



HOUSE BILL No. 4269

February 17, 1993, Introduced by Reps. Joe Young, Jr. and Murphy and referred to the Committee on State Affairs.

A bill to amend the title and sections 2501, 2512, and 2515 of Act No. 299 of the Public Acts of 1980, entitled as amended "Occupational code," section 2501 as amended by Act No. 269 of the Public Acts of 1990 and section 2515 as amended by Act No. 83 of the Public Acts of 1981, being sections 339.2501, 339.2512, and 339.2515 of the Michigan Compiled Laws; and to add section 2517.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. The title and sections 2501, 2512, and 2515 of
2 Act No. 299 of the Public Acts of 1980, section 2501 as amended
3 by Act No. 269 of the Public Acts of 1990 and section 2515 as
4 amended by Act No. 83 of the Public Acts of 1981, being
5 sections 339.2501, 339.2512, and 339.2515 of the Michigan

1 Compiled Laws, are amended and section 2517 is added to read as
2 follows:

3 TITLE

4 An act to revise, consolidate, and classify the laws of this
5 state regarding the regulation of certain occupations; to create
6 a board for each of those occupations; to establish the powers
7 and duties of ~~the department of licensing and regulation~~
8 CERTAIN DEPARTMENTS AND AGENCIES and the boards of each occupa-
9 tion; to provide for the promulgation of rules; to provide for
10 certain fees; to provide for penalties and civil fines; TO ESTAB-
11 LISH RIGHTS AND REMEDIES OF CERTAIN PERSONS UNDER CERTAIN
12 CIRCUMSTANCES; to repeal certain parts of this act on a specific
13 date; and to repeal certain acts and parts of acts.

14 Sec. 2501. As used in this article:

15 (a) "Real estate broker" means an individual, sole proprie-
16 torship, partnership, association, corporation, common law trust,
17 or a combination of those entities who with intent to collect or
18 receive a fee, compensation, or valuable consideration, sells or
19 offers for sale, buys or offers to buy, provides or offers to
20 provide market analyses, lists or offers or attempts to list, or
21 negotiates the purchase or sale or exchange or mortgage of real
22 estate, or negotiates for the construction of a building on real
23 estate; who leases or offers or rents or offers for rent real
24 estate or the improvements on the real estate for others, as a
25 whole or partial vocation; who sells or offers for sale, buys or
26 offers to buy, leases or offers to lease, or negotiates the
27 purchase or sale or exchange of a business, business opportunity,

1 or the goodwill of an existing business for others; or who, as
2 owner or otherwise, engages in the sale of real estate as a prin-
3 cipal vocation.

4 (b) "Real estate salesperson" means a person who for compen-
5 sation or valuable consideration is employed either directly or
6 indirectly by a licensed real estate broker to sell or offer to
7 sell, to buy or offer to buy, to provide or offer to provide
8 market analyses, to list or offer or attempt to list, or to nego-
9 tiate the purchase or sale or exchange or mortgage of real
10 estate, or to negotiate for the construction of a building on
11 real estate, or to lease or offer to lease, rent or offer for
12 rent real estate, or who sells or offers for sale, buys or offers
13 to buy, leases or offers to lease, or negotiates the purchase or
14 sale or exchange of a business, business opportunity, or the
15 goodwill of an existing business for others, as a whole or par-
16 tial vocation.

17 (c) "EMPLOY" OR "EMPLOYMENT" MEANS THE RELATIONSHIP BETWEEN
18 A REAL ESTATE BROKER AND AN ASSOCIATE BROKER OR A REAL ESTATE
19 SALESPERSON WHICH MAY INCLUDE AN INDEPENDENT CONTRACTOR
20 RELATIONSHIP. THE EXISTENCE OF AN INDEPENDENT CONTRACTOR RELA-
21 TIONSHIP BETWEEN A REAL ESTATE BROKER AND AN INDIVIDUAL LICENSED
22 TO THE REAL ESTATE BROKER SHALL NOT RELIEVE THE REAL ESTATE
23 BROKER OF THE RESPONSIBILITY TO SUPERVISE ACTS OF THE LICENSEE
24 REGULATED BY THIS ARTICLE.

25 (d) "INDEPENDENT CONTRACTOR RELATIONSHIP" MEANS A RELATION-
26 SHIP BETWEEN A REAL ESTATE BROKER AND AN ASSOCIATE BROKER OR REAL

1 ESTATE SALESPERSON THAT SATISFIES BOTH OF THE FOLLOWING
2 CONDITIONS:

3 (i) A WRITTEN AGREEMENT EXISTS IN WHICH THE REAL ESTATE
4 BROKER DOES NOT CONSIDER THE ASSOCIATE BROKER OR REAL ESTATE
5 SALESPERSON AS AN EMPLOYEE FOR FEDERAL AND STATE INCOME TAX
6 PURPOSES.

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

10 Sec. 2512. ~~(1)~~ A licensee shall be subject to the penal-
11 ties set forth in article 6 who commits 1 of the following:

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

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

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

19 (d) Changing a business location without notification to the
20 ~~commission~~ DEPARTMENT.

21 (e) ~~if~~ IN THE CASE OF a real estate broker, failing to
22 return a real estate salesperson's license within 5 days as pro-
23 vided in section 2507.

