

Real Estate Appraisers Law Book

*Occupational Code, Related Statutes,
Administrative Rules and Related Rules*



Michigan Department of
Labor & Economic Growth
Board of Real Estate Appraisers
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PREFACE

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

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

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

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**ARTICLES 1-6 OF
THE OCCUPATIONAL CODE**

ACT NO. 299 OF 1980, AS AMENDED

(applicable to all occupations in the Code)

OCCUPATIONAL CODE
Act 299 of 1980

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

The People of the State of Michigan enact:

ARTICLE 1

339.101 Short title.

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

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

339.102 Meanings of words.

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

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

339.103 Definitions; B, C.

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

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

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

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

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

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

339.104 Definitions; D to K.

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

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

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

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

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

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

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

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

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

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

339.105 Definitions; L to S.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(5) "Person" means an individual, sole proprietorship, partnership, association, corporation, common law trust, or a combination of those legal entities. Person includes a department, board, school, institution, establishment, or governmental entity.

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

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

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

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

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

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

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

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

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

ARTICLE 2

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

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

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

Compiler's note: For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at §§338.3501 of the Michigan Compiled Laws. For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Commerce to the Department of Consumer and Industry Services, see E.R.O.1996-2, compiled at §§445.2001 of the Michigan Compiled Laws.

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

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

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

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

Administrative rules: R 339.1001 et seq. of the Michigan Administrative Code.

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

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

appropriate fees as prescribed in article 4.

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

(3) Notwithstanding any other provision of this act, a person licensed, registered, or certified under an act repealed by this act to practice an occupation on the day immediately preceding the effective date of this act shall be considered to be appropriately licensed, registered, or certified under this act until the expiration of the licensure, registration, or certification granted under the repealed act.

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

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

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

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

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

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

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

(3) Except as otherwise provided in article 7, a license or registration renewed under this section may be renewed with a limitation. The department shall notify the appropriate board of the department's intent to impose a limitation on the renewal of a license of a person seeking license renewal in the occupation

for which the board serves. The department may impose the limitation only with the approval of the notified board. However, if the notified board, within 30 days after receipt of the notification by the department, neither approves nor disapproves the imposition of a limitation, the department may impose the limitation. A person who receives a license or registration renewed with a limitation may receive a review of that limitation as provided in section 519.

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

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

339.205 Promulgation of rules.

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

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

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

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

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

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

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

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

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

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

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

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

339.208 Files of board; physical dominion; public access.

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

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

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

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

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

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

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

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

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

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

339.211 Orientation program for board members.

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

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

339.212 Annual report.

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

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

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

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

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

- (a) The results of the next scheduled examination are available.
- (b) The results of the next required evaluation procedure are available.
- (c) A license or certificate of registration is issued.

(d) The next examination date of an examination for licensure or registration in the applicable occupation, if the applicant does not take the examination.

(e) The applicant fails to meet the requirements for a license or certificate of registration.

(f) A change in employment is made.

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

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

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

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

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

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

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

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

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

ARTICLE 3

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

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

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

339.302 Nomination and appointment of board members.

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

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

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

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

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

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

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

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

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

(5) Of the initial members of a board created or first appointed after January 1, 1990, the terms of 3 of the members, including 2 of the members who have a license or registration in the occupation which the board monitors and 1 of the members representing the general public, shall be 4 years; the terms of 2 of the members, including 1 of the members who has a license or registration in the occupation which the board monitors and 1 of the members representing the general public, shall be 3 years; the terms of 2 of the members, including 1 of the members who has a license or registration in the occupation which the board monitors and 1 of the members who represents the general public, shall be 2 years; and the terms of the remaining members shall be 1 year.

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

339.303a Commencement of terms.

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

Accountancy	July 1
Architects	April 1
Athletic board of control	April 1
Barbers	October 1
Collection agencies	July 1
Cosmetology	January 1
Employment agencies	October 1
Land surveyors	April 1
Landscape architects	July 1
Mortuary science	July 1
Nursing home administrators	January 1
Professional engineers	April 1
Real estate appraisers	July 1
Real estate brokers and salespersons	July 1
Residential builders	April 1
Social workers	October 1

History: Add. 1990, Act 269, Imd. Eff. Oct. 17, 1990;--Am. 1995, Act 104, Imd. Eff. June 23, 1995;--Am. 1995, Act 183, Imd. Eff. Oct. 23, 1995;BA. 1996, Exec. Order 1996-2.

339.304 Compensation and expenses of board members.

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

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

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

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

(2) The files of the board shall be available to the public under section 208.
History: 1980, Act 299, Imd. Eff. Oct. 21, 1980.

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

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

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

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

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

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

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

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

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

339.308 Promulgation of rules.

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

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

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

339.309 Assessment of penalties.

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

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

339.310 Aiding department in interpreting licensure or registration requirements.

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

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

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

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

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

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

339.314 Recommending approval or recognition of continuing education program.

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

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

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

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

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

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

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

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

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

demonstrate that the person has the requisite knowledge and skills.

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

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

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

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

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

ARTICLE 4

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

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

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

339.402 Definitions.

Sec. 402. As used in this article:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 409. (1) The department shall not issue a license or registration to a person who has completed the requirements for a license or registration or seeks to renew a license or registration until the person has paid the license or registration fee.

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

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

History: Add. 1988, Act 463, Eff. Sept. 1, 1989;--Am 2002, Act 611, Eff. Dec 20, 2002.

339.411 Failure to renew license or registration; lapse; extension; conditions to relicensing or reregistration; rules; procedure for reinstatement of license or registration.

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

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

(3) Except as otherwise provided in this act, a person who fails to renew a license or registration within the time period set forth in subsection (2)

may be relicensed or reregistered without examination and without meeting additional education or training requirements in force at the time of application for relicensure or reregistration if all of the following conditions are met:

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

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

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

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

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

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

History: Add. 1988, Act 463, Eff. Sept. 1, 1989;--Am. 1989, Act 261, Eff. Jan. 1, 1990; --Am. 2002, Act 611, Eff. Dec. 20, 2002.

ARTICLE 5

339.501 Lodging or filing complaint.

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

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

339.501a Definitions.

Sec. 501a. As used in this article:

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

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

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

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

Sec. 502. The department, upon receipt of a complaint, immediately shall begin its investigation of the allegations of the complaint and shall open a correspondence file. The department shall make a written acknowledgment of the complaint within 15 days after receipt of the complaint to the person making the complaint. If the complaint is made by the department, the director shall designate 1 or more employees of the department to act as the person making the complaint.

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

339.503 Investigation; petition to issue subpoena.

Sec. 503. The department shall conduct the investigation required under section 502. In furtherance of that investigation, the department may request that the attorney general petition the circuit court to issue a subpoena requiring a person to appear before the department and be examined with reference to a matter within the scope of the investigation and to produce books, papers, or documents pertaining to the investigation.

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

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

Sec. 504. (1) The investigative unit of the department, within 30 days after the department receives the complaint, shall report to the director on the status of the investigation. If, for good cause shown, an investigation cannot be completed within 30 days, the director may extend the time in which a report may be filed. The total number of extensions permitted under this section shall be included in the report required by section 212.

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

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

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

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

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

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

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

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

(3) An administrative law hearings examiner shall grant the requested relief dissolving the summary suspension order, unless sufficient evidence is presented that an imminent threat to the public health, safety, and welfare exists which requires emergency action and continuation of the director's summary suspension order.

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

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

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

Sec. 506. (1) After an investigation has been conducted, the director may order a person to cease and desist from a violation of this act or a rule promulgated or an order issued under this act.

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

(3) Upon a violation of a cease and desist order issued under this act, the department of the attorney general may apply in the circuit court of this state to restrain and enjoin, temporarily or permanently, or both, a person from further violating a cease and desist order.

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

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

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

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

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

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

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

(b) If the respondent is a licensee or registrant under this act, an opportunity to demonstrate compliance prior to holding a contested case hearing, as required by section 92 of the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being section 24.292 of the Michigan Compiled Laws.

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

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

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

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

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

339.510 Showing compliance with act, rule, or order.

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

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

339.511 Hearing.

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

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

339.512 Subpoena.

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

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

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

Sec. 513. (1) Except as provided in subsection (3), at the conclusion of a hearing conducted under section 511, the administrative law hearings examiner shall submit a determination of findings of fact and conclusions of law to the department and the department of the attorney general and the appropriate board in a hearing report. The submitted hearing report may recommend the penalties to be assessed as prescribed in article 6.

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

(3) For a complaint involving professional standards of practice under article 7, a majority of the members of the board who have not participated in an investigation of the complaint or who have not attended an informal conference, shall sit to make findings of fact in relation to the complaint.

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

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

Sec. 514. (1) Within 60 days after receipt of an administrative law hearings examiner's hearing report, the board receiving the hearing report shall meet and make a determination of the penalties to be assessed under article 6. The board's determination shall be made on the basis of the administrative law hearings examiner's report. A transcript of a hearing or a portion of the transcript

shall be made available to a board upon request. If a transcript or a portion of the transcript is requested, the board's determination of the penalty or penalties to be assessed under article 6 shall be made at a meeting within 60 days after receipt of a transcript or portion of the transcript.

(2) If a board does not determine the appropriate penalty or penalties to be assessed within the time limits prescribed by subsection (1), the director may determine the appropriate penalty and issue a final order for occupations regulated under articles 8 to 25.

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

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

339.515 Petition for review generally.

Sec. 515. A person seeking a license or certificate of registration or renewal under this act may petition the department and the appropriate board for a review if that person does not receive a license or certificate of registration or renewal.

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

339.516 Petition for review; contents.

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

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

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

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

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

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

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

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

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

Sec. 519. (1) A person who has had a limitation placed on a license, a certificate of registration, or the renewal of a license or certificate of registration under section 203 or 204, within 30 days after the limitation is placed on the license, certificate of registration, or renewal of the license or certificate of registration, may petition the department in writing for a review of the decision to place the limitation.

(2) The department, in reply to a petition submitted under subsection (1), shall set forth the reasons the department determined that the limitation should be placed on the license, certificate of registration, or renewal of a license or certificate of registration. The reply to the person who submits a petition under section 519 shall be sent to the petitioner within 15 days after receipt of the petition.

(3) The department and a board may remove the limitation, if, based on a review of the petitioner's qualifications, the department and the appropriate board determine that the person who submitted a petition under subsection (1) could perform with competence each function of the occupation without the limitation. History: 1980, Act 299, Imd. Eff. Oct. 21, 1980.

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

Sec. 520. A school, institution, program, or other person which has been denied licensure, approval, or recognition within 30 days after the decision, may petition the department in writing for a review of that decision. History: 1980, Act 299, Imd. Eff. Oct. 21, 1980.

339.521 Consideration of petition; reinvestigation; reply.

Sec. 521. In considering a petition submitted under section 520, the department and an appropriate board may reinvestigate the school, institution, or person and the curriculum of the school, institution, or program offered by the person before replying to the petition. The reply to the petition shall set forth the reasons licensure, approval, or recognition had not been granted. The reply shall be sent to the petitioning school, institution, or person. History: 1980, Act 299, Imd. Eff. Oct. 21, 1980.

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

Sec. 522. Notwithstanding any other provision of this act, if an oral or written grievance was lodged before the effective date of this act against a person licensed under an act repealed by this act, the proceedings on that grievance shall be conducted in the manner prescribed in the repealed act. History: 1980, Act 299, Imd. Eff. Oct. 21, 1980.

339.551 Additional definitions.

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

(a) "Employee of the department" means an individual employed by the department or a person under contract to the department whose duty it is to enforce the provisions of this act or rules promulgated or orders issued under this act.

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

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

339.553 Citation generally.

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

existed which are in violation of this act or rules promulgated or orders issued under this act.

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

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

(a) The date of the citation.

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

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

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

(e) The proposed penalties or actions required for compliance, including the payment of a fine which shall not exceed \$100.00 for each violation.

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

(g) A space where the respondent may accept the citation and agree to comply or may indicate that the violation contained in the citation is contested.

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

(i) A brief description of the hearing process and the process for settlement through an informal conference as described in section 508.

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

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

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

(2) If the respondent accepts the conditions set forth in the citation, the respondent, within 30 days after receiving the citation, shall sign the citation and return it to the department along with any fine or other material required to be submitted by the terms of the citation. The citation and accompanying material shall be placed in the person's records with the department, indicating the nature of the violation and that the person accepted the conditions imposed. A citation issued under this section shall have the same force and effect as a final order issued by a board and may be disclosed to the public. If no further disciplinary actions are placed upon the person's record within 5 calendar years after the citation is issued, the department shall remove the citation and accompanying material from the records. If a respondent so chooses, a 1-page explanation prepared by the respondent shall be placed in the department's files and shall be disclosed each time the issuance of the citation is disclosed.

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

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

339.557 Effect of signing citation.

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

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

339.559 Review of pending cases; notice.

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

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

ARTICLE 6

339.601 Practicing regulated occupation or using designated title without license or registration; operation of barber college, school of cosmetology, or real estate school without license or approval; violation as misdemeanor; penalties; injunctive relief; exceptions; “affected person” defined; investigation; remedies; performance of services by interior designer.

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

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

(3) A person, school, or institution which violates subsection (1) or (2) is guilty of a misdemeanor, punishable by a fine of not more than \$500.00, or imprisonment for not more than 90 days, or both.

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

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

(6) Nothing in this act shall apply to a person engaging in or practicing the following:

(a) Interior design.

(b) Building design.

(c) Any activity for which the person is licensed under 1929 PA 266, MCL 338.901 to 338.917.

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

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

(7) As used in subsection (5), "affected person" means a person directly affected by the actions of a person suspected of violating subsection (1) or (2) and includes, but is not limited to, a board established pursuant to this act, a person who has utilized the services of the person engaging in or attempting to engage in an occupation regulated under this act or using a title designated by this act without being licensed or registered by the department, or a private association composed primarily of members of the occupation in which the person is engaging in or attempting to engage in or in which the person is using a title designated under this act without being registered or licensed by the department.

(8) An investigation may be conducted under article 6 to enforce this section. A person who violates this section shall be subject to the strictures prescribed in this section and section 506.

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

that person or the use of a lawful remedy by another person.

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

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980;--Am. 1994, Act 400, Imd. Eff. Dec. 29, 1994; Am. 1998, Act 250, Eff. Oct. 1, 1998.

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

Sec. 601a. (1) There is created in the department an advisory subcommittee on interior design to consist of not more than 5 individuals selected by the department. Of the 5 individuals, 2 shall be licensed architects and the remaining members shall be interior designers chosen from a list of interior designers submitted to the department by nationally recognized associations of interior designers. The department shall assure that the advisory subcommittee on interior design is fully functional not later than 6 months after the effective date of the amendatory act that added this section and shall cease to exist after it has reviewed the last application made under subsection (4)(c). The purpose of the advisory subcommittee on interior design is to verify, by majority vote of its members, the qualifications of interior designers who have not passed an examination as further described in subsection (4)(c) but who seek qualification for the performance of services described in section 601(10) on the basis of education and experience and to recommend the qualifications of those interior designers to perform the services described in section 601(10). The advisory subcommittee on interior design shall also compile a list of all individuals considered qualified to perform the services described in section 601(10). The advisory subcommittee on interior design shall give the list to the board of architects for review and consideration of those persons determined to have met the standards described in subsection (4). The approval of individuals considered qualified shall occur not less than 90 days after the list is submitted to the board of architects. A person whose qualifications are not approved by the board of architects may appeal that determination to the director or his or her designee. The department shall make the list of persons determined to have met the standards described in subsection (4) electronically available to the state or any local unit of government capable of issuing permits under the state construction code act of 1972, 1972 PA 230, MCL 125.1501 to 125.1531.

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

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

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

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

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

(c) Until the expiration of 1 year after the date of the establishment of the advisory subcommittee on interior design, demonstrates to the advisory subcommittee on interior design that he or she was engaged in the activities described in section 601(10) and meets the qualifications of education and experience that would confer eligibility for sitting for the 1997 or other examination offered by the national council for interior design qualification. History: Add. 1998, Act 250, Eff. Oct. 1, 1998.

