subject: Professional Investigators

Recommendation: The Professional Investigator Licensure Act should be amended to include enforcement authority under the Administrative Procedures Act to suspend or revoke a license if the public health, safety or welfare requires emergency action.

Justification: See Issue Paper "Recommendation #B16" in Appendix A on Pg. A-42.

Recommendation #B17

Subject: Residential Builder

Recommendation: The pre-licensure education for residential builders should be eliminated and the continuing competency requirements should be reviewed for necessity.

The requirement for the residential builder license applicant to submit a copy of his or her license or personal identification with his or her application for proof of identification should be eliminated.

Justification: See Issue Paper "Recommendation #B17" in Appendix A on Pg. A-43.

Recommendation #B18

Subject: Real Estate Broker: Residential Property Manager

Recommendation: The leasing agents of residential property management companies should

not be required to be licensed as real estate salespersons in order to show or lease rental properties.

Justification: See Issue Paper "Recommendation #B18" in Appendix A on Pg. A-44.

Recommendation #B19

Subject: Security Alarm Contractors

Recommendation: Security alarm contractors should be de-regulated.

Justification: See Issue Paper "Recommendation #B19" in Appendix A on Pg. A-45.

Recommendation #B20

Subject: Ski Area Safety Board

Recommendation: The Ski Area Safety Board should be abolished. However, licensing should continue and fees should be increased to be sufficient to cover administrative costs of regulation, such as processing applications and issuing permits. Additional charges for actual cost of the inspections should be assessed.

Justification: See Issue Paper "Recommendation #B20" in Appendix A on Pg. A-46.

Recommendation #B21

Subject: Proprietary Schools & Solicitors of Proprietary Schools

Recommendation: The Proprietary School Act should be reviewed to consider the bonding process and enforcement process under the Administrative Procedures Act, as well as the fee structure for licensing to make the regulation of proprietary schools financially self-sustaining. The regulation of proprietary school solicitors should be discontinued.

Justification: See Issue Paper "Recommendation #B21" in Appendix A on Pg. A-47.

Recommendation #B22

Subject: Unarmed Combat Commission

Recommendation: The regulation of unarmed combat events should be retained, however the statute and regulation should be reviewed for appropriate public safety protections.

Justification: See Issue Paper "Recommendation #B22" in Appendix A on Pg. A-49.

Recommendation #B23

Subject: Vehicle Protection Product Warrantors

Recommendation: The administration of Vehicle Protection Product Warrantors should be de-regulated.

Justification: See Issue Paper "Recommendation #B23" in Appendix A on Pg. A-50.

Recommendation #B24

Subject: Occupational Boards' Assessment of Penalties

Recommendation: The Occupational Code at MCL 339.309, MCL 339.514, and MCL 339.602, should be amended to require a compelling reason for an occupational board to assess their own penalties regardless of the findings of the administrative law judge.

Justification: See Issues Paper "Recommendation #B24" in Appendix A on Pg. A-51.

c. Bureau of Construction Codes

Recommendation #C1

Subject: License Renewal Cycles

Recommendation: All licenses under the Bureau of Construction Codes should move to a 3 year cycle, with the exception of apprentice licenses. The Bureau of Construction Codes should have the flexibility to phase in new renewal cycles over a 3 year period.

Justification: See Issue Paper "Recommendation #C1" in Appendix A on Pg. A-53.

Recommendation #C2

Subject: Inspectors

Recommendation: The Building Officials and Inspectors Registration Act, Act 54 of 1986, which provides for registering building officials, inspectors, and plan reviewers should be amended to: a) provide for disciplinary and enforcement processes; b) establish a competency test including code administration; and c) identify an alternative test for building inspectors to allow architects and engineers to qualify.

Justification: See Issue Paper "Recommendation #C2" in Appendix A on Pg. A-54.

Recommendation #C3

Subject: Plumbers

Recommendation: The State Plumbing Act (MCL 338.3549) should be amended to remove the prohibition that prevents a plumbing inspector from practicing the occupation in another jurisdiction.

Justification: See Issue Paper "Recommendation #C3" in Appendix A on Pg. A-55.

Recommendation #C4

Subject: Electrical Administrative Act

Recommendation: The Electrical Administrative Act should be amended to allow for an exception to licensing requirements for businesses performing minimal electrical wiring (MCL 338.887), as well as to alleviate regulatory burdens for electrical apprenticeship programs, licensing examinations, and jobsite ratio requirements (MCL 338.883).

Justification: See Issue Paper "Recommendation #C4" in Appendix A on Pg. A-56.

Recommendation #C5

Subject: Construction Code Commission

Recommendation: The Bureau of Construction Codes should review the Construction Code Commission with stakeholders including discussing the expansion of the Commission in order to allow ad hoc committees to operate in place of the numerous boards under the Bureau of Construction Codes.

Justification: See Issue Paper "Recommendation #C5" in Appendix A on Pg. A-58.

d. Bureau of Health Professions

Recommendation #D1

Subject: Acupuncturist

Recommendation: The occupation of acupuncturist should be de-regulated.

Justification: See Issue Paper "Recommendation #D1" in Appendix A on Pg. A-59.

Recommendation #D2

Subject: Counselors, Marriage & Family Therapists, and Social Workers

Recommendation: A stakeholder group of counselors, marriage & family therapists, and social workers should be established to work with LARA staff review the relevant statutes regarding the need for existing exclusions, the definition of non-profits, and the potential combination of the occupational boards.

Justification: See Issue Paper "Recommendation #D2" in Appendix A on Pg. A-60.

Recommendation #D3

Subject: Dieticians and Nutritionists

Recommendation: The occupations of dieticians and nutritionists should be de-regulated.

Justification: See Issue Paper "Recommendation #D3" in Appendix A on Pg. A-61.

Recommendation #D4

Subject: Medicine, Osteopathic Medicine, and Podiatric Medicine

Recommendation: The occupational board for medicine, osteopathic medicine, and podiatric medicine should be combined while maintaining separate licenses.

Justification: See Issue Paper "Recommendation #D4" in Appendix A on Pg. A-62.

Recommendation #D5

Subject: Nursing Home Administrators

Recommendation: Along with the regulation of nursing home administrators, the Bureau of Health Professions and stakeholders should review the need to license and regulate the administrators of assisted living facilities, homes for the aged, and other long term care facilities.

Justification: See Issue Paper "Recommendation #D5" in Appendix A on Pg. A-64.

Recommendation #D6

Subject: Occupational Therapists

Recommendation: The licensing requirements for occupational therapists should be replaced with statutory requirements for national certification, including criminal penalties for practicing without certification.

Justification: See Issue Paper "Recommendation #D6" in Appendix A on Pg. A-65.

Recommendation #D7

Subject: Board of Pharmacy

Recommendation: The Public Health Code should be amended to allow the Board of Pharmacy to approve pilot projects within the occupation.

Justification: See Issue Paper "Recommendation #D7" in Appendix A on Pg. A-66.

Recommendation #D8

Subject: Psychologists

Recommendation: The regulation of psychologists should be examined by the Department and interested stakeholders to determine if existing exclusions should be maintained.

Justification: See Issue Paper "Recommendation #D8" in Appendix A on Pg. A-67.

Recommendation #D9

Subject: Respiratory Therapists

Recommendation: The occupation of respiratory therapists should be de-regulated.

Justification: See Issue Paper "Recommendation #D9" in Appendix A on Pg. A-68.

Recommendation #D10

Subject: Sanitarians

Recommendation: The occupation of sanitarians should be de-regulated.

Justification: See Issue Paper "Recommendation #D10" in Appendix A on Pg. A-69.

Recommendation #D11

Subject: Speech Pathologists

Recommendation: The occupation of speech pathologists should be de-regulated. An alternative to state regulation could be pursued by encouraging certification by the American Speech-Language-Hearing Association.

Justification: See Issue Paper "Recommendation #D11" in Appendix A on Pg. A-70.

Recommendation #D12

Subject: Michigan Osteopathic Medicine Advisory Board

Recommendation: Eliminate the Michigan Osteopathic Medicine Advisory Board by repealing MCL 390.662-664.

Justification: See Issue Paper "Recommendation #D12" in Appendix A on Page. A-71

e. Office of Financial and Insurance Regulation

Recommendation #E1

Subject: Credit Card Licensees

Recommendation: The license for credit card companies should be eliminated; however the program requirements should be retained for enforcement purposes. Although OFIR will no longer administer the program for the license, the consumer finance regulations will allow the state attorney general or local authorities to pursue a complaint by a consumer.

Justification: See Issue Paper "Recommendation #E1" in Appendix A on Pg. A-72.

Recommendation #E2

Subject: Consumer Financial Services Class 1 & Class 2

Recommendation: The license for consumer financial services class 1 and class 2 should be eliminated to allow entities to become licensed in the specific area in which they conduct business.

Justification: See Issue Paper "Recommendation #E2" in Appendix A on Pg. A-73.

Recommendation #E3

Subject: Debt Management

Recommendation: The Debt Management Act, Public Act 148 of 1975, and the corresponding administrative rules, R 451.1221- 451.1146, should be modernized and expanded to include the debt settlement industry.

The cost of regulating debt management entities should be self-supporting. Therefore the fees charged to the licensee should be increased. The fees the licensee can charge a client should be updated and may be increased as well.

Justification: See Issue Paper "Recommendation #E3" in Appendix A on Pg. A-74.

Recommendation #E4

Subject: Deferred Presentment

Recommendation: The interest rates, service fees, and penalties in the Deferred Presentment Service Transactions Act should be reviewed and the statute strengthened to include internet based companies.

Justification: See Issue Paper "Recommendation #E4" in Appendix A on Pg. A-75.

Recommendation #E5

Subject: First & Second Mortgage Broker, Lender & Servicer

Recommendation: The licensing for first and second mortgage programs should be combined.

Justification: See Issue Paper "Recommendation #E5" in Appendix A on Pg. A-76.

Recommendation #E6

Subject: Motor Vehicle Installment Seller & Sales Finance

Recommendation: The Motor Vehicle Sales Finance Act should be updated to reflect current industry practices and provide sufficient fees to cover the administration of the licenses.

Justification: See Issue Paper "Recommendation #E6" in Appendix A on Pg. A-77.

Recommendation #E7

Subject: Regulatory Loan, Premium Finance, Insurance Counselor, and Insurance Third Party Administrator

Recommendation: The Department should establish workgroups that include stakeholders of these regulated occupations to review whether there is a need to continue licensing or whether changes are necessary in lieu of impending federal regulations.

Justification: See Issue Paper "Recommendation #E7" in Appendix A on Pg. A-78.

Recommendation #E8

Subject: Insurance Producer Individual and Agency

Recommendation: The licensing of insurance producers should provide for a renewal of the license and a renewal fee.

Justification: See Issue Paper "Recommendation #E8" in Appendix A on Pg. A-80.

Recommendation #E9

Subject: Insurance Adjuster

Recommendation: The regulation of insurance adjusters should include credentialing of the professionals and consumer protection provisions.

Justification: See Issue Paper "Recommendation #E9" in Appendix A on Pg. A-81.

Recommendation #E10

Subject: Insurance Solicitors

Recommendation: The licensing of insurance solicitors should be de-regulated.

Justification: See Issue Paper "Recommendation #E10" in Appendix A on Pg. A-82.

f. Other Recommendations

Recommendation #F1

Subject: Underground Storage Tank Qualified Consultants

Recommendation: The regulation of Underground Storage Tank Qualified Consultants and Certified Professionals should be de-regulated.

Justification: See Issue Paper "Recommendation #F1" in Appendix A on Pg. A-83.

g. Additional Rule Rescissions and Amendments

In addition to the foregoing recommendations which include rescission of all rules associated with a de-regulated occupation, the ORR recommends that the Bureau of Commercial Services rescind or amend the following rules. Reasons for rescinding include: the rules are no longer enforceable; the rules are unnecessarily burdensome; or the rules are outdated and/or duplicative of federal regulation.

IDENTIFIED RULE RESCISSIONS		
PROGRAM	**RULES**	**SUMMARY**
Accountants	R 338.5101, et seq.	• Rescind R 338.5105, which relates to the conduct of board meetings and is unnecessary. • Amend R. 338.5465 so that it encompasses acts by a person whose license has been revoked. • PA 215 of 2010 changed the scope of practice and all rules should be reviewed to ensure accuracy.

Barbers	R 339.6001, et seq.	• Should be reviewed generally and harmonized with cosmetology rules. • R 339.1002(2) and R 339.1003(2) should be amended to require annual renewal during one month of the year for students, apprentices, and student instructors, instead of renewal on a rolling basis. • Rescind R 339.6003 relating to conduct of board meetings as it is unnecessary. • Amend R 339.6031 to: o Eliminate subsection (1) (except for the first sentence) o Eliminate subsection (2) (particularly wastebasket requirements) o Replace subsection (3) with a requirement that all soiled towels be properly stored in a covered laundry storage container and all clean equipment be properly stored. o Replace subsection (5) with a requirement that the barber shop have hot and cold running water. • Rescind R 339.6037(2), regarding covering the headrest of a barber chair, as it is unnecessary. • Rescind R 339.6049(3) which requires that enrollment records be posted conspicuously.

Cosmetology	R 338.2101, et seq.	• Rescind R 338.2133 which prohibits transfer of credits between schools and apprentice programs. • Amend R 338.2135(2) to remove the requirement that enrollment records be posted on a bulletin board. • Rescind R 338.2143, dealing with practice by unlicensed students, which is unnecessary and impossible for the department to enforce. • Combine R 338.2144 and R 338.2139, which both address the content of student examinations. • Rescind R 338.2145, regarding signage at schools, which is unnecessary and obsolete. • Rescind R 338.2151(3), regarding unlicensed practice by an apprentice, which is unnecessary and impossible for the department to enforce. • Amend R 338.2171(1) to rescind all requirements except the requirement for adequate ventilation. All others are subjective and/or covered by subsection (2) which requires compliance with health and building codes. • Amend R 338.2173(2) to eliminate the language requiring "covering the headrest of a patron chair and the working surface of any table or chair with fresh, clean paper, linen, or cloth before the chair or table is used," which is duplicative. • Combine R 338.2179a and R 338.2176, which both address sanitization of equipment, and rescind duplicative or conflicting language. • Rescind R 338.2179g(2) which states that "an aesthetician shall not use razors, scissor, or clippers on the face or head of a patron" as the rule conflicts with Article 12 of the statute.
Mortuary Science	R 339.18901, et seq.	• Rescind R 339.18921(1)(a)(i)-(iii), R 339.18921(2), and R 339.18921(3). They are unnecessary, since in order to complete the mortuary science program, schools are going to require these types of prerequisites anyway. • Amend R 339.18931(3) to provide that a licensed establishment does not need an embalming room if another licensed establishment which is owned by the same corporation has an embalming room which can be used by the first licensed establishment, and to clarify what is meant by "direct connection" and "area." • Rescind R 339.18931(5)(a), regarding construction of embalming room, as the issue is covered by statute. • Rescind R 339.18941(1)(c)-(d). These advertising rules serve no purpose. • Rescind R 339.18947 regarding price information. This is already extensive covered by the FTC's Funeral Rule.

