

Act No. 26
Public Acts of 2021
Approved by the Governor
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**STATE OF MICHIGAN
101ST LEGISLATURE
REGULAR SESSION OF 2021**

Introduced by Senators Bullock and Bizon

ENROLLED SENATE BILL No. 312

AN ACT to amend 1980 PA 299, entitled “An act to revise, consolidate, and classify the laws of this state regarding the regulation of certain occupations and to regulate certain persons and activities relative to those occupations; to create a board for each of those occupations; to establish the powers and duties of certain departments and agencies and the boards of each occupation; to provide for the promulgation of rules; to provide for certain fees; to provide for penalties and civil fines; to establish rights, relationships, and remedies of certain persons under certain circumstances; to provide immunity from certain civil liability for certain entities and certain related occupations under certain circumstances; to repeal certain parts of this act on a specific date; and to repeal certain acts and parts of acts,” by amending sections 103, 104, 105, 213, and 2404b (MCL 339.103, 339.104, 339.105, 339.213, and 339.2404b), section 103 as amended by 1994 PA 257, section 104 as amended by 2020 PA 372, section 105 as amended by 2016 PA 502, section 213 as amended by 2014 PA 149, and section 2404b as amended by 2014 PA 175, and by adding section 217.

The People of the State of Michigan enact:

Sec. 103. (1) “Armed forces” means the United States Army, Air Force, Navy, Marine Corps, Space Force, or Coast Guard or other military force designated by Congress as a part of the Armed Forces of the United States, including the reserve components.

(2) “Board” means, in each article that deals with a specific occupation, the agency created in that article composed principally of members of the regulated occupation. In all other contexts, board means each agency created under this act.

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

(4) “Competence” means a degree of expertise that enables a person to engage in an occupation at a level that meets or exceeds minimal standards of acceptable practice for the occupation.

(5) “Complaint” means an oral or written grievance.

(6) "Controlled substance" means a drug, substance, or immediate precursor as set forth in section 7212, 7214, 7216, 7218, or 7220 of the public health code, 1978 PA 368, MCL 333.7212, 333.7214, 333.7216, 333.7218, and 333.7220, not excluded under section 7227 of the public health code, 1978 PA 368, MCL 333.7227.

Sec. 104. (1) "Department" means the department of licensing and regulatory affairs.

(2) "Dependent" means a spouse, surviving spouse, child under 26 years of age, or surviving child under 26 years of age.

(3) "Director" means the director of the department or his or her authorized representative.

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

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

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

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

(8) "Good moral character" means that term as defined in, and determined under, 1974 PA 381, MCL 338.41 to 338.47.

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

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

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

(2) "Licensee" means either of the following, as applicable:

(a) In articles 1 to 6, a person that is licensed or required to be licensed under this act.

(b) In a specific article of this act, a person that is licensed or required to be licensed under that article.

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

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

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

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

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

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

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

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

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

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

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

- (4) "Occupation" means a field of endeavor regulated under this act.
- (5) "Person" means any of the following:
 - (a) An individual.
 - (b) A sole proprietorship, partnership, association, corporation, limited liability company, or common law trust.
 - (c) A combination of persons described in subdivision (a) or (b).
 - (d) A department, board, school, institution, establishment, or governmental entity.
- (6) "Physical dominion" means control and possession.
- (7) "Physician" means that term as defined in sections 17001 and 17501 of the public health code, 1978 PA 368, MCL 333.17001 and 333.17501.
- (8) "Probation" means a sanction that permits a board to evaluate over a period of time a licensee's or registrant's fitness to practice an occupation regulated under this act.
- (9) "Public access" means the right of a person to view and copy files under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.
- (10) "Registrant" means a person that is registered under this act.
- (11) "Registration" means the document issued to a person under this act that enables the person to use a designated title, which use would be otherwise prohibited by this act.
- (12) "Rule" means a rule promulgated under this act and under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.
- (13) "State" means the District of Columbia or a commonwealth, state, or territory of the United States.
- (14) "Uniformed services" means the Commissioned Corps of the United States Public Health Service and the National Oceanic and Atmospheric Administration Commissioned Officer Corps.
- (15) "Veteran" means that term as defined in section 1 of 1965 PA 190, MCL 35.61.