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

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

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

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

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

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

(e) A civil fine to be paid to the department, not to exceed \$10,000.00.

(f) Censure.

(g) Probation.

(h) A requirement that restitution be made.

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980;--Am. 1981, Act 83, Imd. Eff. July 1, 1981.

339.603 Restitution; suspension of license or certificate of registration.

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

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

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

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

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

- (b) Practices fraud, deceit, or dishonesty in practicing an occupation.
 - (c) Violates a rule of conduct of an occupation.
 - (d) Demonstrates a lack of good moral character.
 - (e) Commits an act of gross negligence in practicing an occupation.
 - (f) Practices false advertising.
 - (g) Commits an act which demonstrates incompetence.
 - (h) Violates any other provision of this act or a rule promulgated under this act for which a penalty is not otherwise prescribed.
 - (i) Fails to comply with a subpoena issued under this act.
 - (j) Fails to respond to a citation as required by section 555.
 - (k) Violates or fails to comply with a final order issued by a board, including a stipulation, settlement agreement, or a citation.
- History: 1980, Act 299, Imd. Eff. Oct. 21, 1980;--Am. 1981, Act 83, Imd. Eff. July 1, 1981;--Am. 1989, Act 261, Eff. Jan. 1, 1990.

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

Sec. 605. The department may bring any appropriate action in the name of the people of this state to carry out this act and to enforce this act. If the attorney general considers it necessary, the attorney general shall intervene in and prosecute all cases arising under this act.

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

ARTICLE 26
REAL ESTATE APPRAISERS

339.2601 Definitions.

Sec. 2601. As used in this article:

(a) "Appraisal" means an opinion, conclusion, or analysis relating to the value of real property but does not include any of the following:

(i) A market analysis performed by a person licensed under article 25 solely for the purpose of assisting a customer or potential customer in determining the potential sale, purchase, or listing price of real property or the rental rate of real property as long as a fee or any other valuable consideration is not charged for that analysis.

(ii) A market analysis of real property for a fee performed by a broker or associate broker licensed under article 25 which does not involve a federally related transaction if the market analysis is put in writing and it states in boldface print "This is a market analysis, not an appraisal and was prepared by a licensed real estate broker or associate broker, not a licensed appraiser". Failure to do so results in the individual being subject to the penalties set forth in article 6.

(iii) An assessment of the value of real property performed on behalf of a local unit of government authorized to impose property taxes when performed by an assessor certified under section 10d of the general property tax act, 1893 PA 206, MCL 211.10d, or an individual employed in an assessing capacity.

(b) "Appraiser" means an individual engaged in or offering to engage in the development and communication of an appraisal.

(c) "Certified general real estate appraiser" means an individual who is licensed under section 2615 to appraise all types of real property, including nonresidential real property involving federally related transactions and real estate related financial transactions.

(d) "Certified residential real estate appraiser" means an individual who is licensed under section 2614 to appraise all types of residential real property involving real estate related financial transactions and federally related transactions as authorized by the regulations of a federal financial institution regulatory agency and resolution trust corporation as well as any nonresidential, nonfederally related transaction for which the individual is qualified.

(e) "Federal financial institution regulatory agency" means the board of governors of the federal reserve system, the federal deposit insurance corporation, the office of the comptroller of the currency, the office of thrift supervision, or the national credit union administration.

(f) "Federally related transaction" means any real estate related financial transaction that a federal financial institution regulatory agency or the resolution trust corporation engages in, contracts for, or regulates and that requires the services of an appraiser under any of the following:

(i) 12 C.F.R. part 323, adopted by the federal deposit insurance corporation.

(ii) 12 C.F.R. parts 208 and 225, adopted by the board of governors of the federal reserve system.

(iii) 12 C.F.R. parts 701, 722, and 741, adopted by the national credit union administration.

(iv) 12 C.F.R. part 34, adopted by the office of the comptroller of the currency.

(v) 12 C.F.R. parts 506, 545, 563, 564, and 571, adopted by the office of thrift supervision.

(vi) 12 C.F.R. part 1608, adopted by the resolution trust corporation.

(g) "Limited real estate appraiser" means an individual licensed under section 2611 to perform appraisals of real property not involving real estate related financial transactions or federally related transactions that require the services of a state licensed real estate appraiser, certified residential real estate appraiser, or certified general real estate appraiser.

(h) "Real estate valuation specialist" means an individual licensed under section 2611 to perform appraisals of real property not involving federally related transactions or real estate related financial transactions that require the services of a state licensed real estate appraiser, certified residential real estate appraiser, or certified general real estate appraiser.

(i) "Real estate related financial transaction" means any of the following:

(i) A sale, lease, purchase, investment in, or exchange of real property or the financing of real property.

(ii) A refinancing of real property.

(iii) The use of real property as security for a loan or investment, including mortgage-backed securities.

(j) "Real property" means an identified tract or parcel of land, including improvements on that land, as well as any interests, benefits, or rights inherent in the land.

(k) "Residential real property" means real property used as a residence containing a dwelling that has not more than 4 living units.

(l) "State licensed real estate appraiser" means an individual who is licensed under section 2613 to appraise real property, including, but not limited to, residential and nonresidential real property involving federally related transactions and real estate related financial transactions.

(m) "Uniform standards of professional appraisal practice" means those standards relating to real property adopted by the appraisal foundation on March 31, 1999, or as adopted by rule of the director.

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980;--Am. 1990, Act 269, Imd. Eff. Oct. 17, 1990;--Am. 1994, Act 125, Imd. Eff. May 16, 1994;--Am. 1999, Act 170, Imd. Eff. Nov. 10, 1999.

339.2603 Board of real estate appraisers; creation; qualifications of members.

Sec. 2603. (1) There is created a board of real estate appraisers.

(2) Of those board members who are appraisers, 3 shall be certified general real estate appraisers, 1 shall be a certified residential real estate appraiser, and 2 shall be state licensed real estate appraisers. At least 1 of those appraisers shall be employed by a state or nationally chartered bank, a state or federally chartered savings and loan or savings bank, a state or federally chartered credit union, an entity of the federally chartered farm credit system, or an entity regulated under the mortgage brokers, lenders, and servicers licensing act, 1987 PA 173, MCL 445.1651 to 445.1684.

History: Add. 1990, Act 269, Imd. Eff. Oct. 17, 1990;--Am. 1999, Act 170, Imd. Eff. Nov. 10, 1999.

339.2605 Uniform standards of professional appraisal practice; rules.

Sec. 2605. (1) At a minimum and subject to subsection (2), licensees under this article shall utilize the uniform standards of professional appraisal practice.

(2) The director may supplement or adopt by reference any amendments to the uniform standards of professional appraisal practice through the promulgation of rules if the director determines that the amendments or supplemental standards serve as a basis for the competent development and communication of an appraisal and are not in conflict with federal requirements.

(3) The director through promulgation of a rule may supplement or adopt by reference any changes promulgated by a federal financial institution regulatory agency relative to standards for a federally related transaction.

History: Add. 1990, Act 269, Eff. July 1, 1991;--Am. 1999, Act 170, Imd. Eff. Nov. 10, 1999.

339.2607 Prohibited representations; definitions; authorized appraisals.

Sec. 2607. (1) A person shall not act as or offer to act as an appraiser unless licensed under this article or exempt from licensure under this article.

(2) An individual shall not represent himself or herself to be a state licensed real estate appraiser, a certified general real estate appraiser, a certified residential real estate appraiser, a limited real estate appraiser, or a real estate valuation specialist unless that individual is licensed under this article in the appropriate capacity.

(3) The terms "state licensed real estate appraiser", "certified general real estate appraiser", "certified residential real estate appraiser", "limited real estate appraiser", or "real estate valuation specialist" or any similar term tending to connote licensure under this article shall refer only to an individual licensed under this article and shall not refer to or be used in connection with the name or signature of a person that is not an individual licensed under this article.

(4) An individual licensed as a certified general real estate appraiser may perform the appraisal of real property of any type or value, including appraisals required for federally related transactions and real estate related financial transactions.

(5) An individual licensed as a certified residential real estate appraiser may perform the appraisal of residential real property and any other residential or nonresidential appraisal required for a federally related transaction for which a certified residential real estate appraiser is authorized under sections 1113 and 1114 of title XI of the financial institutions reform, recovery, and enforcement act of 1989, Public Law 101-73, 12 U.S.C. 3342 and 3343, real estate related financial transactions, and any nonfederally related transaction for which the licensee is qualified.

(6) An individual licensed as a state licensed real estate appraiser may independently perform the appraisal of residential real property and any other residential or nonresidential appraisal required for a federally related transaction for which a state licensed real estate appraiser is authorized under title XI of the financial institutions reform, recovery, and enforcement act of 1989, Public Law 101-73, 12 U.S.C. 3342 and 3343, real estate related financial transactions, and any nonfederally related transaction for which the licensee is qualified.

(7) An individual licensed as a real estate valuation specialist or a limited real estate appraiser may perform independently only those appraisals related to transactions not requiring, under federal law or regulations, the services of a

state licensed real estate appraiser, certified residential real estate appraiser, or certified general real estate appraiser. The appraisal must contain the supervisory signature of the state licensed real estate appraiser, certified residential real estate appraiser, or certified general real estate appraiser and must also contain the signature of the real estate valuation specialist or limited real estate appraiser only where the appraisal is performed by the real estate valuation specialist or limited real estate appraiser under the provisions of this subsection.

History: Add. 1990, Act 269, Eff. July 1, 1991;--Am. 1999, Act 170, Imd. Eff. Nov. 10, 1999.

339.2609 Appraisal; requirements.

Sec. 2609. An appraisal shall be in writing and shall do all of the following:

(a) Disclose any limitations on the type of analysis, valuation, or opinion.

(b) Be independently and impartially prepared and conform to the uniform standards of professional appraisal practice and any other standards adopted by the director.

(c) Include an opinion of defined value of adequately described real property as of a specific date and be supported by the presentation and analysis of relevant market information.

(d) Indicate on every appraisal report the license number and level of licensure of the appraiser.

History: Add. 1990, Act 269, Eff. July 1, 1991;--Am. 1999, Act 170, Imd. Eff. Nov. 10, 1999.

339.2611 Limited real estate appraiser; qualifications for license; conversion from real estate valuation specialist.

Sec. 2611. (1) The department shall license as a limited real estate appraiser an individual who is at least 18 years of age, is of good moral character, and provides proof of having completed not less than 75 classroom hours of courses related to developing and communicating appraisals of real property, at least 15 of which relate to the uniform standards of professional appraisal practice.

(2) Beginning the effective date of the amendatory act that added this subsection, the department shall not accept an application for a real estate valuation specialist. The department shall convert licenses for real estate valuation specialists to limited real estate appraiser licenses upon the next license renewal cycle.

History: Add. 1990, Act 269, Eff. July 1, 1991;--Am. 1999, Act 170, Imd. Eff. Nov. 10, 1999.

339.2613 State licensed real estate appraiser; qualifications for license.

Sec. 2613. The department shall license as a state licensed real estate appraiser an individual who demonstrates, to the satisfaction of the department, that he or she meets all of the following conditions:

(a) Has completed not less than 90 classroom hours of courses emphasizing the appraisal of residential real property and meeting the standards of section 2617. The courses shall cover all of the following:

(i) Influences on real estate value.

- (ii) Legal considerations in appraisal.
- (iii) Types of value.
- (iv) Economic principles of appraisals.
- (v) Real estate markets and analysis.
- (vi) Valuation process.
- (vii) Property description.
- (viii) Highest and best use analysis.
- (ix) Appraisal statistical concepts.
- (x) Sales comparison approach.
- (xi) Site value.
- (xii) Cost approach.
- (xiii) Income approach.
- (xiv) Valuation of partial interests.
- (xv) The uniform standards of professional appraisal practice and ethics.

(b) Possesses at least 2,000 hours of experience meeting the standards of section 2621, at least 1,500 hours of which are in appraising residential real property. Acceptable experience includes, but is not limited to, the following in compliance with any applicable federal standards:

- (i) Fee and staff appraisal.
 - (ii) Ad valorem tax appraisal.
 - (iii) Technical review appraisal.
 - (iv) Appraisal analysis.
 - (v) Real estate consulting.
 - (vi) Highest and best use analysis.
 - (vii) Feasibility analysis or study.
 - (viii) Condemnation appraisal.
 - (ix) Market analysis.
- (c) Has passed an examination as described in section 2619.
- (d) Is of good moral character.
- (e) Is at least 18 years of age.

History: Add. 1990, Act 269, Eff. July 1, 1991;--Am. 1999, Act 170, Imd. Eff. Nov. 10, 1999;--Am. 1999, Act 170, Imd. Eff. Nov. 10, 1999.

339.2614 Certified residential real estate appraiser; qualifications for license.

Sec. 2614. The department shall license as a certified residential real estate appraiser an individual who demonstrates, to the satisfaction of the department, that he or she meets all of the following conditions:

(a) Possesses at least 2,500 hours of experience meeting the standards of section 2621 in appraising real property, at least 2,000 hours of which shall be in appraising residential real property, completed over 24 or more months.

Acceptable experience includes, but is not limited to, the following in compliance with any applicable federal standards:

- (i) Fee and staff appraisal.
- (ii) Ad valorem tax appraisal.
- (iii) Technical review appraisal.
- (iv) Appraisal analysis.
- (v) Real estate consulting.
- (vi) Highest and best use analysis.
- (vii) Feasibility analysis or study.

(viii) Condemnation appraisal.

(ix) Market analysis.

(b) Has completed not less than 120 classroom hours of courses meeting the standards of section 2617 and emphasizing all types and values of residential real property appraisals. An applicant may apply the classroom hours used to obtain a prior real estate appraiser license toward the requirement of the 90 classroom hours used to obtain licensure as a certified residential real estate appraiser. The remaining classroom hours shall relate to the appraisal of residential real property or address both residential and commercial real property. The courses shall cover all of the following topics:

(i) Influences on real estate value.

(ii) Legal considerations in appraisal.

(iii) Types of value.

(iv) Economic principles of appraisal.

(v) Real estate markets and analysis.

(vi) Valuation process.

(vii) Property description.

(viii) Highest and best use analysis.

(ix) Appraisal math and statistics.

(x) Sales comparison approach.

(xi) Site value.

(xii) Cost approach.

(xiii) Income approach.

(xiv) Valuation of partial interests.

(xv) The uniform standards of professional appraisal practice and ethics.

(xvi) Narrative report writing.

(c) Has passed an examination as required in section 2619.

(d) Is of good moral character.

(e) Is at least 18 years of age.

History: Add. 1999, Act 170, Imd. Eff. Nov. 10, 1999.

339.2615 Certified general real estate appraiser; qualifications for license.

Sec. 2615. The department shall license as a certified general real estate appraiser an individual who demonstrates, to the satisfaction of the department, that he or she meets all of the following conditions:

(a) Possesses at least 3,000 hours of experience, at least 1,500 hours of which shall be in appraising nonresidential real property completed over at least 30 or more months preceding application for licensure. Acceptable experience includes, but is not limited to, the following in compliance with any applicable federal standards:

(i) Fee and staff appraisal.

(ii) Ad valorem tax appraisal.

(iii) Technical review appraisal.

(iv) Appraisal analysis.

(v) Real estate consulting.

(vi) Highest and best use analysis.

(vii) Feasibility analysis or study.

(viii) Condemnation appraisal.

(b) Has completed 180 classroom hours of courses meeting the standards of section 2617 and emphasizing all types and values of real property appraisals.