Occupational Boards - Renewals	R 339.1001, et seq.	Rules should be revised to clean up internal inconsistencies and facilitate electronic renewals.
Real Estate Appraisers	R 339.23101, et seq.	Rules lack sufficient definitions for terms of art, and should be revised accordingly to promote transparency and consistency in enforcement.
Real Estate Brokers and Salespersons	R 339.22101, et seq.	Rescind Part 5 Rules – "Out of State Land Sales" (R 339.22501 – R 339.22529), which are obsolete following repeal of the Land Sales Act in 2010.
Residential Builders	R 338.1511, et seq.	• Rescind requirements pertaining to financial assurance mechanisms in R 338.1521, specifically subsections (5) and (6), as they have been rendered unnecessary by the Construction Lien Act. • Amend R 338.1534 to narrow the scope of obligation of the licensee to maintain and make available their books and records to the department. The entire rule could be replaced by the following language, based on the real estate brokers and salespersons rules: "Upon a demonstration of good and sufficient cause by the department, a licensee shall provide for inspection, by an authorized representative of the department, any document or record as may be reasonably necessary for investigation of a complaint under the code and these rules."
Solicitors of Private Trade Schools	R 390.671	Rescind R 390.671, which is obsolete. The authorizing legislation was repealed in 1963.
Unarmed Combat	R 339.101, et seq.	Rules should be reviewed and revised to clarify vague rules, clear up omissions, and address issues as required by statute (including drug testing), as identified by bureau staff.
Board of Medicine	R 338.2301, et. seq.	The accreditation or approval standards for educational institutions, postgraduate clinical training programs, hospitals, and institutions, and continuing medical education is outdated and need to be revised to reference the current standards.
Board of Osteopathic Medicine and Surgery: Continuing Education	R 338.91, et. seq.	The standards for continuing education programs and sponsors of continuing education programs are outdated and need to be revised.

Board of Pharmacy	R 338.471 et seq. R 338.3001, et seq.	• Combine R 338.479b with R 338.479, rename it "Prescription Dispensing" and rescind any of the sections placing responsibilities on prescribers which are not enforced or not appropriate. • Rescind R 338.480 and combine any necessary provisions with R 338.479, as both address prescription records. • Amend R 338.480a with stakeholder involvement to reflect current standards of practice with current technology. • Amend R 338.481(3) to eliminate the requirement that a pharmacy have equipment necessary to compound prescription drugs. • Amend R 338.486 to make the definition of "medical institution" correspond to the definition in the Public Health Code. • Rescind R 338.488 as it is obsolete, since mercury thermometers are no longer sold. • Amend R 338.489 to reflect that such automated devices are currently used in a variety of additional locations, including Federally Qualified Health Centers. • Amend R 338.500 to reflect the use of drug box exchange programs in other areas, such as EMT programs. • Rescind "Radiopharmaceuticals" rule set (R 338.3001 – R 338.3007), as it is unnecessary and duplicative of federal regulations. • Rescind R 338.3031, which is obsolete. The Public Health Code was amended to establish that all meetings of the Board must be conducted in accordance with the Open Meetings Act (MCL 333.16138). • Rescind R 338.3169, containing labeling requirements, as it is duplicative of federal regulations.
Board of Pharmacy: Pharmacy Controlled Substances	R 338.3101 – 338.3186	There are new controlled substances that need to be added to the list of controlled substances in the rule.
Board of Veterinary Medicine: Public Conduct at Meetings	R 338.3801	The Public Health Code was amended to establish that all meetings of the Board must be conducted in accordance with the Open Meetings Act (MCL 333.16138). Therefore the provisions of this rule are obsolete.

APPENDIX A

ISSUE PAPERS FOR FINAL RECOMMENDATIONS

Recommendation #A1

Subject: Self-supporting Regulation of Occupations

Background and Description of Issue: Licensing and applications fees are insufficient to cover the administrative costs to regulate most licensed occupations in the state. General fund dollars are not appropriated to the departments to carry out the task of regulating the occupations. Therefore it is the fees of a few occupations that actually sustain the administration of all.

The larger programs should not be required to fully support the smaller programs. There needs to be consideration that the cost of regulation for some of the smaller programs would be prohibitive and unreasonable for the salaries earned by the professionals in the occupation.

If the government and the public have determined that there is sufficient need to regulate the practice of a particular occupation then the government should have the appropriate resources to carry out that task.

If the Legislature feels that it is important enough to regulate, but the cost of licensing is too much, then general fund dollars should be appropriated to cover the regulatory cost.

Proposed Solution: The occupational fee structure for all licensees or registrants should be financially self-supporting so that fees cover the cost of regulatory oversight.

The Public Health Code, State Licensing Fee Act, and all other appropriate statutory language should be amended to allow for licensing and application fees to cover the actual administrative costs of regulating the occupation.

Rationale for Change: If the risk of public harm is great enough to warrant government regulation of an occupation, the resources should be available to properly administer the regulation without dipping into other sources.

Recommendation #A2

Subject: Occupational Licensing Boards

Background and Description of Issue: Most, but not all, licensed occupations have occupational boards that serve the function of assisting with regulation and disciplinary actions of the licensees, as well as rule promulgation associated with the occupation. However, not all boards are created equal. Boards have varying degrees of authority and responsibility. Boards may be required to meet periodically even if they lack an agenda of items to review. Still other boards lack the ability to identify licensees willing to serve.

All occupational boards should be reviewed in order to determine whether they are necessary to carry out the regulation of the occupation. All boards should have some authority in order to continue to operate, but the agency could still seek input from stakeholders in occupations where an occupational board does not exist or is abolished pursuant to this recommendation.

For those that remain, the review should determine whether the board has appropriate statutory authority to function properly and efficiently.

The ARC does not recommend that occupational boards be given the authority to promulgate rules. While occupational boards are instrumental in promulgating rules, and they are closely involved in the process with department staff, the ARC sees no value in changing the current system by requiring boards to give the formal approval to promulgate rules.

Proposed Solution: All licensing boards should be reviewed for necessity, authority and proper functions.

Rationale for Change: Developments and changes over time have eroded the original intent for some occupational boards. Those boards with little authority or duplicative purposes should be eliminated to free up needed resources.

Occupational Boards:

The following is a current list of occupational boards under the Bureau of Construction Codes, Bureau of Commercial Services, and the Bureau of Health Professions that should be reviewed for necessity, authority, and proper functions. Those boards for occupations which are recommended to be de-regulated are noted with a strike through.

Bureau of Construction Codes

State Boundary Commission
Barrier Free Design Board
Electrical Administrative Board
Board of Boiler Rules
Elevator Safety Board
State Plumbing Board
Construction Code Commission
Board of Mechanical Rules
Manufactured Housing Commission

Bureau of Commercial Services
Board of Accountancy
Board of Real Estate Appraisers
Board of Architects
~~Board of Auctioneers~~
Board of Barbers*
Board of Residential Builders
~~Board of Carnivals & Amusement Rides~~
Collection Practices Board
Board of Cosmetology*
Board of Professional Engineers
Board of Examiners in Mortuary Science
Board of Real Estate Brokers & Salespersons
~~Ski Area Safety Board~~
Board of Professional Surveyors
The Unarmed Combat Commission

Bureau of Health Professionals
~~Board of Acupuncture~~
Board of Athletic Trainer
Board of Audiologist
Board of Chiropractic
Board of Counseling*
Board of Dentistry
~~Board of Dietetics & Nutrition~~
Board of Marriage & Family Therapy*
Board of Massage Therapy
Board of Medicine*
Board of Nursing
Board of Nursing Home Administrator
~~Board of Occupational Therapy~~
Board of Optometry
Board of Osteopathic Medicine*
Board of Pharmacy
Board of Physical Therapy
Board of Podiatric Medicine*
Board of Psychology
~~Board of Respiratory Care~~
Board of Social Workers*
~~Board of Speech Language Pathology~~
Board of Veterinary Medicine

~~Michigan Osteopathic Medicine Advisory Board~~

*The ARC recommends combining the Board of Barbers with the Board of Cosmetology, the Board of Medicine with the Board of Osteopathic Medicine and the Board of Podiatric Medicine, as well as possibly combining the Counseling, Marriage and Family Therapy, and Social Workers occupational boards.

Recommendation #A3

Subject: Communications

Background and Description of Issue: Certain provisions in statute require the Department to contact licensees and applicants by written and mailed notice. With so many technological advances and generally accepted practices of communication by society, the Department should be allowed to communicate electronically by e-mail and video conferencing with licensees and board members.

Licensees could be offered a waiver of the written notification requirement to be replaced by electronic mail.

Occupational board meetings should be able to make use of video conferencing for consideration of policy issues. Such an opportunity would allow for board members to participate on occupational boards despite conflicts in scheduling and lengthy travel to attend in person. However, issues involving an individual's interest in a license or the sanctioning of a current license should be considered in person by all parties.

These examples will not only allow for efficiency of administration but also recognize cost savings for the Department through a reduction in paper, postage, and travel reimbursements for occupational board members. Other costs savings may be realized with an expansion of other technological conveniences.

Proposed Solution: Statutes should be amended to allow for increased opportunities to communicate with licensees and occupational board members using new technology and acceptable professional practices.

Rationale for Change: Updating acceptable communication practices with licensees via technological advances will lead to cost savings through mailings, printing and labor.

Recommendation #A4

Subject: Continuing Education & Continuing Professional Development

Background and Description of Issue: Continuing education and the newer trend for continuing professional development for licensed occupations have both proponents and opponents based on philosophical tenets. Proponents argue that it increases the knowledge of licensees and therefore helps ensure the quality of service and provides a preventative measure to incompetency. They also argue that continuing education is necessary in order to stay informed of constantly changing knowledge and technology.

On the other hand, those who are opposed to continuing education argue that the supposed advantages, such as higher quality of service and limiting potential incompetency, are statistically unproven. Furthermore, they argue, the real interest of continuing education is self-serving to the occupation, by discouraging the less enthusiastic or less desirable individuals, from entering the profession.

The ideal approach to regulating continuing education is to reach the balance where the benefits of knowledgeable licensees are clearly identified and any potential self-serving interests of the profession are mitigated.

The decision to add continuing education or continuing professional development as a license-renewal requirement should not be with a broad stroke, but on an occupation-by-occupation basis. Before it is approved, there should be a clear indication that the quality of service will be improved and the public will benefit through the increased education and training of the individual licensed occupation.

For example, for some occupations, continuing education may be important to meet equivalent qualifications for reciprocity with other states' licenses. For other occupations, continuing education could have zero effect upon the ability to have reciprocity with other states.

In addition, adding continuing education as a license renewal requirement, it increases the cost of regulation. As with other recommendations, any additional regulatory requirement should also carry with it the necessary funding for the Department to administer the regulatory program.

Proposed Solution: All new continuing education and continuing professional development requirements should be authorized in statute for the specific occupation.

Before a department supports the creation of continuing education or continuing professional development requirements in statute for an occupation, consideration should be given to these guiding principles:

1. The focus of continuing education and continuing professional development requirements must be the protection and safety of the public.
2. Continuing education and continuing professional development requirements must have the effect of enabling our regulated workforce to be competitive in this and other

states.

3. The cost of implementation and on-going operation of a continuing education or continuing professional development program may necessitate a fee increase for the regulated occupation and should be considered before any program is adopted.
4. Any continuing education or continuing professional development program should be customized by the appropriate board to meet the needs of the regulated occupation. If delineated in statute, parameters for the continuing education or continuing competency program should consider the following:
    a. The requirements should reflect performance objectives that can be measured.
    b. Any courses or classes should include an evaluative component that measures what has been learned.
    c. Some activities considered of value to the regulated occupation that do not include evaluative components may be deemed acceptable by the respective board.
    d. Activities of value that cannot be easily evaluated must be accompanied by the criteria that must be met for credit to be granted.

Rationale for Change: An increase in continuing education or continuing professional development translates into increased costs for regulators and licensees alike. Therefore any increase should be thoroughly examined and justified by the department and legislature on a case-by-case basis.

Recommendation #A5

Subject: Guidelines and Criteria for Licensing Occupations

Background and Description of Issue: In the past, guidelines and criteria were established to assist regulators in analyzing whether or not a particular occupation should be licensed.

The most recent criteria used by regulators can be found in the document, Guidelines & Criteria for Evaluation of Proposed Regulatory Initiatives in Michigan, and include the following:

Criteria One: Risk for Harm to the Consumer (Required)
The unregulated practice of the occupation will *substantially* harm or endanger the public health, safety, or welfare. The harm is recognizable and not remote or dependent on tenuous argument. The harm results from: (a) practices and procedures employed by practitioners engaged in the occupation, (b) physical or economic condition, frequency and type of service required, legal form of relationship (e.g. contractual) and other factors related to the public served, (c) the setting or supervisory arrangements for the delivery of services, or (d) from any combination of these factors. Harm can be either physical or economic.

Criterion Two: Specialized Skills and Training (Required)
The practice of the occupation or profession requires *highly* specialized education and/or training, related to the occupation or profession. The regulated individual will be required to document initial competence and will be expected to maintain continued competence.

Criterion Three: Economic Impact (Required)
The economic costs of regulating the occupational group are *revenue neutral.*
Regulation should not impose significant additional costs on the public or unnecessarily restrict access to health care services. The administrative costs are borne by the profession through regulatory fees.

Criterion Four: No Alternatives to State Regulation (Required)
There are no alternatives to State regulation of the occupation or profession which adequately protect the public.

Criterion Five: Distinguishable Scope of Practice (Required)
The scope of practice is clearly distinguishable from other licensed, certified and registered occupations, in spite of possible overlapping of professional duties.

Criterion Six: Autonomous Practice
The functions and responsibilities of the individual require independent judgment and the individual practices autonomously.

Criterion Seven: Applicable State and National Standards
The regulation of the occupation or profession is consistent with regulatory practices in other states and with established national standards.

These criteria should be maintained by regulators going forward to analyze whether or not a particular occupation should be licensed. Establishing guidelines and criteria creates measurable standards for professional groups seeking licensure. However, consideration for licensure must be on a case by case basis. The ability of the profession to meet the criteria set forth by the Department should not automatically equate to an endorsement for licensure by the Department.

Proposed Solution: LARA and other departments should continue to use the criteria in the document, Guidelines & Criteria for Evaluation of Proposed Regulatory Initiatives in Michigan to review potential new licensed occupations. (See Attachment 1 on page A-11.)

All proposals to license an occupation should be reviewed on a case by case basis; meeting the criteria does not mean the Department will endorse licensing the occupation.

Rationale for Change: Maintaining criteria for reviewing any new potential licensed occupations sets the expectations for both regulators and interested parties. The criteria can then be used as measurements in precedent for judging all future decisions.

Occupational Licensing Rules Committee
Recommendation #A-5
Subject: Guidelines & Criteria for Licensing
Attachment 1

Occupational and Professional Regulation

Guidelines and Criteria for Evaluation
Of Proposed Regulatory Initiatives for Michigan

Michigan Department of Licensing and Regulatory Affairs

February 2012

This document includes the guidelines and criteria for evaluation of proposed regulatory initiatives. The information is presented in the following manner:

- Part 1 establishes the criteria used for evaluation proposals
- Part 2 is a compendium of documentation and issues that need to be addressed when evaluating a regulatory initiative.

PART 1: CRITERIA FOR EVALUATING THE NEED FOR REGUALTION

The following criteria have been established to assist in determining the need and impact of proposed regulatory initiatives. In addition to the criteria, a series of questions have been developed to assist groups in identifying information that decision makers need to evaluate their proposals.

Criteria One: Risk for Harm to the Consumer (Required)

The unregulated practice of the occupation will ***substantially*** harm or endanger the public health, safety, or welfare. The harm is recognizable and not remote or dependent on tenuous argument. The harm results from: (a) practices and procedures employed by practitioners engaged in the occupation, (b) physical or economic condition, frequency and type of service required, legal form of relationship (e.g. contractual) and other factors related to the public served, (c) the setting or supervisory arrangements for the delivery of services, or (d) from any combination of these factors. Harm can be either physical or economic.

