



# SENATE BILL No. 480

March 9, 1993, Introduced by Senators HART, WARTNER, CHERRY, SMITH, MILLER, MC MANUS, POLLACK, CONROY and DI NELLO and referred to the Committee on State Affairs and Military/Veteran Affairs.

A bill to amend section 2512 of Act No. 299 of the Public Acts of 1980, entitled as amended "Occupational code," being section 339.2512 of the Michigan Compiled Laws; and to add section 2517.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Section 2512 of Act No. 299 of the Public Acts  
2 of 1980, being section 339.2512 of the Michigan Compiled Laws, is  
3 amended and section 2517 is added to read as follows:

4 Sec. 2512. (1) A licensee WHO COMMITS 1 OR MORE OF THE  
5 FOLLOWING shall be subject to the penalties set forth in article  
6 6: ~~who commits 1 of the following:~~

7 (a) ~~Acting~~ FAILING TO PROVIDE A WRITTEN AGENCY DISCLOSURE  
8 TO A PROSPECTIVE PURCHASER OF A LEGAL OR EQUITABLE INTEREST IN

1 REAL ESTATE, OR ACTING for more than 1 party in a transaction  
2 without the knowledge of the parties.

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

6 (c) ~~Failure~~ FAILING to account for or to remit money  
7 coming into the licensee's possession which belongs to others.

8 (d) Changing a business location without notification to the  
9 ~~commission~~ DEPARTMENT.

10 (e) If THE LICENSEE IS a real estate broker, failing to  
11 return a real estate salesperson's license within 5 days as pro-  
12 vided in section 2507.

13 (f) Paying a commission or valuable consideration to a  
14 person not licensed under this article. However, a licensed real  
15 estate broker may pay a commission to a licensed real estate  
16 broker of another state if the nonresident real estate broker  
17 does not conduct in this state a negotiation for which a commis-  
18 sion is paid.

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

22 (i) A deposit or other money accepted by a person, partner-  
23 ship, corporation, or association holding a real estate broker's  
24 license under this article shall be retained by a real estate  
25 broker pending consummation or termination of the transaction  
26 involved, and shall be accounted for in the full amount of the  
27 money at the time of the consummation or termination.

1 (ii) A real estate salesperson, ~~en~~ UPON receipt of a  
2 deposit or other money on a transaction in which the real estate  
3 salesperson is engaged on behalf of a real estate  
4 broker-employer, shall pay over the deposit or other money to the  
5 real estate broker.

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

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

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

1 ~~the account~~ shall provide for withdrawal of funds without  
2 previous notice. This act and the rules promulgated pursuant to  
3 this act shall not be construed to prohibit the deposit of money  
4 accepted under this act in a noninterest bearing account of a  
5 state or federally chartered savings and loan association ~~—~~ or  
6 a state or federally chartered credit union.

7 SEC. 2517. (1) IN THE ABSENCE OF A WRITTEN AGREEMENT TO THE  
8 CONTRARY, A LICENSEE UNDER THIS ARTICLE IS PRESUMED TO BE AN  
9 AGENT OF THE SELLER OR LESSOR OF REAL ESTATE IN ANY SALE OR LEASE  
10 OF ANY LEGAL OR EQUITABLE INTEREST OF THAT REAL ESTATE EXCEPT IN  
11 THE CASE OF A TRANSACTIONAL BROKER ACTING PURSUANT TO EITHER A  
12 WRITTEN AGREEMENT WITH A SELLER OR A PROSPECTIVE PURCHASER, OR  
13 BOTH, OR UPON WRITTEN NOTICE TO THE SELLER AND PROSPECTIVE  
14 PURCHASER.