An applicant may apply the 90 classroom hours used to obtain a prior real estate appraiser license toward the requirement of 180 classroom hours, but shall be able to demonstrate that the remaining 90 classroom hours relate to the appraisal of nonresidential real property. The courses shall cover all of the following topics:

- (i) Influences on real estate value.
 - (ii) Legal considerations in appraisal.
 - (iii) Types of value.
 - (iv) Economic principles of appraisal.
 - (v) Real estate markets and analysis.
 - (vi) Valuation process.
 - (vii) Property description.
 - (viii) Highest and best use analysis.
 - (ix) Appraisal math and statistics.
 - (x) Sales comparison approach.
 - (xi) Site value.
 - (xii) Cost approach.
 - (xiii) Income approach.
 - (xiv) Valuation of partial interests.
 - (xv) The uniform standards of professional appraisal practice and ethics.
 - (xvi) Narrative report writing.
- (c) Has passed an examination as required in section 2619.
 - (d) Is of good moral character.
 - (e) Is at least 18 years of age.

History: Add. 1990, Act 269, Eff. July 1, 1991;--Am. 1999, Act 170, Imd. Eff. Nov. 10, 1999.

339.2617 Rules regulating educational courses; courses; prelicensure courses; credit by passing challenge examination; requirements for continuing education courses; types of courses.

Sec. 2617. (1) The director may promulgate rules regulating the offering of educational courses required under this article, including the type and conditions of instruction, the qualification of instructors, the methods of grading, the means of monitoring and reporting attendance, and the representations made by course sponsors.

(2) All educational courses required under this article shall be courses offered by 1 of the following:

(a) An institution of higher education authorized to grant degrees, being a college, university, or community or junior college.

(b) A private school licensed by the department of education under 1943 PA 148, MCL 395.101 to 395.103, or authorized to operate in any other state or jurisdiction.

(c) A state or federal agency or commission.

(d) A nonprofit association related to real property or real property appraisal.

(3) Prelicensure courses, being those courses offered as a qualification for licensure, shall meet the following minimum requirements:

(a) Be not less than 15 classroom hours in length, a classroom hour being at least 50 minutes.

(b) Include an examination at the end of the course requiring an individual taking the course to demonstrate mastery of the course content.

(c) Be completed at any time prior to sitting for the examination described in section 2619.

(4) An applicant who received credit for completion of a preclicensure course by successfully passing a challenge examination may be given credit for such courses passed prior to July 1, 1990, upon review by the department of the course content and examination given.

(5) Continuing education courses required to be completed under this article shall meet the following minimum requirements:

(a) Be not less than 2 classroom hours in length, a classroom hour being at least 50 minutes.

(b) Be completed at any time following the expiration of the licensee's previous license and the time the licensee applies for renewal.

(c) Be designed to maintain and improve the licensee's skill, knowledge, and competency in the appraisal of real estate.

(6) Courses taken in satisfying the qualifying education requirements should not be repetitive in nature and should represent a progression in which the appraiser's knowledge is increased, as determined by the department and board.

History: Add. 1990, Act 269, Eff. July 1, 1991;--Am. 1999, Act 170, Imd. Eff. Nov. 10, 1999.

339.2619 Appraiser qualification board endorsed uniform real property appraiser examination; equivalent; validity of scores.

Sec. 2619. (1) Except as otherwise provided in section 2623, an individual seeking licensure under this article as a state licensed real estate appraiser, certified general real estate appraiser, or certified residential real estate appraiser shall first successfully pass the appraiser qualification board endorsed uniform real property appraiser examination or its equivalent as appropriate to the level of licensure sought and that is acceptable to the board and the department.

(2) The board and department may adopt an examination prepared or approved by a professional entity or organization including, but not limited to, the appraisal qualification board if the department and the board determine that the examination serves as a basis for determining whether an individual has the knowledge and skills to perform with competence.

(3) Examination scores are considered valid for 3 years from the date of the examination.

History: Add. 1990, Act 269, Eff. July 1, 1991;--Am. 1999, Act 170, Imd. Eff. Nov. 10, 1999.

339.2621 Experience.

Sec. 2621. Experience required of applicants for licensure under this article shall meet the following requirements:

(a) Consist of at least the required number of hours of appraisal experience obtained over not less than the required number of months.

(b) Be experience obtained while properly licensed or exempt from licensure under the standards applicable at the time the experience was obtained.

(c) Be capable of being documented in writing by the applicant or licensee upon the request of the department in the form of reports, file memoranda, or affidavits of a supervisor.

History: Add. 1990, Act 269, Eff. July 1, 1991;--Am. 1999, Act 170, Imd. Eff. Nov. 10, 1999.

339.2623 Licensing without examination.

Sec. 2623. The department shall issue a certified general real estate appraiser, certified residential real estate appraiser, or state licensed real estate appraiser license without examination to an individual who, at the time of application, is licensed, registered, certified, or otherwise regulated by another state at that level if the requirements of that state, as determined by the board and the department, are at least equal to the requirements of this article.

History: Add. 1990, Act 269, Eff. July 1, 1991;--Am. 1999, Act 170, Imd. Eff. Nov. 10, 1999.

339.2625 Nonresident licensing; service of process; temporary permit.

Sec. 2625. (1) A nonresident of this state may become licensed under this article by conforming with this article. The nonresident shall file an irrevocable consent to service of process which consent shall be signed by the licensee. A process or pleading served upon the department shall be sufficient service upon the licensee. A process or pleading served upon the department under this section shall be in duplicate. The department shall immediately serve by first-class mail a copy of the process or pleading to the licensee's last known address as determined by the records of the department.

(2) The department may issue a temporary permit, valid for 180 days, to a nonresident of this state who holds a valid license from another state or United States jurisdiction licensing or regulating appraisers and is temporarily in this state to conduct an appraisal involving a federally related transaction or a real estate related financial transaction. The application shall be accompanied by proof of licensure or regulation in the other state or jurisdiction, a consent to the service of process as described in subsection (1), and a written description of the nature of the temporary assignment. The holder of a temporary permit may apply in writing for 1 extension of the temporary permit for not more than 180 days. The holder of a temporary permit is not required to complete continuing education.

History: Add. 1990, Act 269, Eff. July 1, 1991;--Am. 1999, Act 170, Imd. Eff. Nov. 10, 1999.

339.2627 Condition for renewal of licensure; scope of continuing education; continuing education credit; completion of course covering uniform standards of professional appraisal practice.

Sec. 2627. (1) As a condition for the renewal of licensure as a certified general real estate appraiser, a certified residential real estate appraiser, or a state licensed real estate appraiser, a licensee shall complete 14 classroom hours of continuing education meeting the standards of section 2617 for each year since the expiration of his or her previous license.

(2) Effective the third year of licensure as a real estate valuation specialist or as a limited real estate appraiser, an individual licensed as a real estate valuation specialist or as a limited real estate appraiser shall complete not less than 14 classroom hours of continuing education for each year since the expiration of his or her previous license. This continuing education shall meet the standards of section 2617.

(3) Courses for which continuing education credit may be obtained may include, but not be limited to, the following:

- (a) Ad valorem taxation.
- (b) Arbitrations.

- (c) Business courses related to real estate appraisal.
- (d) Construction or development cost estimating.
- (e) Ethics and standards of professional practice.
- (f) Land use planning, zoning, and taxation.
- (g) Real estate management, leasing, brokerage, and time-sharing.
- (h) Property development.
- (i) Real estate appraisal (valuations and evaluations).
- (j) Real estate financing and investment.
- (k) Real estate law.
- (l) Real estate litigation.
- (m) Real estate appraisal related computer applications.
- (n) Real estate securities and syndication.
- (o) Real estate exchange.

(4) An individual who has authored a textbook, prepared and taught a prelicensure or continuing education course, or has undertaken some other activity which he or she believes may meet the continuing education requirements of this section may request continuing education credit for that activity from the department. An individual who has completed continuing education required for the renewal of an appraiser license in another state or jurisdiction may submit proof of the acceptance of that continuing education by that state as evidence of meeting the continuing education requirements in this state.

(5) A course covering the uniform standards of professional appraisal practice must be completed as part of the continuing education requirement every third licensing period.

History: Add. 1990, Act 269, Eff. July 1, 1991;--Am. 1999, Act 170, Imd. Eff. Nov. 10, 1999.

339.2629 Lapsed license; relicensure; applicability of continuing education requirements.

Sec. 2629. (1) Notwithstanding section 411(4), relicensure of an individual whose license as a certified general real estate appraiser, a certified residential real estate appraiser, or a state licensed real estate appraiser under this article has lapsed for 3 or more continuous years shall require that the applicant complete the licensing examination for the type of license sought.

(2) The continuing education requirements of section 2627 do not apply to an individual renewing his or her license in the year in which the original license is issued.

History: Add. 1990, Act 269, Eff. July 1, 1991;--Am. 1999, Act 170, Imd. Eff. Nov. 10, 1999.

339.2631 Repealed. 1990, Act 269, Eff. Dec. 31, 1991.

Compiler's note: The repealed section pertained to temporary license for real estate appraisers.

339.2633 Duties of licensee.

Sec. 2633. A licensee shall do all of the following:

(a) Include, in any appraisal or report provided to a client, the following statement: "Appraisers are required to be licensed and are regulated by the Michigan Department of Consumer and Industry Services, P.O. Box 30018, Lansing, Michigan 48909."

(b) Maintain an actual place of business whose address shall be used as the licensee address and in all advertising.

(c) Maintain a system of books and records open to the department upon request during normal business hours. The books and records shall be maintained in accordance with the uniform standards of professional appraisal practice, the requirements of this article, and any requirements imposed by rules promulgated under this article. The books and records shall show all appraisals undertaken by name of client and the address or description of the property appraised. In addition, applicants for licensure as a state licensed real estate appraiser, a certified residential real estate appraiser, or a certified general real estate appraiser must also provide an appraisal log which includes, at a minimum, the following for each appraisal:

- (i) Type of property.
- (ii) Date of report.
- (iii) Address of appraised property.
- (iv) Description of work performed.
- (v) Number of work hours.

(d) Advertise only the services authorized to be rendered according to the type of license issued and only in the name and address under which the individual is licensed. The licensee shall indicate on every appraisal report the license number and level of licensure.

History: Add. 1990, Act 269, Eff. July 1, 1991;--Am. 1999, Act 170, Imd. Eff. Nov. 10, 1999.

339.2635 Prohibited conduct; penalties.

Sec. 2635. A licensee who does 1 or more of the following shall be subject to the penalties set forth in article 6:

(a) Violates any of the standards for the development and communication of real property appraisals as provided in this article or a rule promulgated pursuant to this article.

(b) Fails or refuses without good cause to exercise reasonable diligence in developing or communicating an appraisal.

(c) Demonstrates incompetence in developing or communicating an appraisal.

(d) Fails to make available to the department upon request books and records required to be kept under this article.

(e) Performs, attempts to perform, or offers to perform appraisal services for which the individual is not licensed under this article.

(f) Aids or abets another to commit a violation of this act or the rules promulgated under this act.

(g) Uses the license of another individual or knowingly allows another individual to use his or her license.

(h) If a real estate valuation specialist or a limited real estate appraiser fails to disclose to the client, before making an appraisal, that the licensee's appraisal

cannot be used in a federally related transaction.

History: Add. 1990, Act 269, Eff. July 1, 1991;--Am. 1999, Act 170, Imd. Eff. Nov. 10, 1999.

339.2636 Sanctions taken by another state.

Sec. 2636. (1) A sanction against an individual licensed under this article in this state by another state or jurisdiction may be grounds for disciplinary action in this state if the offense is substantially similar to a violation of this act or rules promulgated under this act.

(2) A licensee shall report to the department sanctions taken by another state or jurisdiction against his or her appraisal license issued by that other state within 30 days after the final order imposing disciplinary action.

History: Add. 1999, Act 170, Imd. Eff. Nov. 10, 1999.

339.2637 List of licensees; remittance of fee.

Sec. 2637. Not less than monthly, the department shall compile a list of certified general real estate appraiser, certified real estate appraiser, and state licensed real estate appraiser licensees under this article, provide it to the appraisal subcommittee of the federal financial institutions examination council as required by section 1109 of the financial institutions reform, recovery, and enforcement act of 1989, Public Law 101-73, 12 U.S.C. 3338, and remit the appropriate fee for each year the individual is licensed under section 38 of the state license fee act, 1979 PA 152, MCL 338.2238.

History: Add. 1990, Act 269, Eff. July 1, 1991;--Am. 1999, Act 170, Imd. Eff. Nov. 10, 1999.

DEPARTMENT OF LABOR & ECONOMIC GROWTH

BOARD OF REAL ESTATE APPRAISERS

GENERAL RULES

(By authority conferred on the department of consumer and industry services by sections 205, 308, 2605, and 2617 of 1980 PA 299, MCL 339.205, 339.308, 339.2605, and 339.2607, and Executive Reorganization Order No. 1996-2, MCL 445.2001)

PART 1. GENERAL PROVISIONS

R 339.23101 Definitions.

Rule 101. (1) As used in these rules:

(a) "A course covering the "uniform standards of professional appraisal practice" in section 2627(5) and the "uniform standards of appraisal practice and ethics" in sections 2611(1), 2613(a)(xv), 2614(b)(xv) and 2615(b)(xv) of the act means the 15-hour national USPAP course or the 7-hour national USPAP update seminar, or their equivalent, as required by the AQB real property appraiser qualification criteria, adopted on October 27, 2000, and effective January 1, 2003.

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

(c) "Board" means the board of real estate appraisers.

(d) "Licensee" means an individual who is licensed under article 26 of the act, including a real estate valuation specialist, a limited real estate appraiser, a state-licensed real estate appraiser, a certified residential real estate appraiser, or a certified general real estate appraiser.

(e) "Market analysis as performed by a real estate licensee" means the activity defined in section 2601(a)(i) and (ii) of the act, and means analysis solely for the purpose of establishing potential sale, purchase, or listing price of real property or the rental rate of real property and is not for the purpose of evaluating a property for mortgage lenders in the primary or secondary mortgage market.

(f) "Real estate consulting", as used in sections 2613, 2614, and 2615 of the act, means that function or functions described in standards 4 and 5 of the uniform standards of professional appraisal practice.

(g) "Transaction value" means any of the following:

(i) For loans or other extensions of credit, the amount of the loan or the extension of credit.

(ii) For sales, leases, purchases, and investments, or in exchanges of real property, the market value of the real property interest involved.

(iii) For the pooling of loans or interests in real property for resale or purchase, the amount of the loan or market value of the real property calculated with respect to each such loan or interest in real property.

(h) "Uniform standards of professional appraisal practice" or "USPAP" means the uniform standards of professional appraisal practice, published by the Appraisal Foundation, effective January 1, 2004. Copies of the USPAP 2004 edition are available at a cost at the time of adoption of these rules of \$30.00 for

regular binding and \$35.00 for spiral binding plus \$8.50 for single copies and \$1.00 for each additional copy for shipping, from the Appraisal Foundation, 1029 Vermont Avenue NW, Suite 900, Washington DC 20005-3517. Mail orders: P.O. Box 96724, Washington DC 20090-6734. Phone: toll-free 800/805-7857 or 240/864-0100. Internet address: www.appraisalfoundation.org. The USPAP 2004 edition can be reviewed or purchased from the Department of Consumer & Industry Services, Bureau of Commercial Services, 2501 Woodlake Circle, Okemos Michigan 48824, Phone: 517/241-9236, at a cost as of the time of adoption of these rules of \$50.00 plus \$11.00 shipping and handling costs.

(2) Terms defined in articles 1 to 6 and 26 of the act have the same meanings when used in these rules.

History: 1996 MR 6, Effective June 28, 1996. Amended 2002[MR 22 of 2001] Effective May 20, 2002. Amended 2002 MR 21, Effective March 12, 2003. Amended 2003 MR 24, Eff. Dec. 31, 2003.

R 339.23103 Board Meetings.

Rule 103. All board meetings are conducted in accordance with 1976 PA 267, MCL 15.261 et seq., known as the open meetings act, and are open to the public.

History: 1996 MR 6, Effective June 28, 1996. Amended 2002[MR 22 of 2001] Effective May 20, 2002.

PART 2. LICENSING

R 339.23201 Acceptable appraisal experience generally.