24 (f) ~~Paying a~~ EXCEPT AS PROVIDED IN SECTION 2512B, SHARING
25 OR PAYING A FEE, commission, or valuable consideration to a
26 person not licensed under this article INCLUDING PAYMENT TO ANY
27 PERSON PROVIDING THE NAMES OF, OR ANY OTHER INFORMATION

1 REGARDING, A POTENTIAL SELLER OR PURCHASER OF REAL ESTATE BUT
2 EXCLUDING PAYMENT FOR THE PURCHASE OF COMMERCIALY PREPARED LISTS
3 OF NAMES. However, a licensed real estate broker may pay a com-
4 mission to a licensed real estate broker of another state if the
5 nonresident real estate broker does not conduct in this state a
6 negotiation for which a commission is paid.

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

10 (i) A deposit or other money accepted by a person, partner-
11 ship, corporation, or association holding a real estate broker's
12 license under this article shall be retained by a real estate
13 broker pending consummation or termination of the transaction
14 involved, and shall be accounted for in the full amount of the
15 money at the time of the consummation or termination.

16 (ii) A real estate salesperson, on receipt of a deposit or
17 other money on a transaction in which the real estate salesperson
18 is engaged on behalf of a real estate broker-employer, shall pay
19 over the deposit or other money to the real estate broker.

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

24 (iv) A real estate broker shall deposit within 2 banking
25 days after the signing of a purchase agreement by all parties,
26 but not later than 5 days after receipt, money belonging to
27 others in a separate custodial ~~or~~ trust ~~fund~~ OR ESCROW

1 account maintained by the real estate broker with a bank, savings
2 and loan association, credit union, or recognized depository
3 until the transaction involved is consummated or terminated, at
4 which time the real estate broker shall account for the full
5 amount received.

6 (v) A real estate broker shall keep records of funds depos-
7 ited in ~~an~~ A CUSTODIAL TRUST OR ESCROW account, which records
8 shall indicate clearly the date and from whom the money was
9 received, the date deposited, the date of withdrawal, and other
10 pertinent information concerning the transaction, and shall show
11 clearly for whose account the money is deposited and to whom the
12 money belongs. The records shall be subject to inspection by the
13 department. A separate custodial ~~or~~ trust ~~fund~~ OR ESCROW
14 account shall designate the real estate broker as trustee, and
15 the CUSTODIAL TRUST OR ESCROW account shall provide for with-
16 drawal of funds without previous notice. This act and the rules
17 promulgated pursuant to this act shall not be construed to pro-
18 hibit the deposit of money accepted under this act in a noninter-
19 est bearing account of a state or federally chartered savings and
20 loan association ~~—~~ or a state or federally chartered credit
21 union.

22 Sec. 2515. (1) A listing agreement entered into between the
23 broker and seller or lessor of property shall contain language
24 that discrimination because of religion, race, color, national
25 origin, age, sex, HANDICAP, FAMILIAL STATUS, or marital status on
26 the part of the real estate broker, real estate salesperson,
27 seller, or lessor is prohibited. ~~Nothing in this~~

1 (2) THIS article shall NOT authorize the department to
2 assume any facts not in evidence or compel a party to prove inno-
3 cence of charges before the charges have been proven by the
4 department. The department shall at all times bear the burden of
5 proof to all charges made against a party. ~~Nothing contained in~~
6 ~~this~~

7 (3) THIS article shall NOT diminish the right of a party to
8 PURSUE AND UTILIZE direct and immediate legal or equitable reme-
9 dies in ~~the courts of this state~~ A COURT OF COMPETENT
10 JURISDICTION.

11 SEC. 2517. AN ACTION SHALL NOT BE BROUGHT AGAINST A REAL
12 ESTATE BROKER, AN ASSOCIATE BROKER, OR A REAL ESTATE SALESPERSON
13 UNDER THE FOLLOWING CIRCUMSTANCES:

14 (A) FOR FAILURE TO DISCLOSE TO A PURCHASER OR LESSEE OF REAL
15 PROPERTY THAT A FORMER OCCUPANT HAS OR IS SUSPECTED OF HAVING A
16 HANDICAP AS THAT TERM IS DEFINED AND INTERPRETED UNDER, AND DIS-
17 CLOSURE OF WHICH WOULD CONSTITUTE UNLAWFUL DISCRIMINATION UNDER,
18 SECTIONS 804, 805, 806, OR 818 OF THE FAIR HOUSING ACT, TITLE
19 VIII OF PUBLIC LAW 90-284, 42 U.S.C. 3604, 3605, 3606, AND 3617.

20 (B) FOR FAILURE TO DISCLOSE TO A PURCHASER OR LESSEE OF REAL
21 PROPERTY THAT THE REAL PROPERTY WAS OR WAS SUSPECTED TO HAVE BEEN
22 THE SITE OF A HOMICIDE, SUICIDE, OR OTHER OCCURRENCE PROHIBITED
23 BY LAW WHICH HAD NO MATERIAL EFFECT ON THE CONDITION OF THE REAL
24 PROPERTY OR IMPROVEMENTS LOCATED ON THE REAL PROPERTY.