

HOUSE BILL No. 4091

February 7, 1989, Introduced by Reps. Leland, Bartnik, Niederstadt, Hart, Webb, Weeks, Barns, Hunter, Bennane, Law, DeMars, Alley and Porreca and referred to the Committee on Tourism, Fisheries and Wildlife.

A bill to amend Act No. 299 of the Public Acts of 1980,
entitled
"Occupational code,"
as amended, being sections 339.101 to 339.2721 of the Michigan
Compiled Laws, by adding article 29.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Act No. 299 of the Public Acts of 1980, as
2 amended, being sections 339.101 to 339.2721 of the Michigan
3 Compiled Laws, is amended by adding article 29 to read as
4 follows:

ARTICLE 29

6 SEC. 2901. AS USED IN THIS ARTICLE:

7 (A) "ADVERTISE" MEANS TO MAKE ANY REPRESENTATION IN THE
8 SOLICITATION OF POTENTIAL CUSTOMERS.

1 (B) "CUSTOMER" MEANS A PERSON WHO GIVES MONEY OR OTHER
2 CONSIDERATION, OR ON WHOSE BEHALF MONEY OR OTHER CONSIDERATION IS
3 GIVEN, TO A SELLER OF TRAVEL FOR TRANSPORTATION OR TRANSPORTATION
4 RELATED SERVICES.

5 (C) "SELLER OF TRAVEL" MEANS A PERSON DOING BUSINESS IN THIS
6 STATE THAT IS PRIMARILY ENGAGED IN THE SALE OF TRANSPORTATION OR
7 TRANSPORTATION RELATED SERVICES AND DOES 1 OR MORE OF THE
8 FOLLOWING:

9 (i) SOLICITS THE PURCHASE OF TRANSPORTATION OR TRANSPORTA-
10 TION RELATED SERVICES.

11 (ii) ISSUES OR DELIVERS A TICKET REPRESENTING THE SALE OF
12 TRANSPORTATION OR TRANSPORTATION RELATED SERVICES.

13 (iii) COLLECTS FROM A CUSTOMER A PAYMENT, CHARGE, DEPOSIT,
14 OR ANY OTHER CONSIDERATION FOR THE SALE OF TRANSPORTATION OR
15 TRANSPORTATION RELATED SERVICES.

16 (D) "TICKET" MEANS A WRITING, OR COMBINATION OF WRITINGS,
17 THAT ENTITLES THE HOLDER TO OBTAIN TRANSPORTATION OR TRANSPORTA-
18 TION RELATED SERVICES.

19 (E) "TRANSPORTATION" MEANS THE CONVEYANCE OF INDIVIDUALS BY
20 AIR, SEA, RAIL, MOTOR VEHICLE, OR BY ANY OTHER MEANS ON A FOREIGN
21 OR DOMESTIC CARRIER.

22 (F) "TRANSPORTATION RELATED SERVICES" MEANS SERVICES REASON-
23 ABLY RELATED TO TRANSPORTATION INCLUDING, BUT NOT LIMITED TO, CAR
24 RENTALS, TRANSFERS, SIGHTSEEING TOURS, MEALS, AND LODGING.

25 SEC. 2903. (1) A SELLER OF TRAVEL BOARD IS CREATED.

1 (2) SUBJECT TO SUBSECTION (3), THE MEMBERS OF THE INITIAL
2 BOARD SHALL BE INDIVIDUALS WHO MEET EITHER OR BOTH OF THE
3 FOLLOWING REQUIREMENTS:

4 (A) ARE CERTIFIED OR OTHERWISE APPROVED BY A NATIONAL ORGA-
5 NIZATION THAT CERTIFIES OR OTHERWISE APPROVES SELLERS OF TRAVEL.

6 (B) HAVE ACTIVELY ENGAGED IN THE BUSINESS OF BEING A SELLER
7 OF TRAVEL FOR NOT LESS THAN THE 2 YEARS IMMEDIATELY PRECEDING
8 THEIR APPOINTMENT.

9 (3) EACH INDIVIDUAL APPOINTED UNDER SUBSECTION (2) SHALL BE
10 LICENSED UNDER THIS ARTICLE WITHIN 3 YEARS AFTER THE EFFECTIVE
11 DATE OF THIS ARTICLE.

12 SEC. 2905. (1) EXCEPT AS OTHERWISE PROVIDED IN THIS ARTI-
13 CLE, A PERSON SHALL NOT COMMENCE OR ENGAGE IN THE BUSINESS OF
14 BEING A SELLER OF TRAVEL WITHOUT FIRST APPLYING FOR AND OBTAINING
15 A LICENSE FROM THE DEPARTMENT.