Rule 201. (1) Credit for appraisal experience shall be based on the actual performance of appraisals. The department shall not grant experience credit to an applicant solely on the basis of total hours of employment in an appraisal firm or other entity. The actual performance of appraisals includes time spent in such professional activities as personally inspecting real property, conducting research and developing materials supporting the appraisal, preparing the content of appraisal reports, and presenting the appraisal to the client. It does not include time spent in the solicitation of business, negotiation and development of client agreements, clerical tasks, or business accounting and collections, even though such tasks may be appropriately billed to a client as a necessary part of performing the appraisal.

(2) Credit shall not be given for performing more than 40 hours per week of professional experience, unless specific experience, which is verified by a supervisor, can be provided to demonstrate that an individual worked more hours in that week. However, experience in excess of 40 hours a week that is obtained before January 1, 1992, may be verified by a supervisor's affidavit.

(3) Hours credited per appraisal shall be credited upon the number of hours spent on each assignment, not to exceed the number of hours in the following table. Requests for exceptions shall be approved or denied by the department.

supervision of the limited real estate appraiser by accepting responsibility for the appraisal report by signing and certifying that the report is in compliance with the uniform standards of professional appraisal practice by doing both of the following:

(a) Reviewing the appraiser trainee appraisal report or reports.

(b) Personally inspecting each appraised property with the limited real estate appraiser until the supervising appraiser determines the limited appraiser is competent in accordance with the competency provision of the uniform standards of professional appraisal practice (USPAP) for the property type. Separate logs shall be maintained for each supervising appraiser, and each log shall contain the signature, the license or certification number, and the level of licensure of the supervising appraiser.

History: 1996 MR 6, Effective June 28, 1996. Amended 2002[MR 22 of 2001] Effective May 20, 2002.

R 339.23203 Appraisal experience; satisfactory evidence.

Rule 203. For an applicant's experience hours to be accepted, the experience shall be in compliance with both of the following requirements, as applicable:

(a) Appraisal experience shall be demonstrated by copies of reports and file memoranda. A detailed log, which includes the date, property address, property type, and a clear indication of the time devoted to each appraisal, shall be submitted to the department. The information in the log shall be capable of being documented by work samples, and shall include an affidavit of a supervisor, if requested. If a supervisor is not available, if the applicant was the supervisor, or if the applicant was self-employed, then the department may require an affidavit from a professional colleague or from an institution for whom the work was performed to support the documentation of the applicant.

(b) If documentation under subdivision (a) of this rule is not available and the appraisal experience was obtained before January 1, 1992, the hours of supervised experience shall be verified by an affidavit from the applicant's supervisor. The affidavit shall include all of the following information:

(i) A statement that the signer has personal knowledge of the applicant's work.

(ii) The applicant's employment history with that supervisor or employer.

(iii) An explanation regarding why the actual log and work reports are not available.

(iv) The number and types of appraisal reports as reported on the license application and a statement that the number of hours of appraisal experience are accurately represented.

(v) A statement that the appraisal reports complied with the uniform standards of professional appraisal practice or the equivalent appraisal standards that were in effect at the time the appraisals were performed.

(vi) The signature of the individual who completed the affidavit and the individual's license number and type of license, if applicable, or a statement that the signer is exempt from licensure and the reason for the exemption.

(2) An applicant for a license shall demonstrate experience gained in each of the following areas of the appraisal process:

(a) Defining the appraisal problem.

(b) Gathering and analyzing data.

(c) Applying appropriate value approaches and methodology.

(d) Arriving at an opinion of value.

(e) Reporting the opinion of value.

(2) Documents that support the information that is contained in an application, an applicant's experience log, or an affidavit shall be maintained for not less than 5 years from the date of application.

History: 1996 MR 6, Effective June 28, 1996. Amended 2002 [MR 22 of 2001] Effective May 20, 2002.

R 339.23205 Prior licensing or exemptions; Michigan experience.

Rule 205. As required in the act, experience shall be valid only if an individual was properly licensed or exempt from licensure. In Michigan, to be properly licensed before January 1, 1992, an individual shall have held a real estate license in this state. Under the standards applicable to the licensing of appraisal services in Michigan before January 1, 1992, the following positions were considered exempt from real estate licensing:

(a) An employee of a financial institution whose services as an appraiser were performed for the financial institution and not offered to the public.

(b) An employee of an appraisal firm who performed appraisal tasks but did not sign reports.

(c) An employee of a firm whose appraisals were performed for the internal use of the firm and only on property owned or to be purchased by the firm for its own use.

(d) A governmental employee who appraised property for government use or purchase or whose appraisal was required for the operation of a governmental program.

History: 1996 MR 6, Effective June 28, 1996

R 339.23207 Market analysis by real estate licensees; acceptable experience.

Rule 207. Market analysis as performed by a real estate licensee may be included in the experience required in R 339.23203, if both of the following conditions are met:

(a) The applicant provides proof that he or she was properly licensed as a real estate broker, associate broker, or salesperson when the real estate market analysis was performed.

(b) The analysis is prepared in conformity with standards 1 and 2 of USPAP, and the individual can demonstrate that he or she is using similar techniques as appraisers to value properties and effectively utilizes the appraisal process.

History: 1996 MR 6, Effective June 28, 1996. Amended 2002,[MR 22 of 2001] Effective May 20, 2002.

PART 3. APPRAISER EDUCATION

R 339.23301 Definitions.

Rule 301. As used in this part:

(a) "Continuing education course" means a course that is represented as fulfilling the requirements of section 2627 of the act.

(b) "Coordinator" means an individual who assumes, on behalf of a course sponsor, the responsibility pursuant to these rules for offering courses relating to the activities of real estate appraisers.

(c) "Instructor" means an individual who is deemed qualified by the sponsor to instruct students in prelicensure or continuing education courses and who provides instruction directly and interactively in contact with students. An

instructor may utilize guest speakers, but shall bear ultimate responsibility to the sponsor for the quality of information imparted to students.

(d) "Prelicensure course" means a course that is represented as fulfilling, in whole or in part, the requirements of section 2611, 2613(a), or 2615(b) of the act.

(e) "Sponsor" means an entity which meets the requirements of section 2617(2) of the act and which offers or proposes to offer either prelicensure appraiser education or continuing education.

History: 1996 MR 6, Effective June 28, 1996. Amended 2002 [MR 22 of 2001] Effective May 20, 2002.

R 339.23303 Education; submission of documentation by license applicants.

Rule 303. (1) In submitting documentation of prelicensure education obtained before the effective date of the act or from course sponsors that are not approved pursuant to these rules, the applicant shall show that the course was designed to teach individuals to perform appraisals or to augment a basic knowledge of appraisal with general information that the instructor then relates to the performance of appraisals.

(2) General educational courses, such as business, economics, statistics, or law, or general courses in real estate or real estate law will not be considered equivalent to approved prelicensure education unless a relationship to appraisal is shown in the course description, syllabus, or curriculum outline to the extent that not less than 15 classroom hours were specifically related to appraisal. Clock hours of credit shall only be granted for hours that are specifically related to appraisal.

(3) An applicant's submission of documentation of prelicensure education or a submission of documentation of continuing education by a licensee shall include all of the following information:

(a) The date and place the course was taken.

(b) The name of the sponsor and the sponsor's current address or telephone number, if available.

(c) A copy of the course outline, syllabus, detailed curriculum, or similar information.

(d) A copy of the certificate of completion.

(e) The number of classroom hours spent in the course. To have the continuing education hours approved by the department, continuing education course sponsors utilizing distance learning systems shall have an acceptable method of ensuring that the student achieves an equivalent to classroom hours.

(4) In submitting documentation of education from institutions of higher education that are authorized to grant degrees which confer credit hours rather than classroom hours, 1 credit hour shall be equivalent to 10 classroom hours of actual instruction for term credits, and 15 classroom hours of instruction for semester credits.

(5) Documentation to support information on the application for course approval shall be maintained for not less than 5 years from the date of the application.

(6) To assist applicants, the department shall maintain a list of courses that are acceptable to the department.

History: 1996 MR 6, Effective June 28, 1996. Amended 2002 [MR 22 of 2001] Effective May 20, 2002.

R 339.23305 Assessor education.

Rule 305. A state assessor certification examination shall be deemed to be

the course completion examination for courses designed to prepare an individual for certification as an assessor under the programs of the department of treasury's assessor certification division. An assessor training class that does not include an examination within the classroom hours is acceptable education if documentation is submitted by a state-certified assessor who was certified on the basis of completion of the classes and the subsequent certification examination. An applicant whose assessor education includes course credit that was obtained by challenge examination may be given course credit for challenge examinations that were completed before July 1, 1990, in the same fashion as set forth in section 2617(4) of the act for appraisal courses. Upon completion of the required education and experience, the applicant shall be permitted to sit for the real estate appraiser licensing examination.

History: 1996 MR 6, Effective June 28, 1996

R 339.23307 Conduct of courses; changes in courses.

Rule 307. (1) A course sponsor shall comply with all of the following requirements:

(a) A course shall not be represented to licensees or to the public as meeting the requirements of the act and these rules until it has been approved by the department.

(b) Solicitation of organizational membership, employment, or business-related products and services is prohibited during qualifying course classroom hours.

(c) A sponsor shall appoint an individual as coordinator for the sponsor's courses. The coordinator shall be responsible for supervising the program of courses and assuring compliance with the code and these rules. The coordinator need not be a licensee.

(d) A sponsor shall permit only an instructor who meets the requirements of R 339.23309(2) to teach a course.

(e) Each student shall be provided with a written syllabus that contains, at a minimum, all of the following information:

(i) The course title.

(ii) The times and dates of the course offering.

(iii) The name, business address, and telephone number of the course coordinator and the name of the instructor.

(iv) A detailed outline of the subject matter to be covered and the estimated time to be devoted to each subject.

(f) A course shall not be credited for more than 10 classroom hours of instruction in 1 calendar day. Calculations of classroom hours for a course shall not include any of the following:

(i) Meals.

(ii) Breaks.

(iii) Registration.

(iv) Required reading.

(v) Outside assignments.

(g) Each course shall reflect the most current version of state and federal laws and regulations.

(h) A sponsor shall permit the department to review a course at any time or to inspect the records of a course sponsor during normal business hours.

(i) A sponsor whose programs are transferred to another entity shall arrange for student records to be maintained permanently by the successor entity. The successor entity shall assure that course completion information is available to

students who need to verify their education.

(2) The department shall accept or reject a change in, or addition to, the information provided to the department on an original application within 30 days of notification of the change. The department may determine that a proposed change cannot be made without the submission of additional supporting documentation or that the extent or number of changes requested require the sponsor to complete a new application for approval.

(3) The department may request a sponsor to provide any additional supporting documentation that is necessary for the department to approve the course.

History: 1996 MR 6, Effective June 28, 1996. Amended 2002 [MR 22 of 2001] Effective May 20, 2002.

R 339.23309 Sponsors; duties; instructors.

Rule 309. (1) Each sponsor shall be responsible for all of the following:

- (a) Compliance with all laws and rules relating to appraiser education.
- (b) Providing students with current and accurate information.
- (c) Maintaining an atmosphere that is conducive to learning in the classroom.
- (d) Assuring and certifying the attendance of students who are enrolled in courses.

(e) Providing assistance to students and responding to questions relating to course materials.

(f) Supervising all guest lecturers and relating all information that is presented to the practice of real estate appraisal.

(2) Distance education sponsors shall ensure that all of the following qualifications for their courses are complied with:

(a) The course shall be presented with an instructor available to answer questions, provide information, and monitor student attendance.

(b) The course meets 1 of the following criteria:

(i) The course has been presented by an accredited college or university (through the commission on colleges or a regional accreditation association) that offers distance education programs in other disciplines.

(ii) The course has received approval for college credit from the American council on education through its ACE/credit program, or

(iii) The course has received approval of the international distance education certification center (IDECC) for the course design and delivery mechanism and either of the following:

(a) The approval of the appraiser qualification board through the AQB course approval program.

(b) The approval of the licensing or certifying jurisdiction where the course is being offered for the content of the course.

(c) The course meets all of the following requirements:

(i) The course is equivalent to 2 classroom hours.

(ii) A student successfully completes a written examination proctored by an official approved by the presenting college or university or by the sponsoring organization consistent with the requirements of the course accreditation. If a written examination is not required for accreditation, a student successfully completes course mechanisms required for accreditation which demonstrate mastery and fluency.

(iii) The sponsor ensures that students completing the distance education courses will achieve the equivalent of the stated classroom hours per course.

(3) A sponsor shall select as instructors only individuals who can demonstrate mastery of the material being taught and who possess 1 of the following qualifications:

(a) Experience as a faculty member of an institution of higher education that is authorized to grant degrees.

(b) A state licensed, certified residential, or certified general appraiser with 3 years of appraisal experience.

(c) Other experience acceptable to the sponsor for courses other than preclicensure courses.

(d) Instructors of the uniform standards of professional appraisal practice (USPAP) shall have complied with the AQB instructor certification program as required by the real property appraiser qualification criteria, effective January 1, 2003. This requirement will be effective in this state on January 1, 2003, or on the effective date of these rules, whichever is later.

History: 1996 MR 6, Effective June 28, 1996. Amended 2002 [MR 22 of 2001] Effective May 20, 2002.

R 339.23311 Courses that are not acceptable for preclicensure or continuing education.

Rule 311. The department shall not approve a preclicensure or continuing education course, nor shall it grant credit to a licensee under section 2627(5) of the act for any of the following:

(a) Courses that do not provide student access to an instructor during the course

(b) For preclicensure education, distance education courses provided by the internet.

(c) Courses that deal with such employment-related topics as explanations of rights, benefits, and responsibilities; organizational structure; and on-the-job methods, processes, or procedures.

(d) Membership in or service in an office, or on a committee, of a professional, occupational, trade, or industry society or organization.

(e) Conferences, delegate assemblies, or similar meetings of professional organizations for policy-making purposes.

(f) Meetings and conventions of societies and associations; however, educational activities which are provided independently by an approved course sponsor and which are held concurrently with such meetings may be given credit.

(g) Attendance at lecture series, cultural performances, entertainment, or recreational meetings or activities or participation in travel groups, unless these activities are an integral part of a course that is approved pursuant to these rules.

(h) On-the-job training, apprenticeships, and other work experiences.

(i) Courses in sales promotion, motivation, marketing, psychology, time management, or mechanical office or business skills, including typing, speed-reading, or the use of office machines or equipment other than calculators or computers.

History: 1996 MR 6, Effective June 28, 1996. Amended 2002 [MR 22 of 2001] Effective May 20, 2002.

R 339.23313 Misleading information.

Rule 313. A person, including a sponsor, shall not provide misleading information about courses or any component of a course. Information is misleading when, taken as a whole, there is a probability that it will deceive the class of persons that it is intended to influence. A sponsor shall not represent that the department's approval of a course is a recommendation or endorsement of the sponsor or the content of the sponsor's courses.

History: 1996 MR 6, Effective June 28, 1996

R 339.23315 Denial, suspension, or rescission of approval to offer courses; violation of code or rules.

Rule 315. A person, including a sponsor, may be subject to the penalties of section 602 of the code, including disciplinary action against a course approval, for any of the following reasons:

(a) Failure to comply with the provisions of the code or these rules.

(b) Having a high rate of failure on a licensing examination as a result of a lack of competent instruction.

(c) Making a substantial misrepresentation regarding an appraisal education sponsor or course of study.

(d) Making a false promise of a character likely to influence, persuade, or induce regarding an appraiser education sponsor or course of study.

(e) Pursuing a continued and flagrant course of misrepresentation or the making of false promises through agents, salespersons, advertising or otherwise.

History: 1996 MR 6, Effective June 28, 1996

PRELICENSURE EDUCATION

R 339.23317 Prelicensure education; application for course approval; forms; requirements, unacceptable courses.

Rule 317. (1) An application for approval of a prelicensure real estate appraiser education course shall be made on forms provided by the department. The department shall accept or reject an application within 60 days of receipt of the completed application.

(2) The application shall include all of the following information:

(a) The course title.