Criterion Two: Specialized Skills and Training (Required)

The practice of the occupation or profession requires ***highly*** specialized education and/or training, related to the occupation or profession. The regulated individual will be required to document initial competence and will be expected to maintain continued competence.

Criterion Three: Economic Impact (Required)

The economic costs of regulating the occupational group are ***revenue neutral.*** Regulation should not impose significant additional costs on the public or unnecessarily restrict access to health care services. The administrative costs are borne by the profession through regulatory fees.

Criterion Four: No Alternatives to State Regulation (Required)

There are no alternatives to State regulation of the occupation or profession, which adequately protect the public.

Criterion Five: Distinguishable Scope of Practice (Required)

The scope of practice is clearly distinguishable from other licensed, certified and registered occupations, in spite of possible overlapping of professional duties.

Criterion Six: Autonomous Practice

The functions and responsibilities of the individual require independent judgment and the individual practices autonomously.

Criterion Seven: Applicable State and National Standards

The regulation of the occupation or profession is consistent with regulatory practices in other states and with established national standards.

PART 2: QUESTIONS TO BE CONSIDERED FOR THE EVALUATION OF THE NEED FOR REGULATION OF AN OCCUPATION OR PROFESSION

Responses to the following questions will be considered in evaluating the need for regulation of an occupation or profession.

A. GENERAL INFORMATION REGARDING OCCUPATION OR PROFESSION

1. What occupational or professional group is seeking regulation?
2. Identify by title any association, organization, or other group initiating regulation for the occupational or profession. Provide the name and contact information of the national organization with which the state association is affiliated. (If more than one organization, provide the information requested below for each organization).
3. Estimate the number of practitioners (members and nonmembers) in Michigan.
4. How many of these practitioners are members of the group preparing for the proposal? (If several levels or types of memberships are relevant to this proposal, explain these levels and provide the number of members, by type).
5. How many of these practitioners meet the proposed new regulation criteria? How many do not? What actions will be required for the typical practitioner who does not meet the criteria to come into compliance? Do other organizations also represent practitioners of this occupation/profession in Michigan? If yes, provide contact information for these organizations.
6. Provide the name, title, organizational name, mailing address, and telephone number of the responsible contact person(s) for the organization.
7. Is there clear and convincing evidence that the members of the occupation or profession support regulation?
8. Is this organization/profession a subspecialty within a broad occupational group? What organization(s) represent these entities? (List those in existence and any that are emerging).

B. QUESTIONS WHICH ADDRESS THE CRITERIA

Criteria One: Risk for Harm to the Consumer. The unregulated practice of the occupation will harm or endanger the public health, safety or welfare. The harm is recognizable and not remote or dependent on tenuous argument. The harm results from: (a) practices inherent in the occupation, (b) characteristics of the public served, (c) the setting or supervisory arrangements for the delivery of services, or (d) from any combination of these factors. Harm can be personal, emotional, mental, social, economic, or financial.

1. Provide a description of the typical functions performed and services provided by members of this occupational group.
2. Description of the relationship between the professional and the general public. What is the nature of the interaction? Does the interaction involve personal contact? Does the regulated individual provide a product or a personal service?
3. Has there been evidence of specific public harm due to the activity of unregulated providers or by providers who are regulated in other states? If so, what is the frequency of deaths, serious injuries, or other harm; how frequently are errors reported; what is

the magnitude of the error; and how is the evidence of harm documented (e.g. court case or disciplinary or other administrative action)? What was the nature of the harm: physical, emotional, mental, social, economic, or financial? Can the relative harm be quantified? If no specific evidence or actual harm is available, what aspects of the group's practice constitute a potential for harm?

4. Specific public harm is attributed to which of the following? Elaborate as necessary.
    - Lack of skills
    - Lack of knowledge
    - Lack of ethics
    - Lack of supervision
    - Practices inherent in the occupation
    - Characteristics of the client/public being served
    - Characteristics of the practice setting or work environment
    - Other (specify)
5. Does a potential for fraud exist because of the inability of the public to make an informed choice in selecting a competent individual?
6. Is the public seeking regulation or greater accountability of this group?
7. What is the harm to the general public if occupation/profession remains unregulated?

Criterion Two: Specialized Skills and Training. The practice of the occupation or profession requires highly specialized education and/or training, related to the occupation or profession. The regulated individual will be required to document initial competence and will be expected to maintain continued competence.

1. What are the educational or training requirements for entry into this occupation?
2. Are there training programs in Michigan? Who accredits programs? What are the standards for accreditation? Are sample curricula available?
3. If no programs exist in Michigan, what information is available on programs elsewhere which prepare individuals for practice in Michigan? What are the minimum competencies (knowledge, skills, and abilities) required for entry into the profession? How were they derived?
4. Are there requirements and mechanisms for ensuring continuing competence? For example, are there mandatory education requirements, re-examination, peer review, practice audits, institutional review, practice simulations, or self-assessment models?
5. Why does the public require state assurance of initial and/or continuing competence? What assurances does the public have already through private credentialing or certification or institutional standards?
6. Are there currently recognized or emerging specialties (or levels or classifications) within the occupational grouping? If so:
    - What are these specialties? How are they recognized? (By whom and through what mechanisms – e.g. specialty certification by a national academy, society or other organization)?
    - What are the various levels of specialties in terms of the functions or services performed by each?
    - How can the public differentiate among these levels or specialties for classification of practitioners?
    - Is a "generic" regulatory program appropriate, or should classifications

(specialties/levels) be regulated separately (e.g. basic licensure with specialty certification)?

Criterion Three: Economic Impact. The economic costs to the public of regulating the occupational group are revenue neutral. The administrative costs are borne by the profession through regulatory fees.

1. What are the range and average incomes of members of this occupational group in Michigan? In adjoining states? Nationally? In states where the group is regulated?
2. What are the averages fees for services provided by this group in Michigan? In adjoining states? Nationally? In states where the group is regulated?
3. Is there any evidence that cost for services provided by this occupational group will increase or decrease if the group becomes regulated? In other states, have there been any effects on fees/salaries attributable to state regulation?
4. Would state regulation of this occupation restrict other groups from providing services?
    - Are any of the other groups able to provide similar services at lower costs?
    - How is it that this lower cost is possible?
5. Is there a current shortage or oversupply of practitioners in Michigan? In the region? Nationally?
6. Is occupation/profession aware that costs of regulation will be borne by them? Are the members of the group willing to accept the costs associated with regulation and enforcement?
7. If continuing education is one of the proposed provisions, how does the proposed continuing education contribute to the goal of assuring continuing competence? Is the profession willing to accept the additional costs associated with continuing competence verification?
8. **(For Health Professions only)**
   Are third-party payers in Michigan currently reimbursing services of the occupational group? By whom? For what?
    - If not in Michigan, elsewhere in the country?
    - Does another occupational group reimbursed by third-party payers in Michigan provide similar services? Elsewhere? Elaborate.
    - If third-party payment does not currently exist, will the occupation see it subsequent to state regulation?
9. How will the proposed regulation affect the public's interaction with providers? How will access to providers be changed? Will the number of providers be increased or decreased?
10. How will the proposed regulation affect the quality of care?
11. Approximately how many individuals are currently performing the same or similar functions in the work place? How many of these practitioners would meet the proposed new regulation criteria and how many do not? What are the economic implications to individuals currently doing such work? Will any of these individuals lose their jobs?
12. How can costs to the state to regulate this profession be minimized? Do the revenues anticipated from fees pay for the cost of regulating this profession? What specific benefits does regulation provide to the consumer?

Criterion Four: No Alternative to State Regulation. There are no alternatives to state regulation of the occupation that adequately protect the public.

1. What laws or regulations currently exist to govern facilities or environments in which practitioners practice or is employed?
2. What laws or regulations currently exist to govern equipment, devices, chemicals and other substances used in the practice or work environment?
3. What laws or regulations currently exist to govern standards or practice?
4. Does the institution or organization where the practitioners practice set and enforce occupational standards?
5. Does the occupational group participate in a nongovernmental credentialing program, either through a national certifying agency or professional association?
    - How are the standards set and enforced in the program?
    - What is the extent of participation of the occupational group in the program?
6. Does a Code of Ethics exist for this profession?
    - What is it?
    - Who established the Code?
    - How is it enforced?
    - Is adherence mandatory?
7. Does any peer group evaluation mechanism exist in Michigan or elsewhere? Elaborate.
8. How is a practitioner disciplined and for what causes? Violation of professional standards? Unprofessional conduct? Other causes?
9. Are there specific legal offenses, which, upon conviction, preclude an individual from working?
10. Do any other means exist within the occupational group to protect the consumer from negligence or incompetence? How are challenges to an individual's competency currently handled?

Criterion Five: Distinguishable scope of practice. The scope of practice is clearly distinguishable from other licensed, certified and registered occupations, in spite of possible overlapping of professional duties.

1. Which functions of this occupation are similar to those performed by other occupational groups?
    - Which group(s)?
    - Are the other groups regulated by the state?
    - If so, why might the applicant group be considered different?
2. Which functions of this occupation are distinguishable from other similar occupational groups?
    - Which group(s)?
    - Are the other groups regulated by the state?
3. How will the regulation of this occupational group affect the scope of practice, marketability, and economic and social status of the other, similar groups (whether regulated or unregulated)?

Criterion Six: Autonomous Practice. The functions and responsibilities of the individual require independent judgment and the individual practices autonomously.

1. What is the nature of the judgments and decisions made in the work environment?

   For Health Professions:
   - Is the practitioner responsible for making diagnoses?
   - Does the practitioner design or approve treatment plans?
   - Does the practitioner direct or supervise patient care?
   - Does the practitioner use dangerous equipment or substances in performing services?
   - If the practitioner is not responsible for diagnosis, treatment design or approval, or directing patient care, who is responsible for these functions?
   - Does the practitioner operate under the authority of another regulated health professional? Identify the health professional authorizing practice.

   For Commercial Professions:
   - Does the practitioner make independent decisions regarding an individual's or a group of individuals' health, safety and welfare?
   - Does the practitioner design or approve project plans, and/or oversee the implementation (construction) of project plans that affect the public?
   - Does the practitioner use dangerous equipment or substances in performing services?

2. Which functions, typically performed by this group, are unsupervised?
   - What proportion of the individual's time is spent in unsupervised activity?
   - Who is legally accountable/reliable for acts performed with no supervision?
3. Which functions are performed only under supervision?
   - Is the supervision direct (e.g. the supervisor is on the premises and responsible) or general (e.g. supervisor is responsible but not necessarily on the premises)?
   - Who provides the supervision? How frequently? Where? For what purpose?
   - Who is legally accountable/liable for acts performed under supervision?
   - Is the supervisor a member of a regulated profession? Elaborate.
   - What are the parameters contained in a typical supervision arrangement?
4. Does the practitioner of this occupation supervise others? Describe the nature of this supervision (as in #3 above).
5. What is a typical work setting like, including supervisory arrangements and interaction of the individual with other regulated/unregulated occupations and professions?
6. Does this occupational group treat or serve a specific consumer/client/patient population?
7. Are clients/consumers/patients referred from this occupational group for care or services? If so, by whom? Describe a typical referral mechanism.
8. Are clients/consumers/patients referred from this occupational group for care or services? If so, to what individuals are such referrals made? Describe a typical referral mechanism. How and on what basis are decisions to refer made?

Criterion Seven: Applicable State and National Standards. The regulation of the occupation or profession is consistent with regulatory practices in other states and with established national standards.

1. Provide documentation of applicable national or other state:
    - Legislation applicable to the occupation or profession
    - Standards that exist for occupation or profession
    - Scope of practice
    - National job analyses that identify entry level competencies
2. Are there national, state, and/or regional examinations available to assess entry-level competency?
    - Who develops and administers the examination?
    - What content domains are tested?
    - Are the examinations psychometrically sound – in keeping with the Standards for Educational and Psychological Testing?
3. How many other states currently regulate the occupation? Which ones? What is the level of regulation for the occupation/profession – licensure, registration or certification in each state where regulated?
4. Have any states de-regulated this occupation? Why? When?

Recommendation #A6

Subject: Sufficient Resources for New Regulations

Background and Description of Issue: Before any new regulation is added to the licensing of an occupation, adequate resources, such as staffing, should be appropriated to carry out the administration. Simply because an occupation is already regulated, does not mean there are sufficient resources available to add further administrative tasks.

Proposed Solution: All new legislative requirements and or mandates relating to occupational licensing should provide for sufficient resources to carry out the new regulation.

Rationale for Change: It is not only when new occupations are added for regulations that costs to administer licensing increases. Anytime new requirements are placed upon the regulation of an occupation, sufficient resources should be allocated to cover the costs to administer them.

Recommendation #A7

Subject: Non-required Mailings

Background and Description of Issue: All licensees are notified in writing prior to renewal of their license and possibly to remind them of continuing education requirements. This is typically done according to statutory and regulatory requirements. Some departments may actually notify licensees more often than the statute requires, adding unnecessary printing, mailing, and wage costs to the department.

There is much more information available through department websites and electronic communications. Licensees should be able to seek out information during the interim if they have questions about the status of their license and continuing education requirements. Furthermore, the department could seek out e-mail addresses as a means of sending out reminders to licensees at a much lower cost.

Proposed Solution: All non-required mailings by agencies to licensees should be reviewed for cost-effectiveness and necessity.

Rationale for Change: Over time administrative practices can become habitual and even appear necessary. However, a cost savings may be realized by reviewing and eliminating those tasks which are duplicative or excessive from those which are required by law.

Recommendation #A8

Subject: Licensing Reciprocity

Background and Description of Issue: If we truly want jobs to come to Michigan, we must also be assured that we have a skilled workforce available. Licensed professionals who meet professional standards for education and experience with credible backgrounds that are congruent with Michigan's licensed occupations should be welcomed into the state to practice.

Likewise the regulation of Michigan licensed occupations should be adequate enough to allow licensees the ability to practice their profession in a myriad of states with minimum road blocks. Regulation of our licensees should take into consideration pre-licensure education, national certification, examination, and continuing education requirements that would allow licensing reciprocity with other states.

Clearly, reciprocity should not result in the licensure of individuals from states whose regulatory requirements are so insufficient that their licensure could endanger the public. However, opportunities should be explored to allow reciprocity with other states that require adequate training, experience, and testing, as well as sufficient enforcement practices.

Proposed Solution: Evaluate the appropriateness of reciprocity of licensed occupations across states, and where appropriate, subject to ensuring appropriate safeguards in other states, encourage reciprocity.

Rationale for Change: Michigan must strive for a competitive work force by encouraging licensed professionals who credentials that are appropriately licensed in other states to work here.

Recommendation #A9

Subject: Licensee Change of Address

Background and Description of Issue: There are numerous provisions in statutes and regulations that require licensees to be contacted by mail of administrative and judicial notices. However, not all licensees are held responsible to notify the Department when there is a change in address.

The lack of such a provision can cause administrative problems. For example, under the Unarmed Combat Regulatory Act, no such provision requires licensees to notify the Bureau of Commercial Services of a change in address. As a result, it is difficult to defend the Final Order of the Unarmed Combat Commission against a charge of inadequate notice of the preceding disciplinary documents and hearing notices.

Proposed Solution: Statutory changes should be implemented to require all regulated licensees and registrants to notify the agencies of changes in address.

