

HOUSE BILL No. 6058

September 19, 1990, Introduced by Reps. Weeks, Kulchitsky, Varga, Gire, Hart and Wartner and referred to the Committee on State Affairs.

A bill to amend the title and sections 2501 and 2512 of Act No. 299 of the Public Acts of 1980, entitled "Occupational code," section 2501 as amended by Act No. 16 of the Public Acts of 1988, being sections 339.2501 and 339.2512 of the Michigan Compiled Laws; and to add section 2516.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. The title and sections 2501 and 2512 of Act
2 No. 299 of the Public Acts of 1980, section 2501 as amended by
3 Act No. 16 of the Public Acts of 1988, being sections 339.2501
4 and 339.2512 of the Michigan Compiled Laws, are amended and
5 section 2516 is added to read as follows:

TITLE

1
2 An act to revise, consolidate, and classify the laws of this
3 state regarding the regulation of certain occupations; to create
4 a board for each of those occupations; to establish the powers
5 and duties of the department of licensing and regulation and the
6 boards of each occupation; to provide for the promulgation of
7 rules; to provide for certain fees; to provide for penalties and
8 civil fines; TO ESTABLISH RIGHTS AND REMEDIES OF CERTAIN PERSONS
9 UNDER CERTAIN CIRCUMSTANCES; and to repeal certain acts and parts
10 of acts.

11 Sec. 2501. As used in this article:

12 (a) "Real estate broker" means an individual, sole proprie-
13 torship, partnership, association, corporation, common law trust,
14 or a combination of those entities who with intent to collect or
15 receive a fee, compensation, or valuable consideration, sells or
16 offers for sale, buys or offers to buy, appraises or offers to
17 appraise, lists or offers or attempts to list, or negotiates the
18 purchase or sale or exchange or mortgage of real estate, or nego-
19 tiates for the construction of a building on real estate; who
20 leases or offers or rents or offers for rent real estate or the
21 improvements on the real estate for others, as a whole or partial
22 vocation; who sells or offers for sale, buys or offers to buy,
23 leases or offers to lease, or negotiates the purchase or sale or
24 exchange of a business, business opportunity, or the goodwill of
25 an existing business for others; or who, as owner or otherwise,
26 engages in the sale of real estate as a principal vocation.

1 (b) "Real estate salesperson" means a person who for
2 compensation or valuable consideration is employed either
3 directly or indirectly by a licensed real estate broker to sell
4 or offer to sell, to buy or offer to buy, to appraise or offer to
5 appraise, to list or offer or attempt to list, or to negotiate
6 the purchase or sale or exchange or mortgage of real estate, or
7 to negotiate for the construction of a building on real estate,
8 or to lease or offer to lease, rent or offer for rent real
9 estate, or who sells or offers for sale, buys or offers to buy,
10 leases or offers to lease, or negotiates the purchase or sale or
11 exchange of a business, business opportunity, or the goodwill of
12 an existing business for others, as a whole or partial vocation.

13 (C) "EMPLOY" OR "EMPLOYMENT" MEANS THE RELATIONSHIP BETWEEN
14 A REAL ESTATE BROKER AND AN ASSOCIATE BROKER OR A REAL ESTATE
15 SALESPERSON WHICH MAY INCLUDE AN INDEPENDENT CONTRACTOR
16 RELATIONSHIP.

17 (D) "INDEPENDENT CONTRACTOR RELATIONSHIP" MEANS A RELATION-
18 SHIP BETWEEN A REAL ESTATE BROKER AND AN ASSOCIATE BROKER OR REAL
19 ESTATE SALESPERSON UNDER BOTH OF THE FOLLOWING CIRCUMSTANCES:

20 (i) A WRITTEN AGREEMENT EXISTS IN WHICH THE REAL ESTATE
21 BROKER DOES NOT CONSIDER THE ASSOCIATE BROKER OR REAL ESTATE
22 SALESPERSON AS AN EMPLOYEE FOR FEDERAL AND STATE INCOME TAX
23 PURPOSES.

24 (ii) NOT LESS THAN 75% OF THE ANNUAL COMPENSATION PAID BY
25 THE REAL ESTATE BROKER TO THE ASSOCIATE BROKER OR REAL ESTATE
26 SALESPERSON IS FROM COMMISSIONS FROM THE SALE OF REAL ESTATE.

1 Sec. 2512. (1) A licensee shall be subject to the penalties
2 set forth in article 6 who commits 1 of the following:

3 (a) Acting for more than 1 party in a transaction without
4 the knowledge of the parties.

5 (b) Representing or attempting to represent a real estate
6 broker other than the employer, without the express knowledge and
7 consent of the employer.

8 (c) Failure to account for or to remit money coming into the
9 licensee's possession which belongs to others.

10 (d) Changing a business location without notification to the
11 commission.