16 (2) THE DEPARTMENT SHALL ISSUE A LICENSE TO A PERSON WHO HAS
17 DONE ALL OF THE FOLLOWING:

18 (A) APPLIED ON A FORM PROVIDED BY THE DEPARTMENT ACCOMPANIED
19 BY THE APPROPRIATE FEES PRESCRIBED IN ARTICLE 4.

20 (B) SUPPLIED TO THE DEPARTMENT A FINANCIAL STATEMENT AND
21 OTHER INFORMATION REQUESTED BY THE DEPARTMENT INCLUDING, BUT NOT
22 LIMITED TO, THE NAMES, ADDRESSES, AND BANK REFERENCES OF THE FOL-
23 LOWING, IF APPLICABLE:

24 (i) AN INDIVIDUAL OPERATING A SOLE PROPRIETORSHIP ENGAGED IN
25 THE BUSINESS OF BEING A SELLER OF TRAVEL.

26 (ii) EACH MEMBER OF A PARTNERSHIP ENGAGED IN THE BUSINESS OF
27 BEING A SELLER OF TRAVEL.

1 (iii) EACH SHAREHOLDER HOLDING 10% OR MORE OF THE
2 OUTSTANDING SHARES OF A CORPORATION ENGAGED IN THE BUSINESS OF
3 BEING A SELLER OF TRAVEL.

4 (iv) EACH OFFICER AND MEMBER OF THE BOARD OF DIRECTORS OF A
5 CORPORATION ENGAGED IN THE BUSINESS OF BEING A SELLER OF TRAVEL.

6 (v) EACH PERSON OPERATING ANY OTHER TYPE OF LEGAL ENTITY
7 ENGAGED IN THE BUSINESS OF BEING A SELLER OF TRAVEL.

8 (3) UPON RECEIPT OF THE APPLICATION, THE DEPARTMENT SHALL
9 INVESTIGATE BOTH OF THE FOLLOWING:

10 (A) THE FINANCIAL RESPONSIBILITY AND NET WORTH OF THE
11 APPLICANT.

12 (B) THE CIRCUMSTANCES OF ANY BUSINESS FAILURE, RECEIVERSHIP,
13 OR INSOLVENCY PROCEEDING OF THE APPLICANT OR AN EMPLOYEE OF THE
14 APPLICANT.

15 (4) EACH INDIVIDUAL APPLICANT, EACH PARTNER OF A PARTNERSHIP
16 WHICH IS AN APPLICANT, EACH OFFICER OR MEMBER OF THE BOARD OF
17 DIRECTORS OF A CORPORATION WHICH IS AN APPLICANT, AND EACH MEMBER
18 OF ANY OTHER LEGAL ENTITY THAT IS AN APPLICANT SHALL BE BOTH OF
19 THE FOLLOWING:

20 (A) NOT LESS THAN 18 YEARS OF AGE.

21 (B) OF GOOD MORAL CHARACTER.

22 SEC. 2907. (1) THE DEPARTMENT SHALL REVIEW A LICENSE UNDER
23 THIS ARTICLE UPON FULFILLMENT BY THE LICENSEE OF ALL OF THE
24 FOLLOWING:

25 (A) COMPLIANCE WITH SECTION 204.

26 (B) PAYMENT OF THE FEE PRESCRIBED IN ARTICLE 4.

1 (C) THE FILING OF A FINANCIAL STATEMENT CONTAINING
2 INFORMATION THAT IS NOT LESS THAN 60 DAYS OLD.

3 (2) THE DEPARTMENT SHALL ISSUE A LICENSE TO A LICENSEE
4 DESIRING LICENSURE FOR AN ADDITIONAL PLACE OF BUSINESS UPON FUL-
5 FILLMENT OF ALL OF THE FOLLOWING:

6 (A) COMPLETION OF AN APPLICATION FORM PROVIDED BY THE
7 DEPARTMENT.

8 (B) PAYMENT OF THE LICENSE FEE FOR BRANCH OFFICES AS PRE-
9 SCRIBED IN ARTICLE 4.

10 (C) PROOF OF SURETY BOND COVERAGE AS PRESCRIBED IN SECTION
11 2909 FOR THE ADDITIONAL PLACE OF BUSINESS.

12 (3) UPON THE CHANGE OF NAME OR ADDRESS, A LICENSEE SHALL
13 GIVE WRITTEN NOTICE TO THE DEPARTMENT AND PAY THE FEE AS PRE-
14 SCRIBED IN ARTICLE 4. THE DEPARTMENT SHALL AMEND THE LICENSE TO
15 PERMIT THE LICENSEE TO CONDUCT THE BUSINESS AT A NEW LOCATION OR
16 UNDER A NEW NAME.