Rationale for Change: This is a technical fix that places the burden of notification on the party who is in the best position to make the correction.

Recommendation #A10

Subject: Future Regulations

Background and Description of Issue: In this current economic climate, the State is focused on assuring that our regulatory structure is fair, friendly and simple to encourage business growth and job creation in our State. Even after the work of the current review is complete, including the recommendations and implementation of those recommendations by ORR, the same guiding principles for review should be applied to all future regulations.

Proposed Solution: Future statutes and regulations affecting the practice and conduct of occupational licensees or registrants should be fair, efficient, and transparent, so as not to unreasonably diminish competition or exceed the minimum level of regulation necessary to protect the public, yet be conducive to business growth and job creation.

Statutory language should be enacted to ensure that the following tenets are considered prior to adopting legislation requiring licensure or regulation of a new occupation:

1. All regulatory programs should be fair, efficient, transparent and conducive to business growth and job creation.
2. Regulation of an occupation should only be considered if it will offer added protection for the health and safety of the public.
3. Provisions of the law should not exceed the minimum level of regulation necessary to protect the public.
4. Regulation should not unduly limit competition.
5. The cost of the regulatory process should not be overly burdensome for the regulated individuals but it should be adequate for administration of the program. Program cost increases should be anticipated and expected as the cost of business increases.
6. The focus of the regulatory program should be to regulate the practice of the occupation by licensing eligible individuals.

Rationale for Change: These considerations stress the focus of statutes that are fair and transparent to business.

Recommendation #A11

Subject: Licensed Occupations Only

Background and Description of Issue: Regulating occupations can occur in several categories, licensure, registration, and listing. Michigan currently has examples of all three of these categories for regulated occupations.

The focus of the regulatory program should be to regulate the practice of the occupation by licensing eligible individuals. If it is important enough for the public's health and safety, it should be important enough to license and not just provide title protection.

Therefore the regulation of an occupation through a registration or listing program does not offer adequate protection of the public and should not be entertained.

Proposed Solution: Future regulation of occupations should be by licensing only, not registration or listings.

Rationale for Change: The amount of resources required to regulate by registration or listing outweighs the minimal amount of public protection achieved.

Recommendation #B1

Subject: Auctioneers

Background and Description of Issue: Article 29 of the Occupational Code requires a person or company to be registered to use the title, "Registered Auctioneer." Under the statute, auctioneer means "an individual who, for compensation, is engaged in the business of the conduct of or offers to engage in the conduct of an auction."

This is a voluntary registration that adds little consumer protection. Furthermore, consumer protection through occupational regulation may not be necessary for auctioneers. Consumers do not appear to be seeking retribution from unscrupulous auctioneers as there have been zero consumer complaints in the past three years.

When the statute was enacted in 2006 it was estimated that as many as 800 auctioneers would be eligible to register. Yet only 87 are registered five years later. With so few registrants, the fees collected for the registration do not cover the cost to regulate the occupation by the Bureau of Commercial Services.

With so few registrants and a lack of clear consumer protection, continued regulation of auctioneers appears to provide no public health and safety benefit and is an inefficient use of public resources.

Proposed Solution: The occupation of auctioneers should be de-regulated.

Rationale for Change: The registration of auctioneers does not provide a public health and safety benefit sufficient to warrant use of public resources to regulate them.

Recommendation #B2

Subject: Barbers & Cosmetologists

Background and Description of Issue: Article 11 of Public Act 299 of 1980 regulates the services of barbers, barber students, barber colleges, barber instructors, student instructors, and barbershops in Michigan. Article 11 defines a barber as a person who shaves or trims the beard of a person; cuts, trims, shampoos, relaxes, curls, permanently waves, dresses, tints, bleaches, colors, arranges, or styles the hair of a person; massages the face and head of a person; or renders personal services of a similar nature customarily done by a barber.

Article 12 of Public Act 299 of 1980 regulates the practice of cosmetology in Michigan. Article 12 defines cosmetology as one of the following services or a combination of the following services: Hair care services, skin care services, manicuring services and electrology.

The members of the cosmetology industry who are licensed by the Department include schools of cosmetology, both public and private, beauty shops, cosmetologists, manicurists, cosmetology instructors, electrologists, estheticians (skin care specialists) and natural hair culturists (braiders).

While the occupations of barber and cosmetologist have historically been licensed separately, and their scope of occupational practice differs slightly, there are commonalities among the occupations that focus on personal grooming and health regulations for establishments.

Therefore, it is prudent to consider combining the occupational boards of these two occupations. The occupational licenses would remain separate, but opportunities to streamline regulations for schools and establishments could be reviewed and recommended by the combined board.

The Bureau of Commercial Services would see an increase in efficiency by administering a combined program through more consistent inspections, reductions in board meetings, and combined licensing renewals.

Furthermore, the practice is fairly common across the other states. Of all 50 that license barbers and cosmetologists, 23 have a combined occupational board.

Proposed Solution: Barbers and cosmetologists should be combined under one statutory article with one occupational board, but separate occupational licenses.

Rationale for Change: The regulation of these two industries are very similar so that it would be administratively efficient to combine them under one occupational board.

Recommendation #B3

Subject: Carnival Amusement Safety Board

Background and Description of Issue: The Carnival-Amusement Safety Act, Public Act 225 of 1966, provides for the inspection and licensing of amusement parks and rides.

Michigan has approximately 100 permanent locations of amusement rides and approximately 600 locations where transient carnivals operate. The Department currently oversees the operation of approximately 212 carnival/amusement companies and 889 carnival rides.

There are two problems with the regulation of carnival amusement safety. The first one is the considerable expense incurred by Department staff to perform inspections of traveling shows, amusement parks and other fixed locations with rides, to assure compliance with the act and the rules. Such expenses make the licensing and inspection fees insufficient to cover regulation costs.

The Carnival Amusement Safety Board meets periodically and has authority to assist Department staff with promulgating regulations for the safe installation, repair, maintenance, use, operation and inspection of all carnival-amusement rides as the board finds necessary for the protection of the general public using carnival and amusement rides. Despite this valuable input from the industry on specific regulations, the occupational board provides little value to the administration of the program. Scheduling board meetings, creating agendas and minutes, as well as staffing the occupational board meeting takes up valuable department staff time that could be best spent on other responsibilities.

Proposed Solution: The Carnival Amusement Safety Board should be abolished. However, licensing should continue and fees should be increased to be sufficient to cover administrative costs of regulation, such as processing applications and issuing permits. Additional charges for the actual costs of the inspections should be assessed.

Rationale for Change: The department maintains sufficient authority under the statute to inspect carnival and amusement rides without the expense of appointing and staffing an occupational board. The current fees collected by applicants are nowhere near the actual expenses incurred by the department to inspect rides and issue permits. The cost to apply and the cost of the inspection to the applicant should more appropriate reflect the expense by the department.

Recommendation #B4

Subject: Cemeteries, Funeral Directors, Pre-paid Funeral & Cemetery Sales Contract Providers

Background and Description of Issue: The Department of Licensing and Regulatory Affairs registers and regulates cemeteries owned and operated in Michigan. Statutory authority for the regulation of cemeteries is in the Cemetery Regulation Act , 1968 PA 251, MCL 456.521 et seq.

The practice of mortuary science, or the funeral director occupation, is licensed under Article 18 of Public Act 299 of 1980. Article 18 defines the practice of mortuary science as the practice of embalming or the practice of funeral directing, or both. A funeral establishment is defined as a place of business used in the care and preparation for burial or transportation of a dead human body. There are currently approximately 2,135 mortuary science licensees, 82 resident trainees, and 751 funeral homes.

The Prepaid Funeral & Cemetery Sales Act, Public Act 255 of 1986, regulates the sale and provision of certain funeral and cemetery merchandise and services and the use of funds received by sellers and providers of these goods and services. Individuals or companies who sell prepaid funeral and cemetery contracts must be registered with the Department. There are currently approximately 575 prepaid funeral and cemetery sellers and providers.

These three occupations make up the professionals involved in the “death care” industry. Their services often intertwine as they serve families looking to pre-arrange their funeral or make arrangements at the time of the death.

Based on recent industry trends, newly enacted regulations, as well as legislative proposals, it appears there is a lot of activity regarding the regulation of this industry. Given the ongoing issues, it is prudent to encourage the review of the industry and move all the individual regulations under one occupational board with representation for each of the occupational interests, including the public.

Proposed Solution: The regulation of cemeteries, funeral directors, and prepaid sellers of cemetery and funeral goods and services should be combined under one occupational board with separate licenses.

Rationale for Change: The regulation of these three industries are very similar so that it would be administratively efficient to combine them under one occupational board.

Recommendation #B5

Subject: Community Planners

Background and Description of Issue: Professional Community Planners is a registered occupation under Article 23 of Public Act 299 of 1980. Article 23 defines a community planner as a person qualified to prepare comprehensive community plans designed to portray general long range proposals for the arrangement of land uses to guide government toward development of the entire community. Only a person registered under this article may use the title "Community Planner."

There are currently 132 professional community planners registered in Michigan, and there was only one complaint filed against a community planner in the last five years.

Given that registration provides little public protection beyond the use of a professional title, the low volume of registrants, and that contracts between community planners and local governments can provide all the necessary protections, it does not appear that regulating community planners provides any protection for public safety and health.

Proposed Solution: The occupation of community planners should be de-regulated.

Rationale for Change: The registration of community planners does not provide a public health and safety benefit sufficient to warrant use of public resources to regulate them.

Recommendation #B6

Subject: Forensic Polygraph Examiner

Background and Description of Issue: According to the Forensic Polygraph Examiners Act, an examiner is one who detects deception, verifies truthfulness or provides a diagnostic opinion through an instrument used to measure the same.

The licensing fee for this license is the original fee instituted in 1972 and fails to cover the administrative costs to regulate the occupation. There are currently only 117 licensees, and the state has only received three complaints in the past three years.

The small number of new applications increases the regulatory burden. Staff must become familiar with the statute and administrative rules when an occasional new application is received.

Due to the low number of licensees, the low number of consumer complaints, and the cost burden to administer the license, it would appear as if the regulatory burdens outweigh any public safety that may be achieved through licensing forensic polygraph examiners.

Proposed Solution: The occupation of forensic polygraph examiners should be de-regulated.

Rationale for Change: The registration of forensic polygraph examiners does not provide a public health and safety benefit sufficient to warrant use of public resources to regulate them.

Recommendation #B7

Subject: Forester

Background and Description of Issue: Foresters are registered under Article 21 of Public Act 299 of 1980. A forester is a person who by reason of his or her knowledge of the natural sciences, mathematics and principles of forestry, acquired by forestry education and practical experience, is qualified to engage in the practice of professional forestry.

The Department currently oversees the registration of approximately 226 registered foresters, which is quite a low volume of licensees. There were 7 complaints filed against foresters in the last 5 years.

Unfortunately, Article 21 lacks a clear scope of professional practice by foresters, thereby creating registration without any regulatory responsibility.

Given the lack of professional responsibility and the low volume of registrants, it appears that there is very little protection of public safety accomplished through the regulation of this occupation.

Proposed Solution: The occupation of foresters should be de-regulated.

Rationale for Change: The registration of foresters does not provide a public health and safety benefit sufficient to warrant use of public resources to regulate them.

Recommendation #B8

Subject: Hearing Aid Dealers

Background and Description of Issue: Hearing Aid Dealers are regulated under Article 13 of Public Act 299 of 1980, as professionals who engage in the sale of hearing aids. As professionals they fit and mold hearing aids for their customers.

Despite the fact that hearing aid dealers are regulated under the Occupational Code with other Bureau of Commercial Services occupations, it has been suggested that the occupation would more appropriately be regulated under the Bureau of Health Professions, given the health related aspects of the occupation.

Proposed Solution: The regulation of hearing aid dealers should be administered by the Bureau of Health Professions and reviewed for public health necessity.

Rationale for Change: The staff within the Bureau of Health Professions may be better equipped to review the health related aspects and ascertain the necessity for regulating the profession than the staff within the Bureau of Commercial Services.

Recommendation #B9

Subject: Immigration Clerical Assistants

Background and Description of Issue: Immigration Clerical Assistants are registered under the Immigration Clerical Assistant Act PA 161 of 2004. The purpose of the act is to create a list of professionals who provide non-legal services to immigrants.

The issue with registration is that the act fails to identify the scope of practice and prohibited conduct by an immigration clerical assistant. Furthermore, the act provides little enforcement authority for the Bureau of Commercial Services. For example, the state may issue a notice of noncompliance to a person for a first violation for failing to register or failing to meet bonding requirements. However, all subsequent violations and all other types of violations are handled by the local authorities.

Finally, there is the low volume of registrants. After nearly 8 years since the passage of the statute, there are only six listees on the registry. Taken as a whole, the low volume of registrants, the lack of clear scope of practice, and poor enforcement provisions, the regulation of the immigration clerical assistants does not appear to provide any type of protection from unscrupulous professionals, nor does it appear to be an efficient use of government resources.

Proposed Solution: The occupation of immigration clerical assistants should be de-regulated.

Rationale for Change: The registration of immigration clerical assistants does not provide a public health and safety benefit sufficient to warrant use of public resources to regulate them.

Recommendation #B10

Subject: Interior Design

Background and Description of Issue: The State Occupational Code provides for a voluntary list of interior designers. MCL 339.601a. LARA has maintained the list of interior designers since the law was passed in 1998. The sole qualification to be eligible for the list is passage of the National Council of Interior Design Qualification exam. In no way does the statute regulate the practice of interior design; it does not even provide title protection from others wishing to use the title of interior designer.

Furthermore, once an interior designer is on the state list, he or she is on it forever. There is no renewal required. Such a listing creates an unreliable source as it is impossible to determine whether a professional on the list has moved, stopped practicing, or even passed away.

Given the lack of any public protection, or any regulation of professional practice, the state should cease to administer the list of interior designers.

Proposed Solution: The occupation of interior designers should be de-regulated.

Rationale for Change: The list of interior designers produced by state regulators does not provide a public health and safety benefit sufficient to warrant use of public resources to regulate them.

Recommendation #B11

Subject: Landscape Architect

Background and Description of Issue: In May of 2009 the regulation of Landscape Architect was amended from a registry to a license under Article 22 of the Occupational Code, Public Act 299 of 1980.

Under Article 22 a landscape architect is a person who is qualified to practice landscape architecture. Landscape architecture is defined as "the performance of professional services such as consultation, investigation, research, planning, design, or responsible field observation in connection with the development of land areas where, and to the extent that the dominant purpose of the services is the preservation, enhancement, or determination of proper land uses, natural land resources, ground cover and planting."

The act prohibits individuals from using the title "landscape architect" without being licensed. The problem is that the act does not prohibit the use of the titles "landscape gardener," "landscape contractor," or "landscape designer." With the ability to perform all of the same tasks as a licensed architect, as long as you do not use the title, "landscape architect," this license provides little beyond title protection.

Considering that the regulation only provides protection of the title "landscape architect," the statute provides no other public protection to warrant a license of the occupation.

Proposed Solution: The occupation of landscape architects should be de-regulated.

Rationale for Change: The title protection that comes from the license of landscape architects does not provide a public health and safety benefit sufficient to warrant use of public resources to regulate them.

Recommendation #B12

Subject: Ocularist

Background and Description of Issue: The practice of ocularism is the design, fabrication, and fitting of ocular prosthetic appliances. Only a person registered under Article 27 of the Occupational Code, Public Act 299 of 1980, may use the title "Ocularist" or advertise that he or she is registered.