(b) The number of classroom hours to be given for completion of the course.

As provided in section 2617(3) of the act, a course shall be not less than 15 classroom hours in length.

(c) The name, business address, and telephone number of the sponsor.

(d) The name, business address, and telephone number of the course coordinator.

(e) The name, license number, and qualifications of instructors.

(f) A detailed outline, as it will appear in the student syllabus, of the subject matter to be covered and the number of classroom hours to be devoted to each topic.

(g) A summary of the required topics for prelicensure that are covered in the course.

(h) A list of textbooks and reference materials.

(i) The methodology for verifying and monitoring attendance, including the class makeup policy. A sponsor shall have a written makeup policy for students who are absent from all or a part of regularly scheduled class sessions. If there are no opportunities to make up missed sessions, that policy shall be so stated.

(j) The standards a student must meet to complete the course, including assignments, projects, examinations, and the passing score on the examination that is required pursuant to the provisions of section 2617(3) of the act to be given at the completion of the course for a student to demonstrate mastery of the material covered.

(k) A sample of any advertising material, announcements, or brochures to be used to promote the course.

(l) Proof that the sponsor is an entity that may offer prelicensure real estate appraisal education courses in accordance with the provisions of section 2617(2) of the act.

(3) Distance education courses provided via the Internet are unacceptable for prelicensure education.

History: 1996 MR 6, Effective June 28, 1996. Amended 2002[MR 22 of 2001] Effective May 20, 2002.

R 339.23319 Prelicensure education; student records; permanent record; course completion certificate.

Rule 319. (1) A course sponsor shall establish and permanently maintain a record for each student. The record shall contain all of the following information:

- (a) The student's name and address.
- (b) The number of classroom hours attended.
- (c) The title of the course and the date of course completion.
- (e) The student's grade.

(2) A course sponsor shall issue a certificate of completion to a licensee who receives a passing grade in a prelicensure education course. The certificate shall include all of the following information:

- (a) The name of the student.
- (b) The name of the sponsor.
- (c) The name of the course attended.
- (d) The number of classroom hours completed by the student.
- (e) The date of course completion.
- (f) The signature of the course coordinator or instructor.

History: 1996 MR 6, Effective June 28, 1996

CONTINUING EDUCATION

R 339.23321 Continuing education; application for course approval; forms; requirements.

Rule 321. (1) An application for approval of a continuing education course shall be made on forms provided by the department. The department shall accept or reject the application within 60 days after receipt of the completed application.

(2) The application shall include all of the following information:

- (a) The course title.
- (b) The number of classroom hours to be given for completion of the course.

As provided in section 2617 of the act, a course shall be not less than 2 classroom hours in length.

(c) The name, business address, and telephone number of the sponsor.
(d) The name, business address, and telephone number of the course coordinator.

(e) The name, license number, and qualifications of instructors.

(f) A detailed outline, as it will appear in the student syllabus, of the subject

matter to be covered and the estimated time to be devoted to each topic.

(g) A list of textbooks and reference materials.

(h) The methodology for verifying and monitoring attendance. The course sponsor shall be responsible for determining the number of hours, if any, that will be granted to a licensee who does not attend all planned classroom hours. A licensee shall not receive credit for attending the same course more than 1 time during the same license renewal cycle.

(i) The standards a student must meet to complete the course, including assignments, projects, or examinations. Course examinations may be given by the sponsor at its discretion, but examinations are not required by the act or these rules for continuing education courses.

(j) A sample of any advertising material, announcements, or brochures to be used to promote the course.

(k) Proof that the sponsor is an entity that may offer continuing education courses in accordance with the provisions of section 2617(2) of the act.

(l) Information to demonstrate that the course meets the requirements of section 2627(3) and (4) of the act and is designed to improve and maintain the capability of a licensee to perform activities regulated by the act.

History: 1996 MR 6, Effective June 28, 1996. Amended 2002[MR 22 of 2001] Effective May 20, 2002.

R 339.23323 Continuing education; student records; permanent record; course completion certificate.

Rule 323. (1) A course sponsor shall establish and permanently maintain a record for each student. The record shall contain all of the following information:

(a) The student's name, address, and license number.

(b) The number of classroom hours attended.

(c) The title of the course and the date of course completion.

(2) A course sponsor shall issue a certificate of completion to a licensee who successfully completes a continuing education course. The certificate shall include all of the following information:

(a) The name of the student.

(b) The student's license number.

(c) The name of the sponsor.

(d) The name of the course attended.

(e) The number of classroom hours completed by the student.

(f) The date of course completion.

(g) The signature of the course coordinator or instructor.

(3) Within 15 business days after a course ends, a sponsor shall certify to the department the names of students who complete an approved course by a method or on forms approved by the department.

History: 1996 MR 6, Effective June 28, 1996. Amended 2002[MR 22 of 2001] Effective May 20, 2002.

R 339.23325 Continuing education; course credit for instructors.

Rule 325. Instructors may earn continuing education credit for teaching a course. Credit shall not be given if the instructor has previously obtained credit for the same course either as a student or as an instructor.

History: 1996 MR 6, Effective June 28, 1996

R 339.23326 Continuing education requirements for licensees.

Rule 326. As part of the continuing education requirements defined in section 2627 of the act, each licensee shall complete at a minimum of every 4 years a 2-hour course on Michigan appraiser licensing law and rules, or a course or seminar which contains a minimum of 2 hours devoted to Michigan appraiser licensing law and rules, and every 2 years shall successfully complete the 7-hour national USPAP update course or its equivalent. Equivalency shall be determined through the AQB course approval program or by an alternate method established by the AQB.

History: Amended 2002 [MR 22 of 2001] Effective May 20, 2002.

R 339.23327 Continuing education; real estate appraiser licensee not required to complete continuing education requirements under certain circumstances.

Rule 327. A real estate appraiser licensee who becomes licensed in another category of appraisal licensure shall not have to complete continuing education requirements for the first renewal of the new license. The new license is deemed to be an original license to which the provisions of section 2629(3) of the act apply.

History: 1996 MR 6, Effective June 28, 1996.

PART 4. STANDARDS OF CONDUCT

R 339.23401 Licensee relationship to others participating in preparation of appraisals.

Rule 401. A state-licensed or certified residential or certified general real estate appraiser shall not sign an appraisal report for a federally related transaction unless that licensee has performed the appraisal in accordance with uniform standards of professional appraisal practice and is properly licensed to perform the assignment. The material participation of any other individual in preparing the report shall be acknowledged in the report as required by the uniform standards of professional appraisal practice, regardless of the licensure status of the other individual. The signature of a state-licensed, a certified residential, or a certified general appraiser as a supervisory or co-signing appraiser shall not be used to mask the preparation of a report by an individual who is not authorized to sign the report.

History: 1996 MR 6, Effective June 28, 1996. Amended 2002[MR 22 of 2001] Effective May 20, 2002.

R 339.23403 Real estate valuation specialist; limited real estate appraiser; state-licensed real estate appraiser; certified residential appraiser; certified general real estate appraiser; authorized functions.

Rule 403. (1) If a real estate valuation specialist or limited real estate appraiser is properly qualified to undertake an assignment, a real estate valuation specialist or limited real estate appraiser may perform either of the following appraisal services if the report is signed by a supervisory state-licensed, certified residential or certified general real estate appraiser as specified in section 2607 of the act, who by virtue of signing the report, assumes full responsibility for the accuracy of the report content and conclusions:

(a) Appraise properties that are not federally related transactions or real estate related financial transactions.

(b) Assist a state-licensed, certified residential, or certified general real estate appraiser in the development of an appraisal for a federally related transaction or a real estate related financial transaction. The real estate valuation specialist or limited license appraiser shall not sign the report; however, the state-licensed, certified residential, or certified general real estate appraiser shall acknowledge the specific contributions of the real estate valuation specialist or limited license appraiser within the appraisal report.

(2) If a state-licensed real estate appraiser is properly qualified to undertake an assignment, a state-licensed real estate appraiser may perform any of the following appraisal services:

(a) Appraise properties which are not federally related transactions.

(b) Appraise 1 to 4-family residential properties, unless the transaction value is \$1,000,000.00 or more or the property is deemed to be complex and, therefore, required to be appraised by a certified residential or certified general real estate appraiser.

(c) Appraise non-residential properties for federally related transaction and real estate related financial transactions where the transaction value is less than \$250,000.00.

(d) Assist a certified residential or certified general real estate appraiser in the development of an appraisal of a complex residential property or a nonresidential property that is the subject of a federally related transaction, as appropriate. The state-licensed real estate appraiser shall not sign the report; however, the certified residential or certified general real estate appraiser shall acknowledge the specific contributions of the state-licensed real estate appraiser within the appraisal report.

(3) A certified residential real estate appraiser, if properly qualified to undertake an assignment, may perform any of the following appraisal assignments:

(a) Appraise properties that are not federally related transactions.

(b) Appraise 1 to 4 family residential properties, without regard to complexity or value.

(c) Appraise non-residential properties for federally related transactions and real estate related financial transactions where the transaction value is less than \$250,000.00.

(d) Assist a certified general real estate appraiser in the development of an appraisal of a non-residential property that is the subject of a federally related transaction, as appropriate. The certified residential real estate appraiser shall not sign the report. However, the certified general real estate appraiser shall identify the specific contributions of the certified residential appraiser within the appraisal report.

(4) Signatures are required on appraisal reports according to the following chart. The licensee authorized to sign the report shall identify all participating licensees and their contributions to the report.

GENERAL RULES - Real Estate Appraisers

Signatures Required: By License Level and Transaction Categories	Non-Federally Related Transactions & Non-Real Estate Related Financial Transactions	Federally Related Transactions 1-4 Family Properties Less than \$1 Million in Transaction Value	Federally Related Transactions 1-4 Family Properties More Than \$1 Million or Complex Properties More Than \$250,000 In Transaction Value	Federally Related Transactions Non-Residential Properties Less Than \$250,000 In Transaction Value	Federally Related Transactions Non-Residential More Than \$250,000 In Transaction Value
Limited Appraiser	YES	NO	NO	NO	NO
State-Licensed Appraiser	YES	YES	NO	YES	NO
Certified Residential Appraiser	YES	YES	YES	YES	NO
Certified General Appraiser	YES	YES	YES	YES	YES

History: 1996 MR 6, Effective June 28, 1996. Amended 2002 MR 22, Effective May 20, 2002.

R 339.23405 Advertising.

Rule 405. (1) A licensee shall state the level of license held in all advertising. Merely stating that the person is licensed does not satisfy the provisions of this subrule. However, in a directory listing or similar situation where space is limited, it shall be sufficient disclosure for a licensee to use the words certified general, certified residential, state-licensed, limited appraiser, or valuation specialist, as appropriate, without additional wording.

(2) A licensee shall place his or her license number and license level on all reports and shall produce evidence of licens ing upon request by a member of the public or a representative of the department. A license number shall not be required in advertising material.

History: 1996 MR 6, Effective June 28, 1996. Amended 2002, [MR 22 of 2001] Effective May 20, 200

STATE LICENSE FEE ACT (Excerpts)
Act 152 of 1979

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

The People of the State of Michigan enact:

338.2201 Short title.

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

History: 1979, Act 152, Eff. Jan. 1, 1980.

338.2202 Definitions.

Sec. 2. As used in this act:

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

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

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

338.2203 Fees; use; disposition.

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

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

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

338.2205 Refund of fees; rules.

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

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

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

338.2206 Late renewal fee.

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

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

338.2207 Duplicate license or registration; signed statement; fee.

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

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

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

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

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

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

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

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

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

338.2210 Correcting records and issuing new document; fee.

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

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

338.2238 State licensed real estate appraiser, certified general real estate appraiser, certified residential real estate appraiser, or limited real estate appraiser; fees; inclusion of federal fee; establishment, administration, funding, and utilization of real estate appraiser education fund; unexpended balance to be carried forward.

Sec. 38. (1) Fees for an individual licensed or seeking licensure as a state licensed real estate appraiser, certified general real estate appraiser, certified residential real estate appraiser or a limited real estate appraiser under article 26 of the occupational code, MCL 339.2601 to 339.2637, are as follows:

(a) Application processing fees:

- (i) Certified general real estate appraiser.....\$35.00
- (ii) Certified residential real estate appraiser.....\$35.00
- (iii) State licensed real estate appraiser.....\$35.00
- (iv) Limited real estate appraiser.....\$35.00

(b) Examination fees, if the department conducts its own examination:

- (i) Certified general real estate appraiser.....\$100.00
- (ii) Certified residential real estate appraiser.....\$100.00
- (iii) State licensed real estate appraiser.....\$100.00

(c) License fee, per year:

(i) Certified general real estate appraiser.....	\$175.00
(ii) Certified residential real estate appraiser	\$175.00
(iii) State licensed real estate appraiser	\$175.00
(iv) Limited real estate appraiser.....	\$125.00
(v) Temporary permit fee	\$125.00

(2) The license fee includes a fee imposed by the federal government under sections 1113 and 1114 of title XI of the financial institutions reform, recovery, and enforcement act of 1989, Public Law 101-73, 12 U.S.C. 3331 to 3351, for certified general real estate appraisers, certified residential real estate appraisers, and state licensed real estate appraisers, which shall not exceed \$50.00 per licensee and which the department shall collect and pay to the federal government pursuant to section 2637 of the occupational code, MCL 339.2637.

(3) The real estate appraiser education fund is established in the state treasury and shall be administered by the department. Ten dollars of each fee received under subsection (1)(c) shall be deposited with the state treasurer to the credit of the real estate appraiser education fund. The department shall utilize the real estate appraiser education fund only for the operation of departmental programs related to the education required of all licensees or applicants for licensure under article 26 of the occupational code. Any unexpended balance in the real estate appraiser education fund at the end of a fiscal year shall carry forward to the next fiscal year.

History: Add. 1990, Act 268, Imd. Eff. Oct. 17, 1990. Amended 1999, Act 171, Eff. Nov. 10, 1999.

FREEDOM OF INFORMATION ACT
Act 442 of 1976

AN ACT to provide for public access to certain public records of public bodies; to permit certain fees; to prescribe the powers and duties of certain public officers and public bodies; to provide remedies and penalties; and to repeal certain acts and parts of acts.

The People of the State of Michigan enact:

15.231 Short title; public policy.

Sec. 1. (1) This act shall be known and may be cited as the "freedom of information act".

(2) It is the public policy of this state that all persons, except those persons incarcerated in state or local correctional facilities, are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and public employees, consistent with this act. The people shall be informed so that they may fully participate in the democratic process.

History: 1976, Act 442, Eff. Apr. 13, 1977;--Am. 1994, Act 131, Imd. Eff. May 19, 1994.

15.232 Definitions.

Sec. 2. As used in this act:

(a) "Person" means an individual, corporation, partnership, firm, organization, or association, except that person does not include an individual serving a sentence of imprisonment in a state or county correctional facility in this state or any other state, or in a federal correctional facility.

(b) "Public body" means:

(i) A state officer, employee, agency, department, division, bureau, board, commission, council, authority, or other body in the executive branch of the state government, but does not include the governor or lieutenant governor, the executive office of the governor or lieutenant governor, or employees thereof.

(ii) An agency, board, commission, or council in the legislative branch of the state government.

(iii) A county, city, township, village, intercounty, intercity, or regional governing body, council, school district, special district, or municipal corporation, or a board, department, commission, council, or agency thereof.

(iv) Any other body which is created by state or local authority or which is primarily funded by or through state or local authority.

(v) The judiciary, including the office of the county clerk and employees thereof when acting in the capacity of clerk to the circuit court, is not included in the definition of public body.

(c) "Public record" means a writing prepared, owned, used, in the possession of, or retained by a public body in the performance of an official function, from the time it is created. This act separates public records into 2 classes: (i) those which are exempt from disclosure under section 13, and (ii) all others, which are subject to disclosure under this act.

(d) "Unusual circumstances" means any 1 or a combination of the following, but only to the extent necessary for the proper processing of a request:

(i) The need to search for, collect, or appropriately examine or review a voluminous amount of separate and distinct public records pursuant to a single request.