Sec. 213. (1) If a person has not previously been denied a license or a certificate of registration or had a license or a certificate of registration revoked or suspended, the department may grant a nonrenewable temporary license or certificate of registration to an applicant for licensure or registration or transfer of licensure or registration under any of articles 7 to 26a. If approved by a board, a temporary license or certificate of registration issued under this subsection is valid until 1 or more of the following occurs:

- (a) The results of the next scheduled examination are available.
 - (b) The results of the next required evaluation procedure are available.
 - (c) A license or certificate of registration is issued.
 - (d) The next examination date of an examination for licensure or registration in the applicable occupation, if the applicant does not take the examination.
 - (e) The applicant fails to meet the requirements for a license or certificate of registration.
 - (f) A change in employment is made.
- (2) In addition to a temporary license or certificate of registration under subsection (1), beginning September 9, 2014, the department shall grant a temporary license or certificate of registration for an occupation under this act to an applicant who meets both of the following:
- (a) He or she provides proof acceptable to the department that he or she is a dependent of a member of the armed forces, a dependent of a member of the uniformed services, or a dependent of a veteran.
 - (b) He or she provides proof acceptable to the department that he or she holds a current license in good standing, or a current registration in good standing, in that occupation, issued by an equivalent licensing department, board, or authority, as determined by the department, in consultation with the board, in another state of the United States or a foreign country.
- (3) A temporary license or registration issued under subsection (2) is valid for 6 months and may be renewed for 1 additional 6-month term if the department determines the temporary licensee or registrant continues to meet the requirements of subsection (2) and needs additional time to fulfill the requirements for initial licensure or registration in this state. The department may place a limitation on a temporary license or certificate of registration granted under this section.

Sec. 217. (1) Subject to subsection (2), the department shall issue a license or a certificate of registration for an occupation under this act without examination to an individual who demonstrates to the satisfaction of the department that he or she meets all of the following at the time of application:

- (a) Provides proof that the individual is 1 of the following:
 - (i) A member of the armed forces or uniformed services.

(ii) A veteran.

(iii) A dependent of a member of the armed forces, a member of the uniformed services, or a veteran.

(b) Holds a valid license or registration in that occupation from an equivalent licensing department, board, or authority, as determined by the department, in at least 1 other state of the United States. For each license or registration described in this subdivision that he or she holds, all of the following must be met:

(i) The license or registration is in good standing and he or she has held that license or registration for at least 1 year.

(ii) There were minimum education requirements and, if applicable, work experience requirements in effect for licensure or registration in the other state, and the other state verifies that he or she met those requirements for licensure or registration in that state.

(iii) If the other state required an examination for licensure or registration, he or she passed the examination.

(iv) The requirements for licensure or registration in the other state are substantially equivalent to or exceed the requirements of this act and any rule promulgated under this act for the license or registration.

(c) Has not had a license or registration revoked, and has not voluntarily surrendered a license or registration, in any other state of the United States or a foreign country while under investigation for unprofessional conduct.

(d) Has not had discipline imposed by any equivalent licensing department, board, or authority in another state of the United States. If another state of the United States has taken disciplinary action against the applicant, the department shall determine if the cause for the action was corrected and the matter resolved. If the matter has not been resolved by that other state, the department shall not issue or deny a license or registration until the matter is resolved.

(e) Does not have a complaint, allegation, or investigation pending before an equivalent licensing department, board, or authority in another state of the United States or a foreign country that relates to unprofessional conduct. If the applicant has any complaints, allegations, or investigations pending, the department shall suspend the application process and shall not issue or deny a license or registration to the applicant until the complaint, allegation, or investigation is resolved.

(f) Pays all applicable fees.

(g) Is of good moral character.

(h) Meets the age requirement of that occupation under this act, if applicable.

(2) If the department determines that the issuance of a license or a certificate of registration under subsection (1) for an occupation under this act may result in a violation of a federal oversight or licensing guideline for that occupation, the department shall not issue a license or a certificate of registration.

(3) This section does not prevent the department from issuing a temporary license under section 213, a courtesy license under section 1806a, or issuing a license under section 726, 1108(2), 1211, 1806(9), 2013, 2209, or 2623.