This is a very low volume of registrants with only 20 ocularists registered in the state. Zero complaints have been filed in the past five years.

Because registration provides little public protection beyond the use of a professional title, and due to the low volume of registrants' along with the low number of consumer complaints, it does not appear that regulating ocularists provides significant protection for public safety and health.

Proposed Solution: The occupation of ocularist should be de-regulated.

Rationale for Change: The registration of ocularists does not provide a public health and safety benefit sufficient to warrant use of public resources to regulate them. It is likely that a person in need of an ocularist would be referred to a reputable ocularist by their physician.

Recommendation #B13

Subject: Personnel Agencies

Background and Description of Issue: Personnel agencies are businesses which assist consumers with their career pursuits and immediate job needs. There are two types of personnel agencies licensed under Article 10 of Public Act 299 of 1980, as amended. A Type A agency assists clients seeking employment or making basic career decisions, and puts a client in direct contact with employers, then receives a fee from the client for the services rendered. There are also Type B agencies which assist clients with making basic career decisions and receive fees from the clients for the services rendered. The services of a Type B agency include: resume preparation, clearinghouse, personality evaluation testing, letter writing services, providing lists of employers and executive counseling.

While personnel agencies can provide helpful business services to consumers who are in need of a job or career evaluation assistance, they do not actually generate a large enough industry to necessitate regulation by licensing. There is a very low volume of licensees for this occupation with only 84 licensees, and the state has only received eighteen complaints in the past three years.

Even without licensing, consumers seeking employment assistance should be protected from less-than-honorable business operations. However, consumer protection could be achieved through prohibited conduct without the necessary costs of regulating the industry.

The current statute provides prohibited conduct that could be maintained as a means of consumer protection. Below are two excerpts from the Occupational Code.

MCL 339.1020 Type A personnel agency; prohibited acts.
Sec. 1020.
A type A personnel agency, its licensed employment agent, or any other agent or employee of the type A personnel agency, shall not do any of the following:

(a) Persuade, induce, or solicit an employee to leave employment which has been secured for that employee by the personnel agency.
(b) Send a client to a place where a strike or lockout exists or is impending without informing the client of the strike or lockout, and so noting that fact upon the job referral slip given to the client.
(c) Require or accept a fee from a client until the client has made a bona fide acceptance of employment.
(d) Enter into or enforce a contract with a client if another personnel agency or business entity is a party to the contract.

MCL 339.1019 Personnel agency; prohibited acts.
Sec. 1019.
A personnel agency, or any licensed agent or other agent or employee of a personnel agency shall not do any of the following:

(f) Request or accept a registration fee or any other fee not set forth in the agency's contract with a client or charge a fee higher than the fee set forth in the contract.

(g) Request or accept, or give, offer, or promise to give, a gift of such value that the gift is likely to persuade, induce, or influence an action of an employer or benefit the personnel agency or any of its agents or employees.
(h) Knowingly procure, entice, send, or aid in procuring, enticing, or sending a person to perform an illegal act.

Proposed Solution: The licensing of personnel agencies should be de-regulated. Prohibited conduct by personnel agencies should remain in statute as a means of consumer protection.

Rationale for Change: The same public protections can be achieved through prohibited business practices without the expense of licensing personnel agencies.

Recommendation #B14

Subject: Private Security Guards

Background and Description of Issue: A private security guard is an individual or employee of a business who offers, for hire, protection of property on the premises of another, and is regulated under the Private Security Business and Security Alarm Act, Public Act 330 of 1968.

The regulation of private security guards is meant to set occupational standards so that consumers would not mistake private security guards for police officers, or as an official with similar authority as a police officer.

The professional practices of a private security guard are more appropriately regulated than the individual licensees. As long as statutory provisions can be maintained to require background checks for the profession and legal recourse is available by private entities, the actual license for the private security guard is not necessary.

For example, provisions from the following sections in the Occupational Code should be maintained, provided that the Michigan State Police should be consulted regarding proper statutory requirements.

- MCL 338.1068: Employers (currently the licensee) are required to take fingerprints of all prospective employees who are direct providers of the security business which are used for a criminal background check by the state police for a fitness determination. The employer must also conduct a background check of prospective employees by name check.
- MCL 338.1069: This section prohibits security guards from wearing uniforms that would deceive or confuse the public or that is identical with law enforcement at the federal, state, or local level of government. Shoulder identification patches should be worn on all uniforms and jackets. Badges or shields for security guards are prohibited unless otherwise approved by the department. Security guards are also prohibited from carrying deadly weapons unless otherwise licensed under state law.

The administrative code should be amended to reflect the statutory changes eliminates the licensing provisions.

Proposed Solution: The license for private security guards should be eliminated; however statutory requirements meant to protect the public by distinguishing private security guards from police officers should be implemented to regulate professional activities.

The Michigan State Police should be consulted regarding appropriate statutory requirements.

Rationale for Change: The same public protections can be achieved through continuing to identify prohibited conduct of private security guards without licensing them.

Recommendation #B15

Subject: Professional Employer Organizations

Background and Description of Issue: Professional employer organizations were brought under state regulation in 2010 as a way to combat employment practices that manipulated unemployment liability and workers compensation rates for employers. There are potentially 600 licensees who could apply, however the actual numbers are not yet available as Public Act 370 of 2009 only recently went into effect and will not be ready for implementation for another year.

The problem with the current statute is that there is very little substance on professional practice or prohibited conduct. Administration of this occupation will be very difficult without these parameters for regulators. The overall effect is that the act fails to address the problem it was purported to correct.

Given the lack of statutory substance to correct the perceived problem, and therefore provide public protection, this occupation is not appropriate for state regulation.

Proposed Solution: The practice of professional employer organizations should be de-regulated.

Rational for Change: The regulation of professional employer organizations does not provide a public health and safety benefit to consumers to warrant use of public resources to regulate them.

Recommendation #B16

Subject: Professional Investigator

Background and Description of Issue: Professional Investigators are regulated under the Professional Investigator Licensure Act, Public Act 285 of 1965. The Act defines a professional investigator as a person who accepts employment to conduct investigation business. The regulation of professional investigators is self-supporting with approximately 1,037 agents and 52 branches licensed in the state. Most states license professional investigators at some level.

What is missing from the regulation of professional investigators is the authority for enforcement of license suspension and revocations under the Administrative Procedures Act. The lack of authority to adjudicate licenses under the APA is preventing the Bureau of Commercial Services from properly regulating the occupation.

Proposed Solution: The Professional Investigator Licensure Act should be amended to include enforcement authority under the Administrative Procedures Act to suspend or revoke a license if the public health, safety or welfare requires emergency action.

Rationale for Change: Once licensed, the Department should have appropriate statutory provisions to regulate the occupation. This is a fair and necessary public protection provision.

Recommendation #B17

Subject: Residential Builder

Background and Description of Issue: Article 24 of the Occupational Code, Public Act 299 of 1980, provides the regulations for persons engaged in the construction, repair, alteration, or addition of a residential structure.

In 2008, new requirements were added for 60 hours of pre-licensure education for residential builders or residential maintenance and alteration contractor licenses, MCL 339.2404b. All pre-licensure courses must be approved by the Department. This education requirement is excessive for the knowledge needed to take the exam and become licensed to work as a residential builder. Rather than encourage knowledgeable applicants, this requirement serves as a barrier to entry into the occupation.

Furthermore, the continuing competency requirements under MCL 339.2404b for licensure renewal should be reviewed for necessity and appropriateness. While appropriate on their face, it is questionable how much value the continuing competency requirements bring to the practicing occupation.

Section 2404 of the statute also requires the applicant to submit a copy of his or her license or personal identification card, to be used by the department only for proof of identity of the applicant. The application need not be submitted in person so the requirement does little to actually verify the identification of the applicant. In reality, this requirement hinders the ability of the department to accept online applications and reduce paperwork. Therefore, MCL 339.2404(1) should be amended to eliminate the requirement to submit a copy of the applicant's license or personal identification. Eliminating this requirement will allow the Department to collect an applicant's information using the most efficient and appropriate method.

Proposed Solution: The pre-licensure education for residential builders should be eliminated and the continuing competency requirements should be reviewed for necessity.

The requirement for the residential builder license applicant to submit a copy of his or her license or personal identification with his or her application for proof of identification should be eliminated.

Rationale for Change: Pre-licensure education and continuing education for residential builders' licenses should be reviewed to make sure the requirement actually serves the training purposes.

By eliminating the requirement to provide a copy of the applicant's photo identification, the Department can explore more efficient means of processing applications.

Recommendation #B18

Subject: Real Estate Broker: Residential Property Manager

Background and Description of Issue: The practice of real estate brokers and salespersons are governed under Article 25 of Public Act 299 of 1980, as amended, of the Occupational Code. In order to be licensed, a real estate salesperson must be employed directly or indirectly by a licensed real estate broker and by statute is authorized through the broker to buy, sell, provide market analysis, list, and negotiate the purchase, sale, exchange or mortgage of real estate.

More specifically, one "who engages in property management as a whole or partial vocation" under Article 25 of the Occupational Code is a real estate broker and one who would "lease, offer to lease, rent or offer for rent real estate, who is employed by a real estate broker to engage in property management," is a real estate salesperson.

The licensing of residential leasing agents is problematic for many property management companies. These are typically young professionals in transient employment positions. The employees hired to show apartments are not typically in the profession with long-term aspirations of being in the real estate business. Furthermore, property management topics make up a minority of the training courses and examination for the real estate salesperson license which contributes to a low percentage of exam passage rates for the employees.

In consideration of the job expectations for a leasing agent, the supervisory role of the property management company which has a broker's license and the salesperson's licensing requirements, it is overly burdensome to require the leasing agents to obtain a salesperson's license.

Proposed Solution: The leasing agents of residential property management companies should not be required to be licensed as real estate salespersons in order to show or lease rental properties.

Rationale for Change: Despite the intent when the law was written, the employees of leasing offices at apartment complexes are not real estate agents by profession. The requirement for these employees to possess a real estate agent's license is overly burdensome and not realistic.

Recommendation #B19

Subject: Security Alarm Contractors

Background and Description of Issue: Security alarm contractors are regulated under the Private Security Business and Security Alarm Act, Public Act 330 of 1968. The Act defines a security alarm system contractor as a business engaged in the installation, maintenance, alteration, monitoring or servicing of security alarm systems or a company that responds to a security alarm system. There are 386 individuals and 21 branches licensed under the act. The licensing fees collected for security alarm contractors do not support the regulation of the occupation.

Despite the intent to protect the public from false security alarm systems, it is questionable whether licensing the business protects the public from rogue actors. Consumers would receive just as much protection by the enforcement of consumer protection provisions that regulate business practices without requiring the licensure of the businesses that provide the services.

Proposed Solution: Security alarm contractors should be de-regulated.

Rationale for Change: The regulation of security alarm contractors does not provide sufficient public safety protections beyond what would already be covered through the Consumer Protection Act to warrant licensing them.

Recommendation #B20

Subject: Ski Area Safety Board

Background and Description of Issue: The Ski Area Safety Program was created under Public Act 199 of 1962, as amended to license and regulate ski areas and ski lifts in Michigan.

The primary regulation of ski areas comes in the form of inspecting ski lifts and tows, as well as appropriate signage for ski runs, trails, and slopes according to their degree of difficulty. Unfortunately the licensing fees for ski areas and inspections are the same as were instituted when the act was created in 1962. Inspections of ski areas are a major expense for the Bureau of Commercial Services. In a typical year, the state will spend nearly $400,000 to inspect ski areas but collect a mere $13,000 in fees.

The Ski Area Safety Board is required to meet at least once a year or by the written request of three or more board members regardless of whether there is actual business for the board. Beyond this requirement to meet, the board lacks authority to act except to assist department staff with valuable input from the industry on specific regulations and practices. Scheduling board meetings, creating agendas and minutes, as well as staffing the occupational board meeting takes up valuable department staff time that could be best spent on other responsibilities. In the absence of an occupational board, the staff could seek input from industry leaders when necessary to determine appropriate regulations.

The regulation of ski areas does provide a significant public safety protection and should continue with appropriate fees to be self-sustaining. However, the Ski Area Safety Board does not appear to provide any significant benefits to the regulation of the occupation that could not otherwise be accomplished with consultation with industry leaders.

Proposed Solution: The Ski Area Safety Board should be abolished. However, licensing should continue and fees should be increased to be sufficient to cover administrative costs of regulation, such as processing applications and issuing permits. Additional charges for actual cost of the inspections should be assessed.

Rationale for Change: The department maintains sufficient authority under the statute to inspect and issue permits for ski lifts without the expense of appointing and staffing an occupational board. The current fees collected by applicants are nowhere near the actual expenses incurred by the department to inspect and issue permits. The cost to apply and the cost of the inspection to the applicant should more appropriate reflect the expense by the department.

Recommendation #B21

Subject: Proprietary Schools & Proprietary School Solicitors

Background and Description of Issue: Schools that provide training in a specific trade, occupation or vocation are required to be licensed by the State of Michigan, Proprietary Schools Unit, according to the Proprietary School Act, Public Act 148 of 1943. Students attending these schools do not receive a degree, but may earn a certificate of completion in a special area of training. More recently, with the downturn in the economy and the increased use of technology, the need to regulate proprietary schools has grown.

Despite the historic regulation of these private programs, several regulatory tools are missing to appropriately regulate the schools and programs. The Department should review and make recommendations for the bonding process structure and the enforcement process of licensing under the Administrative Procedures Act with input from stakeholders. The fee structure for licensing proprietary schools should also be reviewed so that it is financially self-supporting.

These schools employ solicitors who are responsible for recruiting potential students. In 2007, a question was posed to the Attorney General as to the requirement for the solicitor to have a permit, depending on the whether or not the school was domiciled in the state and offered a bachelor's degree.

Based on the language in Michigan Compiled Laws 395.121-392.122, the Attorney General's office issued a memorandum with the opinion that out of-state schools with the authority to grant bachelor's degrees would not be required to have a solicitor's permit to recruit students. However, a school located in Michigan that meets the definition of a school domiciled within the state would be required to obtain a solicitor's permit despite having baccalaureate degree-granting authority.

The different treatment of solicitors depending on whether or not they are domiciled in the state is not fair to in-state schools and it is not clear why the Legislature imposed such a requirement when the law was passed. Regardless, it does not appear to be necessary to continue to require permits for any solicitors of proprietary schools. The Bureau of Commercial Services indicates that there is sufficient protection provided in the regulation of the actual school that regulating the solicitors is overkill.

Proposed Solution: The Proprietary School Act should be reviewed to consider the bonding process and enforcement process under the Administrative Procedures Act, as well as the fee structure for licensing to make the regulation of proprietary schools financially self-sustaining. The regulation of proprietary school solicitors should be discontinued.

Rationale for Change: If proprietary schools are going to be regulated, the Department should have the proper tools to regulate them, this includes the bonding process structure and enforcement process under the Administrative Procedures Act, but it also includes enough funding to be self-sustaining.

Regulating the solicitors of proprietary schools is overly burdensome and unfair to in-state

school in practice. With all the necessary tools in place, the regulation of the proprietary schools is sufficient, and the licensing of the solicitors should be eliminated.

Recommendation #B22

Subject: Unarmed Combat Commission

Background and Description of Issue: The Michigan Unarmed Combat Regulatory Act, PA 403 of 2004, was enacted to regulate professional boxing and mixed martial arts.