12 (e) ~~If~~ IN THE CASE OF a real estate broker, failing to
13 return a real estate salesperson's license within 5 days as pro-
14 vided in section 2507.

15 (f) Paying a commission or valuable consideration to a
16 person not licensed under this article INCLUDING PAYMENT TO ANY
17 PERSON PROVIDING THE NAMES OF, OR ANY OTHER INFORMATION REGARD-
18 ING, A POTENTIAL SELLER OR PURCHASER OF REAL ESTATE. However, a
19 licensed real estate broker may pay a commission to a licensed
20 real estate broker of another state if the nonresident real
21 estate broker does not conduct in this state a negotiation for
22 which a commission is paid.

23 (g) Failing to deposit in a custodial trust or escrow
24 account money belonging to others coming into the hands of the
25 licensee in compliance with the following:

26 (i) A deposit or other money accepted by a person,
27 partnership, corporation, or association holding a real estate

1 broker's license under this article shall be retained by a real
2 estate broker pending consummation or termination of the transac-
3 tion involved, and shall be accounted for in the full amount of
4 the money at the time of the consummation or termination.

5 (ii) A real estate salesperson, on receipt of a deposit or
6 other money on a transaction in which the real estate salesperson
7 is engaged on behalf of a real estate broker-employer, shall pay
8 over the deposit or other money to the real estate broker.

9 (iii) A real estate broker shall not permit an advance pay-
10 ment of funds belonging to others to be deposited in the real
11 estate broker's business or personal account or to be commingled
12 with funds on deposit belonging to the real estate broker.

13 (iv) A real estate broker shall deposit within 2 banking
14 days after the signing of a purchase agreement by all parties,
15 but not later than 5 days after receipt, money belonging to
16 others in a separate custodial or trust fund account maintained
17 by the real estate broker with a bank, savings and loan associa-
18 tion, credit union, or recognized depository until the transac-
19 tion involved is consummated or terminated, at which time the
20 real estate broker shall account for the full amount received.

21 (v) A real estate broker shall keep records of funds depos-
22 ited in an account, which records shall indicate clearly the date
23 and from whom the money was received, the date deposited, the
24 date of withdrawal, and other pertinent information concerning
25 the transaction, and shall show clearly for whose account the
26 money is deposited and to whom the money belongs. The records
27 shall be subject to inspection by the department. A separate

1 custodial or trust fund account shall designate the real estate
2 broker as trustee, and the account shall provide for withdrawal
3 of funds without previous notice. This act and the rules promul-
4 gated pursuant to this act shall not be construed to prohibit the
5 deposit of money accepted under this act in a noninterest bearing
6 account of a state or federally chartered savings and loan asso-
7 ciation, or a state or federally chartered credit union.

8 (H) PROVIDING MISLEADING OR UNTRUTHFUL ADVERTISING, OR USING
9 ANY TRADE NAME OR INSIGNIA OF MEMBERSHIP IN ANY REAL ESTATE ORGA-
10 NIZATION OF WHICH THE LICENSEE IS NOT A MEMBER.

11 (2) SUBJECT TO SECTION 2512A AND EXCEPT AS OTHERWISE PRO-
12 VIDED BY LAW, NOTHING IN THIS ARTICLE SHALL GRANT TO ANY PERSON A
13 PRIVATE RIGHT OR CAUSE OF ACTION FOR DAMAGES OR FOR ENFORCEMENT
14 OF THIS ARTICLE OR ANY RULES PROMULGATED UNDER THIS ARTICLE BY
15 THE DEPARTMENT OR BOARD.

16 SEC. 2516. AN ACTION SHALL NOT BE BROUGHT AGAINST A REAL
17 ESTATE BROKER, AN ASSOCIATE BROKER, OR A REAL ESTATE SALESPERSON
18 FOR FAILURE TO DISCLOSE TO A PURCHASER OR LESSEE OF REAL PROPERTY
19 EITHER OR BOTH OF THE FOLLOWING CIRCUMSTANCES:

20 (A) A FORMER OCCUPANT IS OR IS SUSPECTED OF BEING INFECTED
21 WITH HIV OR ANY DISEASE OR AFFLICTION DETERMINED BY MEDICAL EVI-
22 DENCE TO BE UNLIKELY TO BE TRANSMITTED THROUGH THE OCCUPANCY OF
23 REAL PROPERTY.

24 (B) THE REAL PROPERTY WAS OR WAS SUSPECTED TO HAVE BEEN THE
25 SITE OF A HOMICIDE, SUICIDE, OR OTHER OCCURRENCE PROHIBITED BY
26 LAW WHICH HAD NO MATERIAL EFFECT ON THE CONDITION OF THE REAL
27 PROPERTY OR IMPROVEMENTS LOCATED ON THE REAL PROPERTY.