Sec. 2404b. (1) Beginning June 1, 2008, an applicant for initial licensure either as a residential builder or as a residential maintenance and alteration contractor must successfully complete the prelicensure course of study requirements under this subsection to obtain a license unless he or she is exempt from those requirements under this section. All of the following apply for purposes of this subsection:

(a) If an individual who holds a residential builder or a residential maintenance and alteration contractor license, or an individual who held a license as a qualifying officer of a licensed residential builder or residential maintenance and alteration contractor, on June 1, 2008 is renewing a license, he or she is exempt from the requirement of successfully completing prelicensure courses described in this subsection.

(b) If an individual is applying for a license or relicensure as a residential builder or residential maintenance and alteration contractor, he or she is exempt from the requirement of successfully completing prelicensure courses described in this subsection if all of the following are met:

(i) His or her application is submitted before the expiration of the 18-month period beginning on September 16, 2014. This subdivision does not apply to applications that are submitted after that 18-month period.

(ii) He or she held an individual license as a residential builder or residential maintenance and alteration contractor, or held a license as a qualifying officer of a licensed residential builder or residential maintenance and alteration contractor, at any time within the 9-year period preceding his or her application.

(c) Unless he or she is exempt under subdivision (a) or (b), an applicant must not receive an initial license under this act unless he or she successfully completed 60 hours of approved prelicensure courses that include at least 6 hours of courses in each of the following areas of competency:

(i) Business management, estimating, and job costing.

- (ii) Design and building science.
- (iii) Contracts, liability, and risk management.
- (iv) Marketing and sales.
- (v) Project management and scheduling.
- (vi) The current Michigan residential code.

(vii) Construction safety standards promulgated under the Michigan occupational safety and health act, 1974 PA 154, MCL 408.1001 to 408.1094.

(2) All of the following apply to an individual license under this article, as applicable:

(a) Subject to subdivision (b), if the individual licensee obtained his or her initial license as a residential builder or a residential maintenance and alteration contractor on or after January 1, 2009, he or she must successfully complete at least 21 hours of activities that demonstrate continuing competence in each 3-year license cycle, including both of the following:

(i) At least 3 hours of activities that demonstrate continuing competency in each calendar year, during the first 6 calendar years of licensure.

(ii) At least 3 hours of activities designed to develop a licensee's understanding and ability to apply state building codes and laws relating to the licensed occupation, safety, and changes in construction and business management laws.

(b) If an individual licensee described in subdivision (a) was exempt from the prelicensure course requirements of subsection (1) under subsection (1)(b) when he or she obtained his or her initial license as a residential builder or residential maintenance and alteration contractor, the hours of activities that he or she must complete in the first year of his or her first 3-year license cycle under subdivision (a) must include successful completion of at least 1 hour of codes, 1 hour of safety, and 1 hour of legal issues described in this subsection.

(c) If the licensee was initially licensed as a licensed residential builder or residential maintenance and alteration contractor, or held a license as a qualifying officer of a licensed residential builder or residential maintenance and alteration contractor, before January 1, 2009, he or she has held a license for not more than two 3-year license cycles, and the department has not taken disciplinary action against him or her for a violation of this act or a rule promulgated under this act, he or she must successfully complete at least 3 hours of activities that demonstrate continuing competency in each 3-year license cycle that includes at least 1 hour of codes, 1 hour of safety, and 1 hour of legal issues described in this subsection.

(d) If the licensee has held a license for more than two 3-year license cycles, and the department has not taken disciplinary action against him or her for a violation of this act or a rule promulgated under this act, he or she must successfully complete at least 3 hours of activities demonstrating continuing competency in each license cycle that includes 1 hour of codes, 1 hour of safety, and 1 hour of legal issues as described in this subsection.

(3) In addition to the requirements of subsection (2), if the department has taken disciplinary action against a licensee for a violation of this act or a rule promulgated under this act, the licensee must successfully complete, during the next complete license cycle, at least 3 and not more than 21 hours of activities that demonstrate the development of continuing competency during that next license cycle as determined appropriate by order of the department. At least 3 hours of the continuing competency must include 1 hour of codes, 1 hour of safety, and 1 hour of legal issues as described in subsection (2).