The following individuals participating in a context or exhibition are required to be licensed: boxer, mixed martial arts contestant, boxing judge, mixed martial arts judge, boxing referee, mixed martial arts referee, boxing timekeeper, mixed martial arts time keeper, manager, matchmaker, promoter, and second.

The licensing of so many different individuals is a regulatory nightmare for the Bureau of Commercial Services. The statute should be amended to create a single licensee or registrant, such as the promoter, who would be responsible for assuring that all of these individuals are appropriately credentialed to participate in the event.

Also to be reviewed are the regulatory fees in to ensure they are sufficient to administer the program, as well as the elimination of the requirement for an administrative law hearing to dissolve a summary suspension order, and to allow a physician licensed in another state to perform the required physical exam of the participating athletes. The lack of all of these requirements is a prime contributor to the difficulty in regulating the program.

Proposed Solution: The regulation of unarmed combat events should be retained, however the statute and regulation should be reviewed for appropriate public safety protections.

Rationale for Change: The number and transient nature of the licensed parties, along with the mobility of the events makes this a difficult industry to regulate. However, the public safety derived from the regulation is worth the numerous but minor tweaks necessary to fine tune the statute and administrative code to allow it to run more efficiently.

Recommendation #B23

Subject: Vehicle Protection Product Warrantor

Background and Description of Issue: A vehicle protection product is a product or system that is installed or applied to a vehicle and is designed to prevent loss or damage to a vehicle from a specific cause. The Vehicle Protection Product Act, Public Act 263 of 2005, was enacted to regulate the warrantors of after-market vehicle protection devices, systems and services sold in Michigan. The statute was meant to distinguish between warranty products and insurance.

The regulation is a list, and only a few Vehicle Protection Product Warrantors have registered for the listing since its inception. The Bureau of Commercial Services' experience with this list reflects very little activity. In the past five years, only 26 companies have applied to be on the list, and there have been very few documented complaints with the Department.

The act contains no enforcement authority for the Department and provides no mechanisms, other than a cease & desist injunction, to stop a person from offering or selling the products without complying with the act.

Proposed Solution: The administration of Vehicle Protection Product Warrantors should be de-regulated.

Rationale for Change: As a consumer product, these devices are covered by the Michigan Consumer Protection Act.

Recommendation #B24

Subject: Occupational Boards' Assessment of Penalties

Background and Description of Issue: True to the nature of all occupational licensing boards, the boards that exist under the Occupational Code, Public Act 299 of 1980, as amended, are given a fair amount of authority for addressing violations by licensees. For these occupational boards, that influence extends into the determination of penalties, even beyond the recommendation of an administrative law judge.

The following statutes outline the board's authority for assessing penalties:

- Section 309 states that "A board, upon completion of a hearing conducted pursuant to section 511, shall assess a penalty or penalties as provided in article 6." MCL 339.309
- Section 514(1) states, "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." MCL 339.514(1)
- Section 602 states, "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:… (h) A requirement that restitution be made, based upon proofs submitted to and findings made by the hearing examiner after a contested case." MCL 339.602

Two Michigan Court of Appeals decisions have reinforced this authority by effectively minimizing the administrative law judge's determination to a mere recommendation while completely vesting all authority to assess penalties with the board. The court in *Arndt v. Department of Licensing and Regulation* said, "The hearing examiner had no authority to assess a penalty. The Residential Builders and Maintenance and Alteration Contractors Board is vested with total authority to assess penalties and exercised such authority in this case." See *147 Mich. App. 97, 104, 1958*. In 2006, in an unpublished opinion, the Michigan Court of Appeals affirmed the Arndt decision in *McDonald Builders, Inc. v Department of Labor and Economic Growth*, 2006 WL 1712488 (Docket No. 259557).

While it is important for occupational licensing boards to have a certain degree of discretion to assess penalties that take into account egregious licensing violations, this tilt in authority is confusing and a twist on the judicial system.

This dichotomy can be confusing for some occupational boards and a game for others. Because boards are not also the finder of facts, they are often confused about exercising their authority. When they are instructed to assess a penalty, they may feel that they have to assess a stronger penalty, as if the hearing examiner's recommendation was not appropriate. Worse yet, boards may turn vindictive and abuse the authority to punish professional competitors.

Recommendation: The Occupational Code at MCL 339.309, MCL 339.514, and MCL 339.602, should be amended to require a compelling reason for an occupational board to assess their own penalties regardless of the findings of the administrative law judge.

Rationale for Change: The board's authority should be a check on the system, but discretion should be given to the judicial process in place. The administrative law judge is the trier of facts

who makes a recommendation based upon the evidence, not upon their emotion. Their recommendation for penalties should be given authority unless there is a compelling reason to do otherwise.

Recommendation #C1

Subject: License Renewal Cycles

Background and Description of Issue: Most, but not all, licenses issued by the Bureau of Construction Codes are done on a 3-year cycle. This time frame is required by statute and is an adequate span of time between licensing renewals.

It is cumbersome for those occupations that are not on the 3 year renewal cycle, causing increased staff hours to coordinate those renewals that come in off years. It would be prudent and efficient to place all licensed occupations in the Bureau of Construction Codes on the same 3 year cycle. One exception is for apprenticeship licenses. Given the increased oversight of apprenticeship activities, licensing renewals for apprentices should remain annual.

Proposed Solution: All licenses under the Bureau of Construction Codes should move to a 3 year cycle, with the exception of apprentice licenses. The Bureau of Construction Codes should have the flexibility to phase in new renewal cycles over a 3 year period.

Rationale for Change: This change is logical and would have little effect on the licensees. Also the Bureau of Construction Codes would realize a cost savings and administrative efficiencies from renewing their licenses on the same cycles.

Recommendation #C2

Subject: Inspectors

Background and Description of Issue: The Building Officials and Inspectors Registration Act, Act 54 of 1986, provides for the registration of building officials, inspectors, and plan reviewers engaged in the enforcement of the Michigan construction codes.

While the general administration of inspectors is sufficient to ensure competent professionals and fair practices, several amendments to the statute would help with the enforcement of registrants' licensed activities, increase the competency of inspectors, and expand the number of professionals eligible to become an inspector.

First, the statute should be amended to provide for a disciplinary process for registrants. The enforcement process for licensees under the Administrative Procedures Act should be applied to registered inspectors.

Next, there needs to be a process for the review of competency for registered inspectors. The statute should require a test in code administration, technical and specialty for renewal of registration.

Also, there is an opportunity to expand the number of professionals who have the knowledge base and competency to serve as a building inspector, but may not qualify under the current law.
The act should be amended to allow for a test of competency for architects and professional engineers to qualify as electrical, mechanical, and plumbing inspectors.

Proposed Solution: The Building Officials and Inspectors Registration Act, Act 54 of 1986, which provides for registering building officials, inspectors, and plan reviewers should be amended to: a) provide for disciplinary and enforcement processes; b) establish a competency test including code administration; and c) identify an alternative test for building inspectors to allow architects and engineers to qualify.

Rationale for Change: These amendments represent positive regulatory reforms for the disciplinary and enforcement process, as well as competency test, but also expand the opportunity for other professionals to serve in these licensed roles.

Recommendation #C3

Subject: Plumbers

Background and Description of Issue: The State Plumbing Act prohibits a plumber who inspects work in one jurisdiction from working as a plumber, even in another jurisdiction. Specifically the statute reads:

> An individual licensed under this act employed or acting as a plumbing inspector shall not engage in, or be directly or indirectly connected with, the plumbing business including, but not limited to, the furnishing of labor, materials, or appliances for the construction, alteration, or maintenance of a building or the preparation of plans or specifications for the construction, alteration, or maintenance of a building and shall not engage in any work that conflicts with his or her official duties. State Plumbing Act, PA 733 of 2002, MCL 338.3549

While such a prohibition may be appropriate within the same jurisdiction in which the plumber serves as an inspector, to prohibit the ability to work as a plumber beyond the jurisdiction of the plumber's inspection responsibilities is over burdensome and unnecessary to protect against unethical activity.

Of all the occupations regulated in the Bureau of Construction Codes, this is the only one that prohibits such conduct.

Proposed Solution: The State Plumbing Act (MCL 338.3549) should be amended to remove the prohibition that prevents a plumbing inspector from practicing the profession in another jurisdiction.

Rationale for Change: Economic opportunities should be given to licensed plumbers by removing this prohibition. No such prohibition exists for any of the other construction inspectors.

Recommendation #C4

Subject: Electrical Administrative Act

Background and Description of Issue: Two recent legal developments affected the Electrical Administrative Act and its requirements upon Michigan employers. The outcome has left employers scrambling to become compliant with electrician licensing requirements, with not much opportunity to be successful.

The first thing to unravel was the ability of employers to use the "factory affidavit" rule to allow employers to hire master electricians to perform covered electrical wiring without securing an electrical contractor's licensing or engaging in an outside electrical contractor's license.

The Electrical Administrative Act at MCL 338.887 prohibits anyone from engaging in the business of electrical contracting without an electrical contractor's license. It also prohibits a person from undertaking to "execute any electrical wiring" unless licensed and employed by and working under the direction of a licensed electrical contractor. MCL 338.887. The statute goes on to provide several exceptions to licensing, however one exception to the contractor's license requirement is found in the administrative code. Essentially the exception provides that a person, firm, or corporation, who is not a licensed contractor, may employ a licensed master electrician to actively supervise the installation of electrical equipment and secure all necessary permits. The Department supplied an affidavit signed by both the employer and the licensed master electrician to affirm their responsibility for supervision and control of the necessary electrical operations. R 338.1039a. This was frequently used by manufacturers for their electricians in their factories.

In 2007, the Michigan Court of Appeals in *Michigan State Employees Association v Department of Corrections* found that the exception to the contractor's license provided by rule was not allowed by the statute. *Michigan State Employees Association v Department of Corrections*, 275 Mich. App. 474, 2007. Consequently the rule is now invalid and all employers who previously operated by hiring a master electrician, sometimes on a part time basis, must hire a full time master electrician, must secure a contractor's license, which includes filing the application, passing the electrical contractor's examination, and paying all required fees.

This requirement is not appropriate for these employers, most of whom are manufacturers, and are not holding themselves out to the public as contractors. It also makes little sense to require companies to hire full time master electricians to supervise a relatively small amount of electrical work in every one of their facilities.

The second issue to arise began in September of 2008 when the United States District Court for the Eastern District of Michigan lifted an injunction on the requirements in the Michigan Electrical Administrative Act for apprentice electricians. Since the injunction was lifted and the laws, which were originally passed in 1992, are beginning to be enforced, a handful of stumbling blocks have arisen for apprentices and apprenticeship programs run by employers.

The most immediate cause of concern is the enforcement of the new required jobsite ratio of 1 electrical journeyman or master electrician to 1 apprentice set forth in Electrical Administrative

Act, Michigan Compiled Laws 338.883e. This is a highly burdensome and inefficient regulation that did not exist for over 50 years, without incident. Imposing such a requirement on employers will result in many apprentices losing their jobs.

The second issue to arise out of the lifting of the injunction is the examination for current apprentices trained prior to the lifting of the injunction. These apprentices have the required hours and qualifications to meet federal requirements but not all of the state licensing requirements to be eligible to sit for the state examination. They are being penalized but for no reason other than timing of the court decision. There should be a period to grandfather these apprentices for the examination and allow the employers time to get into compliance going forward.

Finally, the provisions set forth in the Electrical Administrative Act include the requirement that all apprentices submit proof that they participated in a bona fide apprenticeship training program approved by the Michigan Electrical Administrative Board and equivalent to the requirements by the US Department of Labor Bureau of Apprenticeship and Training. The requirements set by the U.S. Department of Labor are voluntary. Employers should not be required to follow voluntary federal regulations by mandate of state law.

The provisions discussed here, specifically in MCL 338.883 in the Electrical Administrative Act, were originally passed in 1991. Since the injunction has been lifted to allow for enforcement, numerous issues have been identified which are disruptive to employers, costly to comply with, and prohibitive for job training. The statute should be amended to address these issues.

Proposed Solution: The Electrical Administrative Act should be amended to allow for an exception to licensing requirements for businesses performing minimal electrical wiring (MCL 338.887), as well as to alleviate regulatory burdens for electrical apprenticeship programs, licensing examinations, and jobsite ratio requirements (MCL 338.883).

Rationale for Change: The recent changes have been extremely disruptive to employers in Michigan. Initiatives to address these issues should begin immediately.

Recommendation #C5

Subject: Construction Code Commission

Background and Description of Issue: The Bureau of Construction Codes carries out its administrative function with the advice of several boards formed to provide the technical knowledge necessary to license professionals and update state construction regulations. Among those standing boards are:

Construction Code Commission
State Boundary Commission
Barrier Free Design Board
Electrical Administration Board
Board of Elevator Rules
State Plumbing Board Rules
Board of Mechanical Rules
Manufactured Housing Rules

The Construction Code Commission was created in 1972 to bring consistency and improve quality of construction codes for residential buildings across the state. The Commission consists of 17 members, 12 members are appointed by the Governor, 4 members are representatives from other state boards, and 1 member serves by designation of his or her state government position.

While the Bureau of Construction Codes has a number of boards offering expertise in specific trades that may be beneficial in work product, some of these boards are also duplicative in administration. The Construction Code Commission could be expanded to include more individuals from each of the specific technical trades, and eliminate some of the standing boards. The Commission could appoint advisory committees to carry out duties formerly handled by the standing boards.

Proposed Solution: The Bureau of Construction Codes should review the Construction Code Commission with stakeholders including discussing expansion of the Commission in order to allow ad hoc committees to operate in place of the numerous boards under the Bureau of Construction Codes.

Rationale for Change: Exploring the opportunity to move several boards to operate under the Construction Code Commission provides an opportunity to streamline Michigan construction code regulations and eliminate duplicative tasks.

Recommendation #D1

Subject: Acupuncturists

Background and Description of Issue: After the statute was passed in 2006, the registration of acupuncturists began in August of 2011. Part 165 of the Public Health Code provides the requirements for registration and the definition of the practice of acupuncture which includes: the insertion and manipulation of needles through the surface of the human body at specific locations on the human body for the prevention or correction of disease, injury, pain, or other condition. Since the statutory provision stating that acupuncture is still the practice of medicine remains, acupuncturists must practice under the supervision of a physician.

In order to become registered an applicant must pass an exam and be certified by the National Certification Commission for Acupuncture and Oriental Medicine, or an organization with equivalent standards.

Throughout the implementation of the new registration it has become apparent that many professionals may be practicing by using the title "acupuncturist," and that their training and approach is varied. There are a limited number of physicians adequately qualified to oversee acupuncturists.

Due to the diverse training and approaches in the profession and the difficulty in identifying physicians able to supervise the practice of registered acupuncturists, the occupation should be de-regulated. A national certification chosen by the individual is better suited to train, test, and set standards for such an intricate and yet varied profession.

Proposed Solution: The occupation of acupuncturist should be de-regulated.

Rationale for Change: The health and safety benefits arising out of the current registration requirement are minimal. Anyone may practice acupuncture under the supervision of a physician, as long as they do not call themselves an "acupuncturist."

According to Attorney General Opinion No. 4832, the practice of acupuncture falls within the statutory definition of the practice of medicine. Therefore, acupuncture must be performed under the supervision of a licensed physician. This requirement provides the appropriate level of protection to the public from unqualified or incompetent practitioners.