17 (4) THE LICENSEE SHALL REPORT TO THE DEPARTMENT, ON FORMS
18 PROVIDED BY THE DEPARTMENT, A CHANGE IN 1 OR MORE OF THE FOLLOW-
19 ING, IF APPLICABLE, WITHIN 30 DAYS OF THE CHANGE:

20 (A) THE MEMBERSHIP OF EITHER THE BOARD OF DIRECTORS OR THE
21 OFFICERS OF A CORPORATION.

22 (B) THE MEMBERSHIP OF A PARTNERSHIP.

23 (C) THE MEMBERSHIP OF ANY OTHER LEGAL ENTITY.

24 (5) THE DEPARTMENT MAY INVESTIGATE ANY CHANGES REPORTED PUR-
25 SUANT TO SUBSECTION (4) IN ORDER TO DETERMINE WHETHER THE
26 LICENSEE CONTINUES TO COMPLY WITH SECTION 2905(2)(B), (3), AND
27 (4).

1 (6) THE SALE OR TRANSFER OF THE OWNERSHIP INTEREST OF A
2 SELLER OF TRAVEL'S SOLE PROPRIETORSHIP OPERATES AS AN AUTOMATIC
3 REVOCATION OF A LICENSE ISSUED UNDER THIS ARTICLE.

4 SEC. 2909. (1) THE DEPARTMENT SHALL REQUIRE A SELLER OF
5 TRAVEL TO FILE AND MAINTAIN SURETY BONDS WRITTEN BY A COMPANY
6 RECOGNIZED AND APPROVED BY THE COMMISSIONER OF INSURANCE TO DO
7 BUSINESS IN THIS STATE. THE DEPARTMENT SHALL APPROVE OR DISAP-
8 PROVE THE BONDS IN WRITING WITHIN 30 DAYS AFTER THE DATE OF
9 SUBMISSION.

10 (2) THE SURETY BONDS SHALL INCLUDE BOTH OF THE FOLLOWING:

11 (A) COVERAGE FOR PROFESSIONAL ERRORS AND OMISSIONS IN AN
12 AMOUNT NOT LESS THAN \$1,000,000.00.

13 (B) COVERAGE FOR BUSINESS FAILURE OR INSOLVENCY IN AN AMOUNT
14 NOT LESS THAN \$500,000.00.

15 (3) THE SURETY ON THE BOND MAY CANCEL THE BOND UPON GIVING
16 NOT LESS THAN 60 DAYS' WRITTEN NOTICE TO THE DEPARTMENT BY CERTI-
17 FIED OR REGISTERED MAIL.

18 (4) THIS SECTION DOES NOT ALTER THE STANDARD FOR DETERMINING
19 THE LEGAL LIABILITY OF THE SELLER OF TRAVEL NOR DOES IT LIMIT OR
20 IMPAIR ANY RIGHTS OR DEFENSES OTHERWISE AVAILABLE UNDER LAW.

21 SEC. 2911. ALL OF THE FOLLOWING ARE EXEMPT FROM THE
22 REQUIREMENT OF LICENSURE UNDER THIS ARTICLE:

23 (A) A PROVIDER OF TRANSPORTATION AND ITS EMPLOYEES.

24 (B) A PROVIDER OF TRANSPORTATION RELATED SERVICES AND ITS
25 EMPLOYEES.

1 (C) AN EMPLOYEE OF A SELLER OF TRAVEL LICENSED UNDER THIS
2 ARTICLE WHILE THE EMPLOYEE IS ENGAGED IN THE BUSINESS OF THE
3 EMPLOYER.

4 (D) A RELIGIOUS, CHARITABLE, EDUCATIONAL, OR FRATERNAL ORGA-
5 NIZATION EXEMPT FROM TAXATION PURSUANT TO SECTION 501(c)(3) OR
6 (8) OF THE INTERNAL REVENUE CODE IF THE TRANSPORTATION OR TRANS-
7 PORTATION RELATED SERVICES ARE ARRANGED BY A SELLER OF TRAVEL
8 LICENSED UNDER THIS ARTICLE.

9 SEC. 2913. A SELLER OF TRAVEL SHALL NOT ADVERTISE THE
10 AVAILABILITY OF TRANSPORTATION OR TRANSPORTATION RELATED SERVICES
11 UNLESS, BEFORE ADVERTISING THE AVAILABILITY, THE SELLER OF TRAVEL
12 HAS CONTRACTED FOR THE TRANSPORTATION OR TRANSPORTATION RELATED
13 SERVICES.

14 SEC. 2915. BEFORE THE RECEIPT OF MONEY OR OTHER CONSIDERA-
15 TION FROM A PERSON FOR TRANSPORTATION OR TRANSPORTATION RELATED
16 SERVICES, A SELLER OF TRAVEL SHALL FURNISH TO THE PERSON A WRIT-
17 TEN STATEMENT CLEARLY AND CONSPICUOUSLY SETTING FORTH NOT LESS
18 THAN ALL OF THE FOLLOWING:

19 (A) THE NAME, BUSINESS ADDRESS, TELEPHONE NUMBER, AND
20 LICENSE NUMBER OF THE SELLER OF TRAVEL.