(ii) The need to collect the requested public records from numerous field offices, facilities, or other establishments which are located apart from the particular office receiving or processing the request.

(e) "Writing" means handwriting, typewriting, printing, photostating, photographing, photocopying, and every other means of recording, and includes letters, words, pictures, sounds, or symbols, or combinations thereof, and papers, maps, magnetic or paper tapes, photographic films or prints, microfilm, microfiche, magnetic or punched cards, discs, drums, or other means of recording or retaining meaningful content.

History: 1976, Act 442, Eff. Apr. 13, 1977;--Am. 1994, Act 131, Imd. Eff. May 19, 1994.

15.233 Public records; right to inspect, copy, or receive; subscriptions; inspection and examination; memoranda or abstracts; rules; compilation, summary, or report of information; creation of new public record; certified copies.

Sec. 3. (1) Upon an oral or written request which describes the public record sufficiently to enable the public body to find the public record, a person has a right to inspect, copy, or receive copies of a public record of a public body, except as otherwise expressly provided by section 13. A person has a right to subscribe to future issuances of public records which are created, issued, or disseminated on a regular basis. A subscription shall be valid for up to 6 months, at the request of the subscriber, and shall be renewable.

(2) A public body shall furnish a requesting person a reasonable opportunity for inspection and examination of its public records, and shall furnish reasonable facilities for making memoranda or abstracts from its public records during the usual business hours. A public body may make reasonable rules necessary to protect its public records and to prevent excessive and unreasonable interference with the discharge of its functions.

(3) This act does not require a public body to make a compilation, summary, or report of information, except as required in section 11.

This act does not require a public body to create a new public record, except as required in sections 5 and 11, and to the extent required by this act for the furnishing of copies, or edited copies pursuant to section 14(1), of an already existing public record.

(5) The custodian of a public record shall, upon request, furnish a requesting person a certified copy of a public record.

History: 1976, Act 442, Eff. Apr. 13, 1977.

Compiler's note: This section was enacted into law without a designated subsection "(4)."

15.234 Fees; waiver or reduction; affidavit; deposit; calculation of costs; provisions inapplicable to certain public records; review by bipartisan joint committee; appointment of members.

Sec. 4. (1) A public body may charge a fee for providing a copy of a public record. Subject to subsection (3), the fee shall be limited to actual mailing costs, and to the actual incremental cost of duplication or publication including labor, the cost of search, examination, review, and the deletion and separation of exempt from nonexempt information as provided in section 14. Copies of public records may be furnished without charge or at a reduced charge if the public body determines that a waiver or reduction of the fee is in the public interest because furnishing copies of the public record can be considered as primarily benefiting the general public. Except as provided in section 30(3) of Act No. 232 of the Public Acts of 1953, being section 791.230 of the Michigan Compiled Laws, a copy of a public record shall be furnished without charge for the first \$20.00 of the fee for each request, to an individual who submits an affidavit stating that the individual is then receiving public assistance or, if not receiving public assistance, stating facts showing inability to pay the cost because of indigency.

(2) At the time the request is made, a public body may request a good faith deposit from the person requesting the public record or series of public records, if the fee provided in subsection (1) exceeds \$50.00. The deposit shall not exceed 2 of the total fee.

(3) In calculating the costs under subsection (1), a public body may not attribute more than the hourly wage of the lowest paid, full-time, permanent clerical employee of the employing public body to the cost of labor incurred in duplication and mailing and to the cost of examination, review, separation, and deletion. A public body shall utilize the most economical means available for providing copies of public records. A fee shall not be charged for the cost of search, examination, review, and the deletion and separation of exempt from nonexempt information as provided in section 14 unless failure to charge a fee would result in unreasonably high costs to the public body because of the nature of the request in the particular instance, and the public body specifically identifies the nature of these unreasonably high costs. A public body shall establish and publish procedures and guidelines to implement this subsection.

(4) This section does not apply to public records prepared under an act or statute specifically authorizing the sale of those public records to the public, or where the amount of the fee for providing a copy of the public record is otherwise specifically provided by an act or statute.

(5) Three years after the effective date of this act a bipartisan joint committee of 3 members of each house shall review the operation of this section and recommend appropriate changes. The members of the house of representatives shall be appointed by the speaker of the house of representatives. The members of the senate shall be appointed by the majority leader of the senate.

History: 1976, Act 442, Eff. Apr. 13, 1977;--Am. 1988, Act 99, Imd. Eff. Apr. 11, 1988.

Constitutionality: The disclosure of public records under the freedom of information act impartially to the general public for the incremental cost of creating the record is not a granting of credit by the state in aid of private persons and does not justify nondisclosure on the theory that the information is proprietary information belonging to a public body. *Kestenbaum v. Michigan State University*, 414 Mich. 510, 417 N.W.2d 1102 (1982).

15.235 Request to inspect or receive copy of public record; response to request; failure to respond; court order to disclose or provide copies; damages; contents of notice denying request; signing notice of denial; notice extending period of response; grounds for commencement of action.

Sec. 5. (1) A person desiring to inspect or receive a copy of a public record may make an oral or written request for the public record to the public body.

(2) When a public body receives a request for a public record it shall immediately, but not more than 5 business days after the day the request is received unless otherwise agreed to in writing by the person making the request, respond to the request by 1 of the following:

(a) Grant the request.

(b) Issue a written notice to the requesting person denying the request.

(c) Grant the request in part and issue a written notice to the requesting person denying the request in part.

(d) Under unusual circumstances, issue a notice extending for not more than 10 business days the period during which the public body shall respond to the request. A public body shall not issue more than 1 notice of extension for a particular request.

(3) Failure to respond to a request as provided in subsection (2) constitutes a final decision by the public body to deny the request. If a circuit court, upon an action commenced pursuant to section 10, finds that a public body has failed to respond as provided in subsection (2), and if the court orders the public body to disclose or provide copies of the public record or a portion thereof, then the circuit court shall assess damages against the public body as provided in section 10(5).

(4) A written notice denying a request for a public record in whole or in part shall constitute a final determination by the public body to deny the request or portion thereof and shall contain:

(a) An explanation of the basis under this act or other statute for the determination that the public record, or the portion thereof, is exempt from disclosure, if that is the reason for denying the request or a portion thereof.

(b) A certificate that the public record does not exist under the name given by the requester or by another name reasonably known to the public body, if that is the reason for denying the request or a portion thereof.

(c) A description of a public record or information on a public record which is separated or deleted as provided in section 14, if a separation or deletion is made.

(d) A full explanation of the requesting person's right to seek judicial review under section 10. Notification of the right to judicial review shall include notification of the right to receive attorneys' fees and damages as provided in section 10.

(5) The individual designated in section 6 as responsible for the denial of the request shall sign the written notice of denial.

(6) If a public body issues a notice extending the period for a response to the request, the notice shall set forth the reasons for the extension and the date by which the public body shall do 1 of the following:

(a) Grant the request.

(b) Issue a written notice to the requesting person denying the request.

(c) Grant the request in part and issue a written notice to the requesting person denying the request in part.

(7) If a public body makes a final determination to deny in whole or in part a request to inspect or receive a copy of a public record or portion thereof, the requesting person may commence an action in circuit court, as provided in section 10.

History: 1976, Act 442, Eff. Apr. 13, 1977;--Am. 1978, Act 329, Imd. Eff. July 11, 1978.

15.236 Persons responsible for approving denial of request for public record.

Sec. 6. (1) For a public body which is a city, village, township, county, or state department, or under the control thereof, the chief administrative officer of that city, village, township, county, or state department, or an individual designated in writing by that chief administrative officer, shall be responsible for approving a denial under section 5(4) and (5). In a county not having an executive form of government, the chairperson of the county board of commissioners shall be considered the chief administrative officer for purposes of this subsection.

(2) For all other public bodies, the chief administrative officer of the respective public body, or an individual designated in writing by that chief administrative officer, shall be responsible for approving a denial under section 5(4) and (5).

History: 1976, Act 442, Eff. Apr. 13, 1977.

15.240 Action to compel disclosure of public records; commencement; orders; jurisdiction; de novo proceeding; burden of proof; private view of public record; contempt; assignment of action or appeal for hearing, trial, or argument; attorneys' fees, costs, and disbursements; assessment of award; damages.

Sec. 10. (1) If a public body makes a final determination to deny a request or a portion thereof, the requesting person may commence an action in the circuit court to compel disclosure of the public records. If the court determines that the public records are not exempt from disclosure, the court shall order the public body to cease withholding or to produce a public record or a portion thereof wrongfully withheld, regardless of the location of the public record. The circuit court for the county in which the complainant resides or has his principal place of business, or the circuit court for the county in which the public record or an office of the public body is located shall have jurisdiction to issue the order. The court shall determine the matter de novo and the burden is on the public body to sustain its denial. The court, on its own motion, may view the public record in controversy in private before reaching a decision. Failure to comply with an order of the court may be punished as contempt of court.

(2) An action under this section arising from the denial of an oral request may

not be commenced unless the requesting person confirms the oral request in writing not less than 5 days before commencement of the action.

(3) An action commenced pursuant to this section and appeals therefrom shall be assigned for hearing and trial or for argument at the earliest practicable date and expedited in every way.

(4) If a person asserting the right to inspect or to receive a copy of a public record or a portion thereof prevails in an action commenced pursuant to this section, the court shall award reasonable attorneys' fees, costs, and disbursements. If the person prevails in part, the court may in its discretion award reasonable attorneys' fees, costs, and disbursements or an appropriate portion thereof. The award shall be assessed against the public body liable for damages under subsection (5).

(5) In an action commenced pursuant to this section, if the circuit court finds that the public body has arbitrarily and capriciously violated this act by refusal or delay in disclosing or providing copies of a public record, the court shall, in addition to any actual or compensatory damages, award punitive damages in the amount of \$500.00 to the person seeking the right to inspect or receive a copy of a public record. The damages shall not be assessed against an individual, but shall be assessed against the next succeeding public body, not an individual, pursuant to whose public function the public record was kept or maintained.

History: 1976, Act 442, Eff. Apr. 13, 1977;--Am. 1978, Act 329, Imd. Eff. July 11, 1978.

15.241 Matters required to be published and made available by state agencies; form of publications; effect on person of matter not published and made available; exception; action to compel compliance by state agency; order; attorneys' fees, costs, and disbursements; jurisdiction; definitions.

Sec. 11. (1) A state agency shall publish and make available to the public all of the following:

(a) Final orders or decisions in contested cases and the records on which they were made.

(b) Promulgated rules.

(c) Other written statements which implement or interpret laws, rules, or policy, including but not limited to guidelines, manuals, and forms with instructions, adopted or used by the agency in the discharge of its functions.

(2) Publications may be in pamphlet, loose-leaf, or other appropriate form in printed, mimeographed, or other written matter.

(3) Except to the extent that a person has actual and timely notice of the terms thereof, a person shall not in any manner be required to resort to, or be adversely affected by, a matter required to be published and made available, if the matter is not so published and made available.

(4) This section does not apply to public records which are exempt from disclosure under section 13.

(5) A person may commence an action in the circuit court to compel a state agency to comply with this section. If the court determines that the state agency has failed to comply, the court shall order the state agency to comply and shall award reasonable attorneys' fees, costs, and disbursements to the person commencing the action. The circuit court for the county in which the state agency is located shall have jurisdiction to issue the order.

(6) As used in this section, "state agency", "contested case", and "rules" shall

have the same meanings as ascribed to those terms in Act No. 306 of the Public Acts of 1969, as amended, being sections 24.201 to 24.315 of the Michigan Compiled Laws.

History: 1976, Act 442, Eff. Apr. 13, 1977.

15.243 Exemptions from disclosure; withholding of information required by law.

Sec. 13. (1) A public body may exempt from disclosure as a public record under this act:

(a) Information of a personal nature where the public disclosure of the information would constitute a clearly unwarranted invasion of an individual's privacy.

(b) Investigating records compiled for law enforcement purposes, but only to the extent that disclosure as a public record would do any of the following:

(i) Interfere with law enforcement proceedings.

(ii) Deprive a person of the right to a fair trial or impartial administrative adjudication.

(iii) Constitute an unwarranted invasion of personal privacy.

(iv) Disclose the identity of a confidential source, or if the record is compiled by a criminal law enforcement agency in the course of a criminal investigation, disclose confidential information furnished only by a confidential source.

(v) Disclose law enforcement investigative techniques or procedures.

(vi) Endanger the life or physical safety of law enforcement personnel.

(c) A public record that if disclosed would prejudice a public body's ability to maintain the physical security of custodial or penal institutions occupied by persons arrested or convicted of a crime or admitted because of a mental disability, unless the public interest in disclosure under this act outweighs the public interest in nondisclosure.

(d) Records or information specifically described and exempted from disclosure by statute.

(e) Information the release of which would prevent the public body from complying with section 438 of subpart 2 of part C of the general education provisions act, title IV of Public Law 90-247, 20 U.S.C. 1232g, commonly referred to as the family educational rights and privacy act of 1974.

(f) A public record or information described in this section that is furnished by the public body originally compiling, preparing, or receiving the record or information to a public officer or public body in connection with the performance of the duties of that public officer or public body, if the considerations originally giving rise to the exempt nature of the public record remain applicable.

(g) Trade secrets or commercial or financial information voluntarily provided to an agency for use in developing governmental policy if:

(i) The information is submitted upon a promise of confidentiality by the public body.

(ii) The promise of confidentiality is authorized by the chief administrative officer of the public body or by an elected official at the time the promise is made.

(iii) A description of the information is recorded by the public body within a reasonable time after it has been submitted, maintained in a central place within the public body, and made available to a person upon request. This subdivision does not apply to information submitted as required by law or as a condition of receiving a governmental contract, license, or other benefit.

(h) Information or records subject to the attorney-client privilege.

(i) Information or records subject to the physician-patient privilege, the psychologist-patient privilege, the minister, priest, or Christian science practitioner privilege, or other privilege recognized by statute or court rule.

(j) A bid or proposal by a person to enter into a contract or agreement, until the time for the public opening of bids or proposals, or if a public opening is not to be conducted, until the time for the receipt of bids or proposals has expired.

(k) Appraisals of real property to be acquired by the public body until (i) an agreement is entered into; or (ii) 3 years has elapsed since the making of the appraisal, unless litigation relative to the acquisition has not yet terminated.

(l) Test questions and answers, scoring keys, and other examination instruments or data used to administer a license, public employment, or academic examination, unless the public interest in disclosure under this act outweighs the public interest in nondisclosure.

(m) Medical, counseling, or psychological facts or evaluations concerning an individual if the individual's identity would be revealed by a disclosure of those facts or evaluation.

(n) Communications and notes within a public body or between public bodies of an advisory nature to the extent that they cover other than purely factual materials and are preliminary to a final agency determination of policy or action. This exemption does not apply unless the public body shows that in the particular instance the public interest in encouraging frank communications between officials and employees of public bodies clearly outweighs the public interest in disclosure. This exemption does not constitute an exemption under state law for purposes of section 8(h) of the open meetings act, Act No. 267 of the Public Acts of 1976, being section 15.268 of the Michigan Compiled Laws. As used in this subdivision, "determination of policy or action" includes a determination relating to collective bargaining, unless the public record is otherwise required to be made available under Act No. 336 of the Public Acts of 1947, as amended, being sections 423.201 to 423.216 of the Michigan Compiled Laws.

(o) Records of law enforcement communication codes, or plans for deployment of law enforcement personnel, which if disclosed would prejudice a public body's ability to protect the public safety unless the public interest in disclosure under this act outweighs the public interest in nondisclosure in the particular instance.

(p) Information which would reveal the exact location of archaeological sites. The secretary of state may promulgate rules pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, as amended, being sections 24.201 to 24.328 of the Michigan Compiled Laws, to provide for the disclosure of the location of archaeological sites for purposes relating to the preservation or scientific examination of sites.