Recommendation #D2

Subject: Counselors, Marriage & Family Therapists, and Social Workers

Background and Description of Issue: The Public Health Code regulates the practice and practitioners of counseling (MCL 333.18105), marriage & family therapy (MCL 333.16903), and social work (MCL 333.18503). While distinct in their scope of practice and training, the types of complaints against the licensees are similar in topic. Moreover, many of these licensees maintain licenses in two of these professions.

Each of the statutes identify exclusions from the licensing of these occupations. There are exclusions for non-profits and exclusions from licensing if you do not perform all of the criteria in the specific scope of practice. Such exclusions should be reviewed for appropriateness.

Given the number of similarities in complaints, as well as similar issues for excluding individuals from licensing who do not meet all of the scope of practice criteria, these three occupations should be considered for a combined board. Although the licenses would remain distinct, each profession would be represented on the combined board.

A combined occupational board could provide a cost savings to the Bureau of Health Professions with reduced board meetings, and combined efforts at licensing and regulation.

Proposed Solution: A stakeholder group of counselors, marriage & family therapists, and social workers should be established to work with LARA staff review the relevant statutes regarding the need for existing exclusions, the definition of non-profits, and the potential combination of the occupational boards.

Rationale for Change: The similarities to the licensing structures and complaints for these three occupations make them optimal for combining them into one regulatory board.

Recommendation #D3

Subject: Dieticians and Nutritionists

Background and Description of Issue: When dieticians were added as licensed professionals to the Public Health Code in 2006, the law also included the practice and the use of the title "nutritionists" as those professionals who would now have to become licensed. Since the effective date of the act and the creation of the Michigan Board of Dietetics and Nutrition, there has been an ongoing discussion about how to establish acceptable credentialing and education requirements by nutritionists in order to become licensed.

A closer examination of the practices of dieticians and nutritionists calls into question whether true public harm is prevented by licensing the occupations. There is one credentialing agency for dieticians, but there are multiple national credentialing bodies for nutritionists that offer credentialing in lieu of state licensing.

In consideration of all of these issues, it does not appear that licensing dieticians and nutritionists is necessary to protect the public.

Proposed Solution: The occupations of dieticians and nutritionists should be de-regulated.

Rationale for Change: The regulation of dieticians and nutritionists does not provide a clear public health and safety benefit and therefore it should be de-regulated. Professional credentialing could be achieved through national credentialing bodies.

Recommendation #D4

Subject: Medicine, Osteopathic Medicine, Podiatric Medicine

Background and Description of Issue: The Michigan Board of Medicine was originally formed with the enactment of Public Act 237 of 1899. According to the definition in statute, the practice of medicine means the diagnosis, treatment, prevention, cure or relieving of a human disease, ailment, defect, complaint, or other physical or mental condition, by attendance, advice, device, diagnostic test, or other means, or offering, undertaking, attempting to do, or holding oneself out as able to do, any of these acts.

The Michigan Board of Medicine consists of 19 voting members: 10 medical doctors, one physician's assistant, and eight public members. The Board currently oversees the practice of approximately 36,330 Medical Doctors.

The Michigan Board of Osteopathic Medicine and Surgery was formed in 1903 with the enactment of Public Act 162 of 1903. The practice of osteopathic medicine and surgery means a separate, complete, and independent school of medicine and surgery, utilizing full methods of diagnosis and treatment in physical and mental health and disease, including the presentation and administration of drugs and biologicals, operative surgery, obstetrics, radiological and other electromagnetic emissions, and placing special emphasis on the interrelationship of the musculoskeletal system to other body systems.

The Michigan Board of Osteopathic Medicine and Surgery consists of 11 voting members: seven osteopathic physicians, one physician's assistant, and three public members. The board currently oversees approximately 8,164 Osteopathic Doctors.

The Michigan Board of Podiatric Medicine and Surgery was first formed in 1915 under Public Act 115 of 1915 and was transferred to the Public Health Code, Public Act 368 of 1978, as amended in 1978. The practice of podiatric medicine and surgery means the examination, diagnosis, and treatment of abnormal nails, superficial excrescenses occurring on the human hands and feet, including corns, warts, callosities, and bunions, and arch troubles or the treatment medically, surgically, mechanically, or by physiotherapy of ailments of human feet or ankles as they affect the condition of the feet.

The Michigan Board of Podiatric Medicine and Surgery consists of 9 voting members: 5 podiatrists, 1 physician's assistant and 3 public members. The board currently oversees approximately 835 Podiatrists.

While distinct in their scope of practice and training, the types of complaints against the licensees are similar in topic. A combined occupational board could provide a cost savings to the Bureau of Health Professions with reduced board meetings, and combined efforts at licensing and regulation.

Proposed Solution: The occupational board for medicine, osteopathic medicine, and podiatric medicine should be combined while maintaining separate licenses.

Rationale for Change: Despite historical differences, these occupations have more regulations that are similar than different. Therefore combining their regulatory boards into one would be administratively efficient.

Recommendation #D5

Subject: Nursing Home Administrators

Background and Description of Issue: The practice of a nursing home administrator entails planning, organizing, directing, and controlling the total operation of the nursing home on behalf of the governing board or owner of a nursing home and is regulated under the Public Health Code, MCL 333.17301.

Through its occupational board, minimal entry-level competency of nursing home administrators is enforced. The Board also has the obligation to take disciplinary action against licensees who have adversely affected the public's health, safety and welfare. The Board currently oversees the practice of approximately 1,257 nursing home administrators.

Much like the public protection achieved through regulating nurse aides, regulating those who are in charge of places that house some of the most vulnerable people in our population should be expanded. As long term care expands and further levels of assisted living facilities grow, the state should regulate the individuals in control of the new operations.

Proposed Solution: Along with the regulation of nursing home administrators, the Bureau of Health Professions and stakeholders should review the need to license and regulate the administrators of assisted living facilities, homes for the aged, and other long term care facilities.

Rationale for Change: The senior home living experience is expanding to meet the growing senior population. Now is the appropriate time to determine whether the individuals running these facilities should be licensed like the nursing home administrators.

Recommendation #D6

Subject: Occupational Therapists

Background and Description of Issue: The regulation of occupational therapy is found in Part 183 of the Public Health Code, Public Act 368 of 1978, and the practice consists of those therapy services provided to promote health and wellness, prevent disability, preserve functional capabilities, prevent barriers, and enable or improve performance in everyday activities.

The National Board for Certification in Occupational Therapy (NBCOT) is a not-for-profit credentialing agency that provides certification for occupational therapists and occupational therapy assistants. The NBCOT certification reflects current national standards for competent practice in occupational therapy. States that regulate the practice of occupational therapy require that applicants for licensure or registration meet the initial NBCOT certification requirements as a condition of licensure or registration.

The NBCOT has the authority to investigate complaints against certificants and impose sanctions for violations of the NBCOT Code of Conduct.

The well-established standards set by the NBCOT and the presence of the NBCOT at the federal level make it an ideal national organization to certify occupational therapists in Michigan, in lieu of state licensing.

Proposed Solution: The licensing requirements for occupational therapists should be replaced with statutory requirements for national certification, including criminal penalties for practicing without certification.

Rationale for Change: The credentialing by the national organization provides sufficient qualifications to employers who hire occupational therapist in lieu of licensing.

Recommendation #D7

Subject: Board of Pharmacy

Background and Description of Issue: The Public Health Code, by Section 17722, grants authority to the Board of Pharmacy to regulate, control, and inspect the character and standards of pharmacy practice and of drugs manufactured, distributed, prescribed, dispensed, and administered or issued in this State and procure samples, and limit or prevent the sale of drugs that do not comply with this section's provisions; prescribe minimum criteria for the use of professional and technical equipment in reference to the compounding and dispensing of drugs; grant pharmacy licenses for each separate place of practice of a dispensing prescriber who meets requirements for drug control licensing; and grant licenses to manufacturer and wholesale distributors of prescription drugs. (MCL 333.17722)

The pharmacy practice is constantly evolving as scientists and industry seek to provide better products in a more efficient fashion to patients. Unfortunately, the administrative code can pose barriers to new projects that do not comply with technology or processes that were in place at the time when the rules where written.

For example, automated devices, “dispensing machines,” are allowed in limited designated facilities such as hospitals, hospices, nursing homes, to dispense prescription drugs. Michigan rules require a pharmacist to be available for questions from customers every time a new prescription is dispensed, regardless of the location. However the rules do not take into consideration technology that would allow the customer to communicate with a pharmacist via video screen. If the Board of Pharmacy could conduct a pilot project, they would have the ability to install a dispensing machine in a setting where the customer would have access to a pharmacist via a video screen. Most importantly, a pilot project would allow the Board to put in safe guards in a limited program and get feedback on issues or complications that would need to be considered prior to actually changing the administrative code.

To keep up with opportunities in the most safe, yet efficient, manner, the Board of Pharmacy should have the authority to approve pilot projects.

Proposed Solution: The Public Health Code should be amended to allow the Board of Pharmacy to approve pilot projects within the occupation.

Rationale for Change: Such authority will allow the most innovative developments to be explored under the supervision of professional experts without exposing the entire public to new untested practices.

Recommendation #D8

Subject: Psychologists

Background and Description of Issue: The Public Health Code defines the practice of psychology as the rendering to individuals, groups, organizations, or the public of services involving the application of principles, methods, and procedures of understanding, predicting, and influencing behavior for the purposes of the diagnosis, assessment related to diagnosis, prevention, amelioration, or treatment of mental or emotional disorders, disabilities or behavioral adjustment problems by means of psychotherapy, counseling, behavior modification, hypnosis, biofeedback techniques, psychological tests, or other verbal or behavioral means. The practice of psychology does not include the practice of medicine such as prescribing drugs, performing surgery, or administering electro-convulsive therapy.

Exclusions to licensed activity exist under the statute to allow professionals trained in other fields to continue to practice within their training without needing a psychology license. However, there are some exclusions that warrant a review, such as allowing a limited licensee to practice in a governmental entity or non-profit without the supervision required of other limited license psychologists. Another example is that the same scope of practice is identified for both masters' level and doctoral trained psychologists even though their training is different.

These are examples of exclusion that lead to inconsistencies. They should be reviewed to determine whether the public policy intent of the statute actually matches the reality of the outcome.

Proposed Solution: The regulation of psychologists should be examined by the Department and interested stakeholders to determine if existing exclusions should be maintained.

Rationale for Change: With the passage of time the legislation was passed, it is worth reviewing the exclusions for licensing psychologists and whether the same needs still exist as when the law was drafted. Not all the exclusions make sense anymore.

Recommendation #D9

Subject: Respiratory Therapists

Background and Description of Issue: According to the Public Health Code, "Respiratory care services" means preventative services, diagnostic services, therapeutic services, and rehabilitative services under the written, verbal, or telecommunicated order of a physician to an individual with a disorder, disease, or abnormality of the cardiopulmonary system as diagnosed by a physician. MCL 333.18701(e). In 2004, the Public Health Code was amended to prohibit the practice of respiratory care or offer respiratory care services without being licensed. MCL 333.18707.

The National Board of Respiratory Care is a national voluntary health certifying board that provides credentialing for respiratory care practitioners. (For further information go to the National Board of Respiratory Care's website at www.nbrc.org.) Through its credentialing program, the NBRC provides examinations of practitioners, and supports ethical and educational standards of respiratory care. It also actively establishes standards to credential practitioners to work under medical direction.

The NBRC previously served as the professional standard for employers hiring respiratory therapists prior to licensing in Michigan. The credentialing continues to be a job qualification, despite the replacement of credentialing with licensing.

The well-established standards set by the NBRC and the preferred NBRC credentialing by employers make it an ideal national organization to credential respiratory therapists in Michigan, in lieu of state licensing.

Proposed Solution: The occupation of respiratory therapists should be de-regulated.

Rationale for Change: The credentialing by the national organization provides sufficient qualifications to employers who hire respiratory therapist in lieu of licensing. This was the practice prior to licensing and is still used by employers today.

Recommendation #D10

Subject: Sanitarians

Background and Description of Issue: A sanitarian is an individual who has specialized education and experience in the physical, biological and sanitary sciences as applied to the educational, investigational and technical duties in the field of environmental health, as identified in the Public Health Code MCL 333.18401. These registrants are typically public employees who are health inspectors, such as restaurant inspectors or well water inspectors.

Current regulation is by registration and there are approximately 484 Registered Sanitarians. The registration essentially provides only a title protection as anyone can provide the same services as long as they do not call themselves a sanitarian. MCL 333.18411

The regulation of any health professional is intended to ensure the general public that the people who are identified as a specific type of health occupation are qualified to practice. There appears to be a lack of any identified public health or safety benefit that is realized through the regulation of this occupation. There is a national certification program for sanitarians which provides a benchmark of education and training for professionals. Furthermore, any desire for stronger enforcement of environmental protections can be pursued through stronger statutes without regulating the occupation.

The professionals themselves would like to be licensed, but that is opposed by private companies, due to the likelihood that licensure would only increase the costs associated with inspections of businesses.

Proposed Solution: The occupation of sanitarians should be de-regulated.

Rationale for Change: The regulation of this occupation provides little public health and safety benefit beyond the expectation of qualified public employees and sufficient environmental protection laws.

Recommendation #D11

Subject: Speech Pathologists

Background and Description of Issue: The statutory authority for licensure of speech-language pathologists was effective on January 13, 2009. As a newly licensed occupation, the Department of Licensing and Regulatory Affairs, in consultation with the Board of Speech Language Pathology, is in the process of developing administrative rules that establish the minimum standards for licensure. The administrative rules were completed in December and licenses are now being issued.

Despite the recent legislative activity to implement licensure of this occupation, the ARC could not identify any clear harm to the public if they were treated by an un-licensed speech pathologist.

Proposed Solution: The occupation of speech pathologists should be de-regulated. An alternative to state regulation could be pursued by encouraging certification by the American Speech-Language-Hearing Association.

Rationale for Change: The regulation of speech pathologists does not provide a clear public health and safety benefit and therefore it should be de-regulated. Professional credentialing could be achieved through the American Speech-Language-Hearing Association.

Recommendation #D12

Subject: Michigan Osteopathic Medicine Advisory Board

Background and Description of Issue: The Michigan Osteopathic Medicine Advisory Board was created by PA 162 of 1969 (MCL 390.661, et seq.) to allow MSU, UM and WSU to all bid on being the host for the state's first school of osteopathic medicine. MSU was awarded the school, and the board was functional in the developmental years. For the past decade, it has not served a useful purpose in fulfilling its legislative mission to "recommend tuition and other fees" and "recommend the appointment or removal of such personnel as the interests of the school and the generally accepted principles of academic tenure permit or require."

Proposed Solution: Eliminate the Michigan Osteopathic Medicine Advisory Board by repealing MCL 390.662-664.

Rationale for Change: The board no longer serves a useful purpose.

Recommendation #E1

Subject: Credit Card Licensees

Background and Description of Issue: The Credit Card Arrangement Act, Public Act 379 of 1984, provides licensing oversight for credit cards not issued through a depository institution and is essential to ensure the entity complies with consumer finance regulations and to guard against consumer financial harm.

Currently there are two licensees in Michigan who offer credit cards, and the Office of Financial and Insurance Regulation reports a low number of applicants. The cost of this regulation is supposed to be self-supporting, but it is not due to the low volume of licensees. Therefore the actual licensing of credit card companies should be de-regulated.