21 (B) THE AMOUNT TO BE PAID, THE DATE A DEPOSIT OR PAYMENT IS
22 DUE, THE PURPOSE OF THE PAYMENT, AND AN ITEMIZED STATEMENT OF ANY
23 BALANCE DUE.

24 (C) THE NAME OF THE PROVIDER OF TRANSPORTATION WITH WHICH
25 THE SELLER OF TRAVEL HAS CONTRACTED, THE TYPE OF TRANSPORTATION,
26 AND THE DATE, TIME, AND PLACE OF EACH DEPARTURE ON THE
27 ITINERARY.

1 (D) THE NAMES OF THE PROVIDER OR PROVIDERS OF THE
2 TRANSPORTATION RELATED SERVICES WHICH THE PERSON IS PURCHASING
3 AND A DESCRIPTION OF THOSE TRANSPORTATION RELATED SERVICES.

4 (E) ALL CONDITIONS UNDER WHICH THE CONTRACT BETWEEN THE
5 SELLER OF TRAVEL AND A PERSON MAY BE CANCELED.

6 (F) ALL CONDITIONS UNDER WHICH THE CONTRACT BETWEEN THE
7 SELLER OF TRAVEL AND THE PROVIDERS OF TRANSPORTATION AND THE PRO-
8 VIDERS OF TRANSPORTATION RELATED SERVICES MAY BE CANCELED.

9 SEC. 2917. A SELLER OF TRAVEL SHALL NOT BRING OR MAINTAIN
10 AN ACTION IN A COURT IN THIS STATE FOR THE COLLECTION OF MONEY OR
11 OTHER CONSIDERATION FOR THE PERFORMANCE OF AN ACT OR CONTRACT
12 RELATED TO THE SALE OF TRANSPORTATION OR TRANSPORTATION RELATED
13 SERVICES WITHOUT ALLEGING AND PROVING LICENSURE UNDER THIS ARTI-
14 CLE, OR EXEMPTION FROM LICENSURE UNDER SECTION 2911, DURING THE
15 ENTIRE PERFORMANCE OF THE ACT OR CONTRACT.

16 SEC. 2919. (1) A PERSON LICENSED UNDER THIS ARTICLE SHALL
17 FILE WITH THE DEPARTMENT, ON A FORM PRESCRIBED BY THE DEPARTMENT,
18 AN IRREVOCABLE CONSENT APPOINTING THE DIRECTOR TO RECEIVE SERVICE
19 OF PROCESS IN ANY NONCRIMINAL PROCEEDING AGAINST THAT PERSON FOR
20 A VIOLATION OF THIS ACT, A RULE PROMULGATED UNDER THIS ACT, OR AN
21 ORDER ISSUED UNDER THIS ACT AFTER THE CONSENT IS FILED. THE CON-
22 SENT SHALL HAVE THE SAME FORCE AND VALIDITY AS PERSONAL SERVICE.

23 (2) THE ACT OF DOING BUSINESS IN THIS STATE BY A SELLER OF
24 TRAVEL THAT IS NEITHER LICENSED NOR EXEMPTED FROM LICENSURE UNDER
25 THIS ARTICLE OPERATES AS AN APPOINTMENT OF THE DIRECTOR TO
26 RECEIVE SERVICE OF PROCESS IN A NONCRIMINAL ACTION FOR VIOLATION
27 OF THIS ACT.

1 (3) SERVICE UNDER SUBSECTION (1) OR (2) SHALL BE MADE BY
2 LEAVING A COPY OF THE PROCESS WITH THE DIRECTOR OR HIS OR HER
3 DEPUTY. THE SERVICE SHALL NOT BE EFFECTIVE UNLESS THE PARTY INI-
4 TIATING THE PROCEEDING IMMEDIATELY SENDS A COPY OF THE PROCESS BY
5 REGISTERED OR CERTIFIED MAIL TO THE PERSON AT THAT PERSON'S LAST
6 KNOWN ADDRESS AND TAKES OTHER STEPS WHICH ARE REASONABLY CALCU-
7 LATED TO GIVE ACTUAL NOTICE OF THE PROCEEDINGS. THE PARTY INITI-
8 ATING THE PROCEEDING SHALL FILE AN AFFIDAVIT OF COMPLIANCE WITH
9 THE AGENCY OR COURT HEARING THE PROCEEDING.

10 Section 2. This amendatory act shall not take effect unless
11 Senate Bill No. ____ or House Bill No. 4092 (request
12 no. 01015'89 a) of the 85th Legislature is enacted into law.