(q) Testing data developed by a public body in determining whether bidders' products meet the specifications for purchase of those products by the public body, if disclosure of the data would reveal that only 1 bidder has met the specifications. This subdivision does not apply after 1 year has elapsed from the time the public body completes the testing.

(r) Academic transcripts of an institution of higher education established under sections 5, 6, or 7 of article VIII of the state constitution of 1963, where the record pertains to a student who is delinquent in the payment of financial obligations to the institution.

(s) Records of any campaign committee including any committee that receives money from a state campaign fund.

(t) Unless the public interest in disclosure outweighs the public interest in nondisclosure in the particular instance, public records of a police or sheriff's agency or department, the release of which would do any of the following:

(i) Identify or provide a means of identifying an informer.

(ii) Identify or provide a means of identifying a law enforcement undercover officer or agent or a plain clothes officer as a law enforcement officer or agent.

(iii) Disclose the personal address or telephone number of law enforcement officers or agents or any special skills that they may have.

(iv) Disclose the name, address, or telephone numbers of family members, relatives, children, or parents of law enforcement officers or agents.

(v) Disclose operational instructions for law enforcement officers or agents.

(vi) Reveal the contents of staff manuals provided for law enforcement officers or agents.

(vii) Endanger the life or safety of law enforcement officers or agents or their families, relatives, children, parents, or those who furnish information to law enforcement departments or agencies.

(viii) Identify or provide a means of identifying a person as a law enforcement officer, agent, or informer.

(ix) Disclose personnel records of law enforcement agencies.

(x) Identify or provide a means of identifying residences which law enforcement agencies are requested to check in the absence of their owners or tenants.

(u) Except as otherwise provided in this subdivision, records and information pertaining to an investigation or a compliance conference conducted by the department of commerce under article 15 of the public health code, Act No. 368 of the Public Acts of 1978, being sections 333.16101 to 333.18838 of the Michigan Compiled Laws, before a complaint is issued. This subdivision does not apply to records and information pertaining to any of the following:

(i) The fact that an allegation has been received and an investigation is being conducted, and the date the allegation was received.

(ii) The fact that an allegation was received by the department of commerce; the fact that the department of commerce did not issue a complaint for the allegation; and the fact that the allegation was dismissed.

(2) This act does not authorize the withholding of information otherwise required by law to be made available to the public or to a party in a contested case under Act No. 306 of the Public Acts of 1969, as amended.

History: 1976, Act 442, Eff. Apr. 13, 1977;--Am. 1978, Act 329, Imd. Eff. July 11, 1978; --Am. 1993, Act 82, Eff. Apr. 1, 1994.

15.243a Salary records of employee or other official of institution of higher education, school district, intermediate school district, or community college available to public on request.

Sec. 13a. Notwithstanding section 13, an institution of higher education established under section 5, 6, or 7 of article 8 of the state constitution of 1963; a school district as defined in section 6 of Act No. 451 of the Public Acts of 1976, being section 380.6 of the Michigan Compiled Laws; an intermediate school district as defined in section 4 of Act No. 451 of the Public Acts of 1976, being section 380.4 of the Michigan Compiled Laws; or a community college established under Act No. 331 of the Public Acts of 1966, as amended, being sections 389.1 to 389.195 of the Michigan Compiled Laws shall upon request

make available to the public the salary records of an employee or other official of the institution of higher education, school district, intermediate school district, or community college.

History: Add. 1979, Act 130, Imd. Eff. Oct. 26, 1979.

15.244 Separation of exempt and nonexempt material; design of public record; description of material exempted.

Sec. 14. (1) If a public record contains material which is not exempt under section 13, as well as material which is exempt from disclosure under section 13, the public body shall separate the exempt and nonexempt material and make the nonexempt material available for examination and copying.

(2) When designing a public record, a public body shall, to the extent practicable, facilitate a separation of exempt from nonexempt information. If the separation is readily apparent to a person requesting to inspect or receive copies of the form, the public body shall generally describe the material exempted unless that description would reveal the contents of the exempt information and thus defeat the purpose of the exemption.

History: 1976, Act 442, Eff. Apr. 13, 1977.

15.245 Repeal of §§ 24.221, 24.222, and 24.223.

Sec. 15. Sections 21, 22 and 23 of Act No. 306 of the Public Acts of 1969, as amended, being sections 24.221, 24.222 and 24.223 of the Michigan Compiled Laws, are repealed.

History: 1976, Act 442, Eff. Apr. 13, 1977.

15.246 Effective date.

Sec. 16. This act shall take effect 90 days after being signed by the governor.

History: 1976, Act 442, Eff. Apr. 13, 1977.

OCCUPATIONAL LICENSE FOR FORMER OFFENDERS
Act 381 of 1974

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

The People of the State of Michigan enact:

338.41 "Good moral character" and "principal department" defined.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 4. This act shall not bar the use by a licensing board or agency in its determination of a person's fitness, of any other public record, not related to arrest or prosecution, or of any other source of unbiased and accurate information.

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

338.45 Finding person unqualified; statement; rehearing.

Sec. 5. When a person is found to be unqualified for a license because of a lack of good moral character, or similar criteria, the person shall be furnished by the board or agency with a statement to this effect. The statement shall contain a complete record of the evidence upon which the determination was based. The person shall be entitled, as of right, to a rehearing on the issue before the board if he or she has relevant evidence not previously considered, regarding his or her qualifications.

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

338.46 Judicial review; statement; order.

Sec. 6. A person, aggrieved by a licensing agency or board determination regarding the person's possession of good moral character, if unsatisfied by his or her administrative appeal as provided in section 5, may bring an action in circuit court for a review of the record. If, in the opinion of the circuit court, the record does not disclose a lack of good moral character, as defined in this act, the court shall so state and shall order the board to issue the license, when all other licensing requirements are complied with.

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

338.47 Power to discipline licensees not affected.

Sec. 7. This act does not affect the power of a licensing agency to discipline licensees under its jurisdiction for prohibited acts of professional misconduct or dishonesty.

History: 1974, Act 381, Eff. Apr. 1, 1975.

OPEN MEETINGS ACT
Act 267 of 1976

AN ACT to require certain meetings of certain public bodies to be open to the public; to require notice and the keeping of minutes of meetings; to provide for enforcement; to provide for invalidation of governmental decisions under certain circumstances; to provide penalties; and to repeal certain acts and parts of acts.

The People of the State of Michigan enact:

15.261 Short title; effect of act on certain charter provisions, ordinances, or resolutions.

Sec. 1. (1) This act shall be known and may be cited as the "Open meetings act".

(2) This act shall supersede all local charter provisions, ordinances, or resolutions which relate to requirements for meetings of local public bodies to be open to the public.

(3) After the effective date of this act, nothing in this act shall prohibit a public body from adopting an ordinance, resolution, rule, or charter provision which would require a greater degree of openness relative to meetings of public bodies than the standards provided for in this act.

History: 1976, Act 267, Eff. Mar. 31, 1977.

15.262 Definitions.

Sec. 2. As used in this act:

(a) "Public body" means any state or local legislative or governing body, including a board, commission, committee, subcommittee, authority, or council, which is empowered by state constitution, statute, charter, ordinance, resolution, or rule to exercise governmental or proprietary authority or perform a governmental or proprietary function, or a lessee thereof performing an essential public purpose and function pursuant to the lease agreement.

(b) "Meeting" means the convening of a public body at which a quorum is present for the purpose of deliberating toward or rendering a decision on a public policy.

(c) "Closed session" means a meeting or part of a meeting of a public body which is closed to the public.

(d) "Decision" means a determination, action, vote, or disposition upon a motion, proposal, recommendation, resolution, order, ordinance, bill, or measure on which a vote by members of a public body is required and by which a public body effectuates or formulates public policy.

History: 1976, Act 267, Eff. Mar. 31, 1977.

15.263 Meetings, decisions, and deliberations of public body; requirements; attending or addressing meeting of public body; tape-recording, videotaping, broadcasting, and telecasting proceedings; rules and regulations; exclusion from meeting; exemptions.

Sec. 3. (1) All meetings of a public body shall be open to the public and shall be held in a place available to the general public. All persons shall be permitted to attend any meeting except as otherwise provided in this act. The right of a person to attend a meeting of a public body includes the right to tape-record, to videotape, to broadcast live on radio, and to telecast live on television the proceedings of a public body at a public meeting. The exercise of this right shall not be dependent upon the prior approval of the public body. However, a public body may establish reasonable rules and regulations in order to minimize the possibility of disrupting the meeting.

(2) All decisions of a public body shall be made at a meeting open to the public.

(3) All deliberations of a public body constituting a quorum of its members shall take place at a meeting open to the public except as provided in this section and sections 7 and 8.

(4) A person shall not be required as a condition of attendance at a meeting of a public body to register or otherwise provide his or her name or other information or otherwise to fulfill a condition precedent to attendance.

(5) A person shall be permitted to address a meeting of a public body under rules established and recorded by the public body. The legislature or a house of the legislature may provide by rule that the right to address may be limited to prescribed times at hearings and committee meetings only.

(6) A person shall not be excluded from a meeting otherwise open to the public except for a breach of the peace actually committed at the meeting.

(7) This act does not apply to the following public bodies only when deliberating the merits of a case:

(a) The worker's compensation appeal board created under the worker's disability compensation act of 1969, Act No. 317 of the Public Acts of 1969, as amended, being sections 418.101 to 418.941 of the Michigan Compiled Laws.

(b) The employment security board of review created under the Michigan employment security act, Act No. 1 of the Public Acts of the Extra Session of 1936, as amended, being sections 421.1 to 421.73 of the Michigan Compiled Laws.

(c) The state tenure commission created under Act No. 4 of the Public Acts of the Extra Session of 1937, as amended, being sections 38.71 to 38.191 of the Michigan Compiled Laws, when acting as a board of review from the decision of a controlling board.

(d) An arbitrator or arbitration panel appointed by the employment relations commission under the authority given the commission by Act No. 176 of the Public Acts of 1939, as amended, being sections 423.1 to 423.30 of the Michigan Compiled Laws.

(e) An arbitration panel selected under chapter 50A of the revised judicature act of 1961, Act No. 236 of the Public Acts of 1961, being sections 600.5040 to 600.5065 of the Michigan Compiled Laws.

(f) The Michigan public service commission created under Act No. 3 of the Public Acts of 1939, being sections 460.1 to 460.8 of the Michigan Compiled Laws.

(8) This act does not apply to an association of insurers created under the insurance code of 1956, Act No. 218 of the Public Acts of 1956, being sections 500.100 to 500.8302 of the Michigan Compiled Laws, or other association or facility formed under Act No. 218 of the Public Acts of 1956 as a nonprofit organization of insurer members.

(9) This act does not apply to a committee of a public body which adopts a nonpolicy-making resolution of tribute or memorial which resolution is not adopted at a meeting.

(10) This act does not apply to a meeting which is a social or chance gathering or conference not designed to avoid this act.

(11) This act shall not apply to the Michigan veterans' trust fund board of trustees or a county or district committee created under Act No. 9 of the Public Acts of the first extra session of 1946, being sections 35.601 to 35.610 of the Michigan Compiled Laws, when the board of trustees or county or district committee is deliberating the merits of an emergent need. A decision of the board of trustees or county or district committee made under this subsection shall be reconsidered by the board or committee at its next regular or special meeting consistent with the requirements of this act. "Emergent need" means a situation which the board of trustees, by rules promulgated under the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, as amended, being sections 24.201 to 24.328 of the Michigan Compiled Laws, determines requires immediate action.

History: 1976, Act 267, Eff. Mar. 31, 1977;--Am. 1981, Act 161, Imd. Eff. Nov. 30, 1981;--Am. 1986, Act 269, Imd. Eff. Dec. 19, 1986;--Am. 1988, Act 158, Imd. Eff. June 14, 1988;--Am. 1988, Act 278, Imd. Eff. July 27, 1988.
Administrative rules: R 35.621 of the Michigan Administrative Code.

15.264 Public notice of meetings generally; contents; places of posting.

Sec. 4. The following provisions shall apply with respect to public notice of meetings:

(a) A public notice shall always contain the name of the public body to which the notice applies, its telephone number if one exists, and its address.

(b) A public notice for a public body shall always be posted at its principal office and any other locations considered appropriate by the public body. Cable television may also be utilized for purposes of posting public notice.

(c) If a public body is a part of a state department, part of the legislative or judicial branch of state government, part of an institution of higher education, or part of a political subdivision or school district, a public notice shall also be posted in the respective principal office of the state department, the institution of higher education, clerk of the house of representatives, secretary of the state senate, clerk of the supreme court, or political subdivision or school district.

(d) If a public body does not have a principal office, the required public notice for a local public body shall be posted in the office of the county clerk in which the public body serves and the required public notice for a state public body shall be posted in the office of the secretary of state.

History: 1976, Act 267, Eff. Mar. 31, 1977;--Am. 1984, Act 87, Imd. Eff. Apr. 19, 1984.

15.265 Public notice of regular meetings, change in schedule of regular meetings, rescheduled regular meetings, or special meetings; time for posting; statement of date, time, and place; applicability of subsection (4); recess or adjournment; emergency sessions; meeting in residential dwelling; notice.

Sec. 5. (1) A meeting of a public body shall not be held unless public notice is given as provided in this section by a person designated by the public body.

(2) For regular meetings of a public body, there shall be posted within 10 days after the first meeting of the public body in each calendar or fiscal year a public notice stating the dates, times, and places of its regular meetings.

(3) If there is a change in the schedule of regular meetings of a public body, there shall be posted within 3 days after the meeting at which the change is made, a public notice stating the new dates, times, and places of its regular meetings.

(4) Except as provided in this subsection or in subsection (6), for a rescheduled regular or a special meeting of a public body, a public notice stating the date, time, and place of the meeting shall be posted at least 18 hours before the meeting. The requirement of 18-hour notice shall not apply to special meetings of subcommittees of a public body or conference committees of the state legislature. A conference committee shall give a 6-hour notice. A second conference committee shall give a 1-hour notice. Notice of a conference committee meeting shall include written notice to each member of the conference committee and the majority and minority leader of each house indicating time and place of the meeting. This subsection does not apply to a public meeting held pursuant to section 4(2) to (5) of Act No. 239 of the Public Acts of 1955, as amended, being section 200.304 of the Michigan Compiled Laws.

(5) A meeting of a public body which is recessed for more than 36 hours shall be reconvened only after public notice, which is equivalent to that required under subsection (4), has been posted. If either house of the state legislature is adjourned or recessed for less than 18 hours, the notice provisions of subsection (4) are not applicable. Nothing in this section shall bar a public body from meeting in emergency session in the event of a severe and imminent threat to the health, safety, or welfare of the public when 2/3 of the members serving on the body decide that delay would be detrimental to efforts to lessen or respond to the threat.

(6) A meeting of a public body may only take place in a residential dwelling if a nonresidential building within the boundary of the local governmental unit or school system is not available without cost to the public body. For a meeting of a public body which is held in a residential dwelling, notice of the meeting shall be published as a display advertisement in a newspaper of general circulation in the city or township in which the meeting is to be held. The notice shall be published not less than 2 days before the day on which the meeting is held, and shall state the date, time, and place of the meeting. The notice, which shall be at the bottom of the display advertisement and which shall be set off in a conspicuous manner, shall include the following language: "This meeting is open to all members of the public under Michigan's open meetings act".

History: 1976, Act 267, Eff. Mar. 31, 1977;--Am. 1978, Act 256, Imd. Eff. June 21, 1978;--Am. 1982, Act 134, Imd. Eff. Apr. 22, 1982;--Am. 1984, Act 167, Imd. Eff. June 29, 1984.

15.266 Providing copies of public notice on written request; fee.

Sec. 6. (1) Upon the written request of an individual, organization, firm, or corporation, and upon the requesting party's payment of a yearly fee of not more than the reasonable estimated cost for printing and postage of such notices, a public body shall send to the requesting party by first class mail a copy of any notice required to be posted pursuant to section 5(2) to (5).