Despite the lack of licensees and applicants, the regulation of non-depository credit cards should be maintained as it does provide much-needed consumer protection. The statute does provide specific protections such as maximum interest charged and not requiring the extension of credit to be conditioned upon the purchase of any other goods or services. MCL 493.110. The Credit Card Arrangement Act also requires all credit transactions to occur according to the Truth in Lending Act and reinforces that the consumer be provided such notices required under the Truth in Lending Act. MCL 493.111. Finally, Section 12 of the act gives the consumer, local prosecutor, or attorney general a claim for declaratory judgment or equity for those acts which are, in general, in violation of the previously mentioned conduct. MCL 493.112

Proposed Solution: The license for credit card companies should be eliminated; however the program requirements should be retained for enforcement purposes. Although OFIR will no longer administer the program for the license, the consumer finance regulations will allow the state attorney general or local authorities to pursue a complaint by a consumer.

Rationale for Change: Eliminating the license would allow the current companies to provide services to their customers seamlessly without compromising the consumer protection elements of the statute. The state is also freed of maintaining resources for a licensing entity that is very low volume.

Recommendation #E2

Subject: Consumer Financial Services Class 1 & Class 2

Background and Description of Issue: The licensing of consumer financial services class 1 and consumer financial services class 2 are covered under the Consumer Financial Services Act, Public Act 161 of 1988. These 2 licenses are actually omnibus licenses, placed under one statute to cover multiple types of consumer finance licensure: money transmission, first and second mortgage, regulatory loan and credit card activity. Therefore a licensee could seek a single license to provide all of these financial services, as opposed to applying and maintaining several licenses.

Even if a licensee has an omnibus license, the licensee must comply with the regulatory requirements pertaining to the specific financial service license type. Likewise, complaints against the licensee are actually issued against the individual financial service license type.

There are currently 12 class 1 licensees and four class 2 licensees. Despite the low volume, the cost of administering the license by the Department is self-supporting, partially due to the fees that are annually adjusted to cover costs.

Based on the number of licensees, it would appear prudent and cost effective to eliminate this omnibus license and allow the entities to become licensed in the area in which they conduct business.

Proposed Solution: The license for consumer financial services class 1 and class 2 should be eliminated to allow entities to become licensed in the specific area in which they conduct business.

Rationale for Change: Regulation of the occupation and the corresponding business will continue, only the type of license that is issued will change. The practice of the omnibus license appears duplicative to administer and is of limited value to the licensee, as evidenced by the low volume of licensees.

Recommendation #E3

Subject: Debt Management

Background and Description of Issue: Debt Management entails the planning and management of the financial affairs of a debtor and the receipt of money from the debtor for distribution to a creditor in payment or partial payment of the debtor's obligations. Debt management firms are also called credit counselors and often refer to their firm and advertise in the yellow pages of the telephone directory as credit counseling firms. They work with creditors on behalf of debtors in an attempt to stop harassing telephone calls, lower interest rates, lower monthly payments, and perhaps stop late fees and over limit fees on behalf of consumers. Regulating them protects against consumer harm.

However, the statute and especially the rules are antiquated and need to be revised to reflect current industry activity. The statute was last amended in 2000, and the rules were last amended in 1985.

Recent discussions have indicated a necessity to regulate the debt settlement industry and if that is done, it should be under the same licensing statute as debt management.

Proposed Solution: The Debt Management Act, Public Act 148 of 1975, and the corresponding administrative rules, R 451.1221- 451.1146, should be modernized and expanded to include the debt settlement industry.

The cost of regulating debt management entities should be self-supporting. Therefore the fees charged to the licensee should be increased. The fees the licensee can charge a client should be updated and may be increased as well.

Rationale for Change: With the current state of the economy, many consumers may turn to these companies for assistance. It is important that the act be current so that consumers and businesses alike may operate successfully.

Recommendation #E4

Subject: Deferred Presentment

Background and Description of Issue: The deferred presentment service industry is also known as the payday lending or check advance industry, and is regulated under the Deferred Presentment Service Transaction Act, Public Act 244 of 2005. Regulation is essential to ensure that business entities comply with laws to protect the public. This is an area where OFIR concentrates examination activity and is highly prone to statutory violations.

Two hundred and fifteen (215) complaints have been filed in the last three years against the 641 entities that are currently licensed. The cost of the program is self-supporting, and the licensing fees are adjusted annually to cover the cost of administering the program.

Since it has been six years since this act took effect, the interest rates and service fees charged to consumers need to be reviewed. Another issue to be addressed is the requirement that the Commissioner charge $100 a day for late reporting by a licensee. This penalty should be made discretionary.

Finally, the ability to regulate internet deferred presentment companies must be strengthened. The number of companies offering these services over the internet has grown in recent years. Yet a number of these companies lack a presence in the state sufficient to pursue them when a consumer is harmed. The statute should be reviewed to look for opportunities to regulate these companies and protect Michigan consumers who may use their services.

Proposed Solution: The interest rates, service fees, and penalties in the Deferred Presentment Service Transactions Act should be reviewed and the statute strengthened to include internet based companies.

Rationale for Change: Now that the law has operated for several years, tweaks to the law may be appropriate to respond to how the law has been applied. This could include regulating internet companies that are popping up offering similar services. Consumers in Michigan need to be protected from predatory internet companies with little ties to the state.

Recommendation #E5

Subject: First & Second Mortgage Lender, Broker & Servicer

Background and Description of Issue: Regulation of mortgage companies has intensified on the state and federal level after the recent financial breakdown of the lending industry. In Michigan, mortgage lenders, brokers, and services are regulated by the Mortgage Lenders, Brokers & Servicers Licensing Act, Public Act 173 of 1987, and the Secondary Mortgage Loan Act, Public Act 125 of 1981. Regulation is necessary to ensure that consumers are not over-charged and that lending practices are fair and within the confines of the law.

The cost of regulating the industry is self-supporting and the fees are adjusted annually to cover the costs of the program administration. However, in recent years, mortgage investigations have been forced to tap into a fund created by fees from the licensing of real estate agents which is meant to cover the cost of investigating prohibited activities by real estate agents. Although linked to the same transaction in the purchase of a home, the investigation of mortgage fraud should come from the licensing fees of the mortgage lenders, brokers and servicers.

Due to similarities in regulation, it would be advantageous and administratively efficient, including a cost savings in staff and regulated licensees, to combine the regulation of the first and second mortgage licenses.

Proposed Solution: The licensing for first and second mortgage programs should be combined.

Rationale for Change: The state associations representing the interest of the first and the second mortgage licensees may not agree with the combination of the two licenses. However, administrative efficiencies would indicate it is the better approach to regulation.

Recommendation #E6

Subject: Motor Vehicle Installment Seller and Sales Finance

Background and Description of Issue: The regulation of motor vehicle installment sellers and motor vehicle sales finance licensees provides oversight of persons originating loans for motor vehicles to ensure transactions are conducted in accordance with the law to avoid consumer harm. The statutory requirements can be found under the Motor Vehicle Sales Finance Act, Public Act 27 of 1950 (Ex. Sess.).

Like many other regulatory programs, the fees associated with this license are not self-supporting to cover the cost of regulation. As evidence, examination of licensee records has not occurred recently due to the lack of sufficient funds to administer the statutory regulations. The statute also needs to be updated to reflect current industry practices, as well as establishment of sufficient fess to pay for the regulation.

Proposed Solution: The Motor Vehicle Sales Finance Act should be updated to reflect current industry practices and provide sufficient fees to cover the administration of the licenses.

Rationale for Change: The act should reflect current industry practices, including consumer protection provisions and optimal licensees practices in order to properly regulate motor vehicle installment sellers and motor vehicle sales finance licensees

Recommendation #E7

Subject: Regulatory Loan, Premium Finance, Insurance Counselor, Insurance Third Party Administrator

Background and Description of Issue: Review of the regulation of these entities indicated there is a need for a closer review of the statutory oversight. However, due to time constraints, the ARC felt more comfortable recommending a workgroup of department staff and stakeholders be established in each of these areas to review the necessity and appropriateness of current regulations. A brief description of each follows below.

Regulatory Loan

The Regulatory Loan Act, Public Act 21 of 1938, provides oversight of non-depository business entities that provide consumer loans. Oversight is essential to protect the financial well-being of Michigan's citizens. Failure to regulate is likely to result in overcharges and excessive fees charged to consumers. However, the act and the rules should be modernized and the workgroup should review for appropriate regulation of these entities.

Premium Finance

As recorded in the Insurance Code, an "Insurance premium finance agreement" is an agreement by which an insured or prospective insured promises to pay to a premium finance company the amount advanced or to be advanced under the agreement to an insurer or to an insurance agent in payment of premiums on an insurance contract together with a service charge. MCL 500.1508 The insurance premium finance company is the licensed entity and is engaged in the business of entering into insurance premium finance agreements. MCL 500.1503 The license protects against consumer overcharges. The workgroup should review whether the entity needs to be regulated or whether it could be combined with another regulated program.

Insurance Counselor

A counselor's license will allow a person to counsel in the areas of life insurance and/or property and casualty insurance. MCL 500.1232. The State of Michigan does not issue a license for counseling accident and health insurance. The consumer protection benefits should be the assurance that the counselor meets highly professional standards, as well as to ensure that the consumer is not overcharged. In light of opportunities for private credentialing programs, and a lack of funding for the regulation to be self-supporting, a workgroup should review whether there really is a need for a license as an insurance counselor.

Third Party Administrator

A third party administrator is a claims processor and is regulated under the Third Party Administrator Act, Public Act 218 of 1984. In light of changes coming from the federal government for health insurance, a workgroup should be established to review any necessary changes to state regulation that should follow the federal changes.

Proposed Solution: The Department should establish workgroups that include stakeholders of these regulated occupations to review whether there is a need to continue licensing or whether changes are necessary in lieu of impending federal regulations.

Rationale for Change: These issues appear to warrant a deeper review to include stakeholders and experts in the field that could lead to greater consumer protection and regulatory reform.

Recommendation #E8

Subject: Insurance Producer Individual and Agency

Background and Description of Issue: The regulation of insurance producer agencies and individuals provides a considerable consumer protection benefit as it impacts consumers in almost every aspect of their lives. The regulation is found in the Insurance Code of 1956, Public Act 218 of 1956 at Chapter 12 Agents, Solicitors, Adjustors, and Counselors. One glaring hole in the regulation is a statutory lack of a licensing renewal and corresponding renewal fee. A license renewal would greatly improve the ability to administer the regulation of the licensees.

Proposed Solution: The licensing of insurance producers should provide for a renewal of the license and a renewal fee.

Rationale for Change: All licensees should be required to verify their continued qualifications and contact information through licensing renewal. Fees are appropriate to cover the administrative cost of this administrative task.

Recommendation #E9

Subject: Insurance Adjuster

Background and Description of Issue: The regulation of insurance adjusters can be expensive to administer and enforce, but provides an enormous consumer benefit as it impacts consumers at a time when they are most vulnerable due to a loss. The regulation is found in the Insurance Code of 1956, Public Act 218 of 1956 at Chapter 12 Agents, Solicitors, Adjustors, and Counselors.

Despite the necessity to regulate the occupation, the Insurance Code does not provide sufficient requirements for credentialing of applicants and consumer protection provisions. It would be worthwhile to review opportunities to enhance both of these provisions.

Proposed Solution: The regulation of insurance adjusters should include credentialing of the professionals and consumer protection provisions.

Rationale for Change: If insurance adjusters are going to continue to be licensed, their specialized skills or training should be identified which distinguishes them from other professionals. Consumer protection elements are necessary to enhance licensed professionals from non-licensed professionals.

Recommendation #E10

Subject: Insurance Solicitors

Background and Description of Issue: Although there is a consumer protection benefit to licensing insurance solicitors, a solicitor is very much like an insurance producer with the exception that they cannot bind coverage. Therefore, they have more limited authority than a producer. In that light, the license for a solicitor is largely redundant.

Other states have eliminated this type of license. Michigan should eliminate the solicitor license to come into compliance with uniform licensing standards.

The regulation can be found in the Insurance Code of 1956, Public Act 218 of 1956 at Chapter 12 Agents, Solicitors, Adjustors, and Counselors.

Proposed Solution: The licensing of insurance solicitors should be de-regulated.

Rationale for Change: The license for insurance solicitors can be eliminated as a duplicative state regulation.

Recommendation #F1

Subject: Underground Storage Tank Qualified Consultants

Background and Description of Issue: An owner of an underground storage tank is required to hire a qualified underground storage tank consultant to orchestrate the corrective actions necessary when releases occur from the underground storage tank. The Department of Environmental Quality (DEQ) is required to certify the consultants and provide lists to the public for hire, according to Refined Petroleum Fund, Natural Resources and Environmental Protection Act, Public Act 451 of 1994 as amended.

Each qualified consultant is required to hire one certified qualified underground storage tank professional, who is also certified by the DEQ according to qualifications delineated in the Natural Resources and Environmental Protection Act. There is no fee collected with the application for either the consultant or the certified professional by the DEQ.

In essence this is a listing, and the regulation provides little protection to the public by regulating the consultants other than to provide a list of professionals who meet minimum qualifications.

Proposed Solution: The regulation of Underground Storage Tank Qualified Consultants and Certified Professionals should be de-regulated.

Rationale for Change: The administrative cost of certifying the professionals and verifying the qualified consultants grossly outweighs any public health or safety that is gained by regulating these professionals to the public. Environmental protections can be maintained through requirements on underground storage tanks rather than the professionals hired to clean them.

APPENDIX B

ISSUES & OCCUPATIONS NOT RESULTING IN RECOMMENDATIONS

The following is a list of occupations regulated by the state which were reviewed by the ARC, and for which the ARC recommends continued regulation. It should be noted that occupations which are recommended to continue to be regulated by the state may still require reforms. Rather, the ARC's time constraints in tandem with the large amount of information for review, did not allow for the Committee to consider the complete review of all statutes and regulations pertaining to each occupation. The Committee would expect the Office of Regulatory Reinvention to pursue such opportunities through its mission laid out in Executive Order 2011-5.

The following occupations are recommended to be retained for regulation:

Bureau of Commercial Services
Accountancy
Architects
Carnival Ride Operators
Cemeteries
Collection Agencies
Engineers
Funeral Directors
Hearing Aid Dealers
Prepaid Funeral & Cemetery Sales Providers
Professional Investigator
Proprietary Schools
Real Estate Appraisers
Real Estate Brokers & Sales
Residential Builders
Ski Areas
Surveyors
Unarmed Combat Commission

Bureau of Health Professions
Athletic Trainer
Audiologist
Chiropractors
Counselors
Dental Assistant
Dentist
Dental Hygienist
Marriage & Family Therapist
Massage Therapist
Medical Doctor
Nurse Aid
Nurse
Nursing Home Administrator
Osteopathic Doctor
Optometry

Pharmacist
Pharmacy
Physical Therapist
Physician's Assistant
Podiatric Medicine
Psychologist
Social Worker
Veterinarian
Veterinarian Technician

Bureau of Construction Codes
Boiler Installer
Boiler Repairer
Boiler Inspector
Boiler Operator
Elevator Contractor
Elevator Journeyperson
Fire Alarm Contractor
Fire Alarm Specialty Tech
Fire Alarm Specialist Apprentice Tech
Sign Specialty Contractor
Sign Specialist
Mechanical Contractor
Manufactured Housing Installer
Manufactured Retailer
Manufactured Communities

Office of Financial and Insurance Regulation
Money Transmission Services
Mortgage Loan Originator
Insurance Surplus Lines Producer Individual
Insurance Surplus Lines Agency/Producer
Foreign Risk Retention Group
Insurance Purchasing Group
Managing General Agent Individual
Managing General Agent Agency
Reinsurance Intermediary License