(4) Any construction code update courses approved by the bureau of construction codes and any fire safety or workplace safety courses approved or sponsored by the department are also considered appropriate for fulfilling the continuing competency requirements of this section. The department may, by rule, amend, supplement, update, substitute, or determine equivalency regarding any courses or alternate activities for developing continuing competency described in this section.

(5) The subject matter of the prelicensure and continuing competency activities required under this section may be offered by a high school, an intermediate school district, a community college, a university, the bureau of construction codes, the Michigan occupational safety and health administration, a trade association, or any other proprietary school that is licensed by the department.

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

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

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

(c) Acceptable distance learning.

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

(7) Each licensee may select approved courses in his or her subject matter area or specialty. A licensee's service as a lecturer or discussion leader in an approved course must count toward his or her continuing competency requirements under this section. Alternate forms of continuing competency may be earned and documented as promulgated in rules by the department.

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

(9) Before September 16, 2014, a licensed residential builder or residential alteration and maintenance contractor may apply for inactive status by completing an application, made available by the department, in which he or she declares that he or she is no longer actively engaged in the practice authorized by his or her license and temporarily intends to suspend activity authorized by his or her license. If a completed application is submitted, the department shall designate the licensee as inactive and note that status on records available to the public. A licensee who is designated as inactive must have a current copy of the Michigan residential code and is exempt from the continuing competency requirements imposed under this section, but must still pay the per-year license fee. An inactive licensee may activate his or her license by submitting an application to the department requesting activation of the license. If the department activates an inactive license, the licensee must complete at least 1 credit hour of activities that demonstrate continuing competency for that calendar year.

(10) An individual licensee who applied for and was designated inactive under subsection (9) before September 16, 2014 may remain in inactive status after that date by complying with the requirements of subsection (9). A licensee who remains in inactive status after September 16, 2014 is exempt from the continuing competency requirements of this section while he or she remains in inactive status. A licensee may activate his or her license by submitting an application to the department requesting activation of the license. If his or her license is activated, the licensee must complete at least 1 credit hour of activities that demonstrate continuing competency for that calendar year.

(11) Subject to subsection (13), an applicant for initial licensure as a residential builder or residential maintenance and alteration contractor is exempt from the requirements of subsection (1) if he or she meets all of the following:

(a) Served in the armed forces.

(b) While serving in the armed forces, was engaged in the erection, construction, replacement, repair, alteration, or demolition of buildings or other structures.

(c) Was separated from service in the armed forces, and provides to the department a form DD214, form DD215, or any other form that is satisfactory to the department that demonstrates that he or she was separated from that service, with an honorable character of service or under honorable conditions (general) character of service.

(d) Has, and provides with his or her application an affidavit signed by a commanding officer, supervisor, or military superior with direct knowledge of the applicant's service that he or she has, entry-level experience in or basic knowledge of each of the areas of competency described in subsection (1)(c).

(12) If an applicant who otherwise meets the requirements of subsection (11) does not have entry-level experience in or basic knowledge of each of the areas of competency described in subsection (1)(c), he or she may provide with his or her application an affidavit signed by a commanding officer, supervisor, or military superior with direct knowledge of the applicant's service that states in which of those areas of competency the applicant has entry-level experience or basic knowledge, and the department may in its discretion grant the applicant credit toward the 60-hour preclosure education requirement of subsection (1) based on that experience or knowledge.

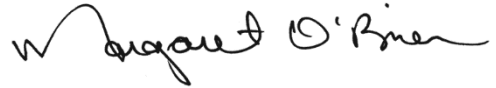
(13) If an applicant for initial licensure as a residential builder or residential maintenance and alteration contractor described in subsection (11) does not pass the examination for that license the first time he or she takes the examination, that applicant may not retake the examination until he or she successfully completes a preclosure course of study described in subsection (1).

Enacting section 1. This amendatory act takes effect 90 days after the date it is enacted into law.

Enacting section 2. This amendatory act does not take effect unless all of the following bills of the 101st Legislature are enacted into law:

- (a) House Bill No. 4376.
- (b) House Bill No. 4377.

This act is ordered to take immediate effect.



Secretary of the Senate



Clerk of the House of Representatives

Approved _____

Governor