(2) Upon written request, a public body, at the same time a public notice of a meeting is posted pursuant to section 5, shall provide a copy of the public notice of that meeting to any newspaper published in the state and to any radio and television station located in the state, free of charge.

History: 1976, Act 267, Eff. Mar. 31, 1977.

15.267 Closed sessions; roll call vote; separate set of minutes.

Sec. 7. (1) A 2/3 roll call vote of members elected or appointed and serving is required to call a closed session, except for the closed sessions permitted under section 8(a), (b), (c), (g), and (i). The roll call vote and the purpose or purposes for calling the closed session shall be entered into the minutes of the meeting at which the vote is taken.

(2) A separate set of minutes shall be taken by the clerk or the designated secretary of the public body at the closed session. These minutes shall be retained by the clerk of the public body, are not available to the public, and shall only be disclosed if required by a civil action filed under section 10, 11, or 13. These minutes may be destroyed 1 year and 1 day after approval of the minutes of the regular meeting at which the closed session was approved.

History: 1976, Act 267, Eff. Mar. 31, 1977;--Am. 1993, Act 81, Eff. Apr. 1, 1994.

15.268 Closed sessions; permissible purposes.

Sec. 8. A public body may meet in a closed session only for the following purposes:

(a) To consider the dismissal, suspension, or disciplining of, or to hear complaints or charges brought against, or to consider a periodic personnel evaluation of, a public officer, employee, staff member, or individual agent, if the named person requests a closed hearing. A person requesting a closed hearing may rescind the request at any time, in which case the matter at issue shall be considered after the rescission only in open sessions.

(b) To consider the dismissal, suspension, or disciplining of a student if the public body is part of the school district, intermediate school district, or institution of higher education that the student is attending, and if the student or the student's parent or guardian requests a closed hearing.

(c) For strategy and negotiation sessions connected with the negotiation of a collective bargaining agreement if either negotiating party requests a closed hearing.

(d) To consider the purchase or lease of real property up to the time an option to purchase or lease that real property is obtained.

(e) To consult with its attorney regarding trial or settlement strategy in connection with specific pending litigation, but only if an open meeting would have a detrimental financial effect on the litigating or settlement position of the public body.

(f) To review the specific contents of an application for employment or appointment to a public office if the candidate requests that the application remain confidential. However, all interviews by a public body for employment or appointment to a public office shall be held in an open meeting pursuant to this act.

(g) Partisan caucuses of members of the state legislature.

(h) To consider material exempt from discussion or disclosure by state or federal statute.

(i) For a compliance conference conducted by the department of commerce under section 16231 of the public health code, Act No. 368 of the Public Acts of 1978, being section 333.16231 of the Michigan Compiled Laws, before a complaint is issued.

History: 1976, Act 267, Eff. Mar. 31, 1977;--Am. 1984, Act 202, Imd. Eff. July 3, 1984;--Am. 1993, Act 81, Eff. Apr. 1, 1994.

15.269 Minutes generally.

Sec. 9. (1) Each public body shall keep minutes of each meeting showing the date, time, place, members present, members absent, any decisions made at a meeting open to the public, and the purpose or purposes for which a closed session is held. The minutes shall include all roll call votes taken at the meeting. Corrections in the minutes shall be made not later than the next meeting after the meeting to which the minutes refer. Corrected minutes shall be available no later than the next subsequent meeting after correction. The corrected minutes shall show both the original entry and the correction.

(2) Minutes shall be public records open to public inspection and shall be available at the address designated on posted public notices pursuant to section 4. Copies of the minutes shall be available to the public at the reasonable estimated cost for printing and copying.

(3) Proposed minutes shall be available for public inspection not more than 8 business days after the meeting to which the minutes refer. Approved minutes shall be available for public inspection not later than 5 business days after the meeting at which the minutes are approved by the public body.

History: 1976, Act 267, Eff. Mar. 31, 1977;--Am. 1982, Act 130, Imd. Eff. Apr. 20, 1982.

15.270 Decisions of public body; presumption; civil action to invalidate; jurisdiction; venue; reenactment of disputed decision.

Sec. 10. (1) Decisions of a public body shall be presumed to have been adopted in compliance with the requirements of this act. The attorney general, the prosecuting attorney of the county in which the public body serves, or any person may commence a civil action in the circuit court to challenge the validity of a decision of a public body made in violation of this act.

(2) A decision made by a public body may be invalidated if the public body has not complied with the requirements of section 3(1), (2), and (3) in making the decision or if failure to give notice in accordance with section 5 has interfered with substantial compliance with section 3(1), (2), and (3) and the court finds that the noncompliance or failure has impaired the rights of the public under this act.

(3) The circuit court shall not have jurisdiction to invalidate a decision of a public body for a violation of this act unless an action is commenced pursuant to this section within the following specified period of time:

(a) Within 60 days after the approved minutes are made available to the public by the public body except as otherwise provided in subdivision (b).

(b) If the decision involves the approval of contracts, the receipt or acceptance of bids, the making of assessments, the procedures pertaining to the issuance of bonds or other evidences of indebtedness, or the submission of a borrowing proposal to the electors, within 30 days after the approved minutes are made available to the public pursuant to that decision.

(4) Venue for an action under this section shall be any county in which a local public body serves or, if the decision of a state public body is at issue, in Ingham county.

(5) In any case where an action has been initiated to invalidate a decision of a public body on the ground that it was not taken in conformity with the requirements of this act, the public body may, without being deemed to make any admission contrary to its interest, reenact the disputed decision in conformity with this act. A decision reenacted in this manner shall be effective from the date of reenactment and shall not be declared invalid by reason of a deficiency in the procedure used for its initial enactment.

History: 1976, Act 267, Eff. Mar. 31, 1977.

15.271 Civil action to compel compliance or enjoin noncompliance; commencement; venue; security not required; commencement of action for mandamus; court costs and attorney fees.

Sec. 11. (1) If a public body is not complying with this act, the attorney general, prosecuting attorney of the county in which the public body serves, or a person may commence a civil action to compel compliance or to enjoin further noncompliance with this act.

(2) An action for injunctive relief against a local public body shall be commenced in the circuit court, and venue is proper in any county in which the public body serves. An action for an injunction against a state public body shall be commenced in the circuit court and venue is proper in any county in which the public body has its principal office, or in Ingham county. If a person commences an action for injunctive relief, that person shall not be required to post security as a condition for obtaining a preliminary injunction or a temporary restraining order.

(3) An action for mandamus against a public body under this act shall be commenced in the court of appeals.

(4) If a public body is not complying with this act, and a person commences a civil action against the public body for injunctive relief to compel compliance or to enjoin further noncompliance with the act and succeeds in obtaining relief in the action, the person shall recover court costs and actual attorney fees for the action.

History: 1976, Act 267, Eff. Mar. 31, 1977.

15.272 Violation as misdemeanor; penalty.

Sec. 12. (1) A public official who intentionally violates this act is guilty of a misdemeanor punishable by a fine of not more than \$1,000.00.

(2) A public official who is convicted of intentionally violating a provision of this act for a second time within the same term shall be guilty of a misdemeanor and shall be fined not more than \$2,000.00, or imprisoned for not more than 1 year, or both.

History: 1976, Act 267, Eff. Mar. 31, 1977.

15.273 Violation; liability.

Sec. 13. (1) A public official who intentionally violates this act shall be personally liable in a civil action for actual and exemplary damages of not more than \$500.00 total, plus court costs and actual attorney fees to a person or group of persons bringing the action.

(2) Not more than 1 action under this section shall be brought against a public official for a single meeting. An action under this section shall be commenced within 180 days after the date of the violation which gives rise to the cause of action.

(3) An action for damages under this section may be joined with an action for injunctive or exemplary relief under section 11.

History: 1976, Act 267, Eff. Mar. 31, 1977.

15.274 Repeal of §§ 15.251 to 15.253.

Sec. 14. Act No. 261 of the Public Acts of 1968, being sections 15.251 to 15.253 of the Compiled Laws of 1970, is repealed.

History: 1976, Act 267, Eff. Mar. 31, 1977.

15.275 Effective date.

Sec. 15. This act shall take effect January 1, 1977.

History: 1976, Act 267, Eff. Mar. 31, 1977.

DEPARTMENT OF CONSUMER AND INDUSTRY SERVICES

OCCUPATIONAL BOARDS

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

PART 1. LICENSE AND REGISTRATION RENEWALS

R 339.1001 Definitions.

(1) As used in these rules:

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

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

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

History: 1979 ACS 8, Effective September 17, 1981. Amended 2000 MR 9 Effective August 31, 2000.

R 339.1002 Certain occupations; license and license renewal expiration.

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

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

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

History: 1979 ACS 8, Effective September 17, 198. Amended 1993 MR 8, Effective September 15, 1993.

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

Rule 3. (1) Except as provided in R 339.1002 and subrule (2) of this rule, licenses or registrations and license or registration renewals that are issued for foresters, landscape architects, cosmetology, barbers, community planners, mortuary science, nursing home administrators, architects, professional surveyors, professional engineers, hearing aid dealers, accountancy, real estate appraisers, and residential builders and maintenance and alteration contractors, shall expire biennially on the following dates and shall be renewed every 2 years thereafter:

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

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

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

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

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

History: 1979 ACS 8, Effective September 17, 1981. Amended 1993 MR 8, Effective September 15, 1993. Amended 2000 MR 9, Effective August 31, 2000.

R 339.1004 Biennial renewal fees.

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

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

History:1979 ACS 8, Effective September 17, 1981. Amended 1993 MR 8, Effective September 15, 1993.

R 339.1005 Rescinded.

History: 1979 ACS 8, Effective September 17, 1981. Rescinded 1993 MR 8 Effective September 15, 1993.

PART 7. DISCIPLINARY PROCEEDINGS

R 339.1701 Definitions.

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

- (a) "Adjournment" means an adjournment, stay, continuation, or delay of a contested case hearing at any time after the issuance of a formal complaint.
- (b) "Administrative procedures act" means Act No. 306 of the Public Acts of 1969, as amended, being '24.201 et seq. of the Michigan Compiled Laws.
- (c) "Compliance conference" means the conference provided for in accordance with the provisions of section 92 of the administrative procedures act.
- (d) "Days" means calendar days.
- (e) "Department" means the department of consumer and industry services.
- (f) "Informal conference" means the conference defined in section 504 of the occupational code, but does not mean a compliance conference provided in accordance with the provisions of section 92 of the administrative procedures act.
- (g) "Licensing law" means a law under which the department issues a license, registration, or other authorization to practice an occupation or profession or render other services and includes the occupational code.
- (h) "Occupational code" means Act No. 299 of the Public Acts of 1980, as amended, being '339.101 et seq. of the Michigan Compiled Laws.
- (i) "Party" means a person, agency, or designated agent of the department named, admitted, or properly seeking and entitled of right to be admitted, as a party in a contested case.
- (j) "Presiding officer" means an administrative law judge who is employed by the department or a person who is designated, in writing, by the director of the department, to act as an administrative law judge and conduct a contested case hearing.
- (k) "Respondent" means a person against whom a formal complaint has been issued.

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

History: 1990 MR 7, Eff. Aug. 1, 1990; 1997 MR 11, Eff. Dec. 3, 1997.

R 339.1703 Applicability of law and rules.

Rule 703. Compliance conferences, the processing of complaints, contested case hearings, and other related proceedings shall be conducted in accordance with the provisions of the licensing law, these rules, rules promulgated by a board or the department governing specific

circumstances unique to the occupation, profession, facility, or service being regulated, and the administrative procedures act.

History: 1990 MR 7, Eff. Aug. 1, 1990.

R 339.1705 Issuance of license not bar to discipline.

Rule 705. The issuance of a license by the department does not diminish the authority of a board or the department to take disciplinary action based upon conduct which occurred before the issuance of a license without regard to whether the department or a board had notice of the alleged grounds for discipline at the time the license was issued.

History: 1990 MR 7, Effective August 1, 1990.

R 339.1707 Rescinded.

History: 1990 MR 7, Effective August 1, 1990. Rescinded 1997 MR 11, Effective December 3, 1997.

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

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

History: 1990 MR 7, Effective August 1, 1990.

R 339.1711 Rescinded.

History: 1990 MR 7, Effective August 1, 199. Rescinded 1997 MR 11, Effective December 3, 1997.

R 339.1713 Time computations.

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

History: 1990 MR 7, Effective August 1, 1990.

R 339.1715 Rescinded.

History: 1990 MR 7, Effective August 1, 1990. Rescinded 1997 MR 11, Effective December 3, 1997.

R 339.1721 Complaints; consolidation; withdrawal.

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

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

History: 1990 MR 7, Effective August 1, 1990.

R 339.1725 Rescinded.

History: 1990 MR 7, Effective August 1, 1990. Rescinded 1997 MR 11, Effective December 3, 1997.

R 339.1726 Settlement of complaints.

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

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

History: 1990 MR 7, Effective August 1, 1990.

R 339.1727 Rescinded.

History: 1990 MR 7, Effective August 1, 1990. Rescinded 1997 MR 11, Effective December 3, 1997.

R 339.1728 Rescinded.

History: 1990 MR 7, Effective August 1, 1990. Rescinded 1997 MR 11, Effective December 3, 1997.

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

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

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

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

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

History: 1990 MR 7, Effective August 1, 1990.

R 339.1741 Filing pleadings after notice of hearing; answers and amendments.

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

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

History: 1990 MR 7, Effective August 1, 1990. Amended 1997 MR 11, Effective December 3, 1997.

R 339.1743 Consolidation of cases; procedure.

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

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

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

History: 1990 MR 7, Effective August 1, 1990. Amended 1997 MR 11, Effective December 3, 1997.

R 339.1745 Appearance by counsel and service.

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

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

History: 1990 MR 7, Effective August 1, 1990. Amended 1997 MR 11, Effective December 3, 1997.

R 339.1746 Rescinded.

History: 1990 MR 7, Effective August 1, 1990. Rescinded 1997 MR 11, Effective December 3, 1997.

R 339.1747 Prehearing conference.

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

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

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

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

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

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

History: 1990 MR 7, Effective August 1, 1990.

R 339.1751 Official notice of facts; notice; objection.

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

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

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

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

History: 1990 MR 7, Effective August 1, 1990.

R 339.1753 Rescinded.

History: 1990 MR 7, Effective August 1, 1990. Rescinded 1997 MR 11, Effective December 3, 1997.

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

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

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

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

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

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

History: 1990 MR 7, Effective August 1, 1990.

R 339.1757 Hearing decorum.

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

History: 1990 MR 7, Effective August 1, 1990.

R 339.1759 Evidence; objections; rulings.

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

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

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

History: 1990 MR 7, Effective August 1, 1990. Amended 1997 MR 11, Effective December 3, 1997.

R 339.1761 Evidence; prior adjudication of misconduct.

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

History: 1990 MR 7, Effective August 1, 1990.

R 339.1763 Formal complaint allegations; burden of proof.

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

History: 1990 MR 7, Effective August 1, 1990.

R 339.1765 Stipulations.

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

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

History: 1990 MR 7, Effective August 1, 1990. Amended 1997 MR 11, Effective December 3, 1997.

R 339.1767 Witnesses.

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

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

History: 1990 MR 7, Effective August 1, 1990.

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

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

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

History: 1990 MR 7, Effective August 1, 1990. Amended 1997 MR 11, Effective December 3, 1997.

REFUND OF FEES

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

338.941 Definitions.

Rule 1. As used in these rules:

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

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

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

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

History: 1979 ACS 4, Effective November 19, 1980. Amended 2000, MR 9, Effective August 31, 2000.

R 338.942 Applicability.

Rule 2. These rules apply to all fees collected pursuant to 1979 PA 152, MCL 338.2201 et seq.

History: 1979 ACS 4, Effective November 19, 1980.

R 338.943 Issuance of full refunds.

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

(a) A duplicate payment.

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

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

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

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

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

History: 1979 ACS 4, Effective November 19, 1980.

R 338.944 Issuance of partial refunds.

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

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

History: 1979 ACS 4, Effective November 19, 1980.