15 (2) LICENSEES OBTAINING AN OFFER FROM A PROSPECTIVE PUR-  
16 CHASER SHALL DISCLOSE IN WRITING TO THE PROSPECTIVE PURCHASER  
17 WHETHER THE LICENSEE IS THE AGENT OF THE PROSPECTIVE PURCHASER OR  
18 THE SELLER IN THE TRANSACTION OR WHETHER THE LICENSEE IS ACTING  
19 IN SOME OTHER LEGAL CAPACITY. THE WRITTEN AGENCY DISCLOSURE  
20 STATEMENT SHALL BE PROVIDED TO THE PROSPECTIVE PURCHASER BEFORE  
21 THE SIGNING OF AN OFFER TO PURCHASE BY A PROSPECTIVE PURCHASER.  
22 THE LICENSEE SHALL ALSO PROVIDE A COPY OF THE WRITTEN AGENCY DIS-  
23 CLOSURE STATEMENT, SIGNED AND DATED BY THE PROSPECTIVE PURCHASER,  
24 TO ANY OTHER LICENSEE WHO HAS A WRITTEN LISTING AGREEMENT WITH  
25 THE SELLER AS SOON AS IS PRACTICABLE BUT NOT LATER THAN THE TIME  
26 OF THE SELLER'S ACCEPTANCE OF OR THE TIME OF ANY OTHER WRITTEN  
27 RESPONSE TO THE OFFER TO PURCHASE. ANY LICENSEE IN THE

1 TRANSACTION WHO HAS A WRITTEN LISTING AGREEMENT WITH THE SELLER  
 2 SHALL PROVIDE A COPY OF THE WRITTEN AGENCY DISCLOSURE STATEMENT  
 3 TO THE SELLER BEFORE THE TIME OF THE SELLER'S ACCEPTANCE OF OR  
 4 OTHER WRITTEN RESPONSE TO THE OFFER TO PURCHASE. IF THE SELLER  
 5 HAS NOT ENTERED INTO A WRITTEN LISTING AGREEMENT WITH A LICENSEE,  
 6 THE LICENSEE PRESENTING THE OFFER SHALL PROVIDE A COPY OF THE  
 7 WRITTEN AGENCY DISCLOSURE STATEMENT TO THE SELLER BEFORE THE TIME  
 8 OF THE SELLER'S ACCEPTANCE OF OR OTHER WRITTEN RESPONSE TO THE  
 9 OFFER TO PURCHASE.

10 (3) THE WRITTEN AGENCY DISCLOSURE STATEMENT TO BE PROVIDED  
 11 BY THE LICENSEE PURSUANT TO THIS SECTION SHALL BE IN SUBSTAN-  
 12 TIALY THE FOLLOWING FORM:

13 AGENCY DISCLOSURE STATEMENT

14 THE LISTING BROKER AND ALL AGENTS ASSOCIATED WITH THE LISTING  
 15 BROKER REPRESENT THE SELLER. THE \_\_\_\_\_ (SELLING  
 16 BROKER) AND \_\_\_\_\_ (SELLING AGENT) REPRESENT (PLEASE  
 17 CHECK ONE): THE PURCHASER/TENANT \_\_\_\_\_; THE SELLER/LANDLORD  
 18 \_\_\_\_\_; OR ARE ACTING AS A TRANSACTIONAL BROKER \_\_\_\_\_.

19 IF A BROKER/AGENT IS REPRESENTING BOTH THE PURCHASER/TENANT AND  
 20 THE SELLER/LANDLORD OR IS ACTING AS A TRANSACTIONAL BROKER,  
 21 HE/SHE MUST ATTACH A COPY OF THE AGREEMENT SIGNED BY THE  
 22 PURCHASER/TENANT AND THE SELLER/LANDLORD ACKNOWLEDGING THEIR  
 23 AGREEMENT TO THIS ARRANGEMENT.

24 BY SIGNING BELOW, THE PARTIES CONFIRM THAT THEY HAVE RECEIVED,  
 25 READ, AND UNDERSTOOD THE INFORMATION IN THIS AGENCY DISCLOSURE  
 26 STATEMENT AND THAT THIS FORM WAS PROVIDED TO THEM BEFORE THE

1 SELLER/LANDLORD'S ACCEPTANCE OF OR OTHER WRITTEN RESPONSE TO THE  
2 PURCHASER/TENANT'S OFFER.

3 \_\_\_\_\_  
4 PURCHASER/TENANT      DATE      SELLER/LANDLORD      DATE

5           (4) IF A PURCHASER OR A SELLER REFUSES TO SIGN THE AGENCY  
6 DISCLOSURE STATEMENT AFTER RECEIPT, A LICENSEE SHALL INDICATE  
7 SUCH REFUSAL IN THE AGENCY DISCLOSURE STATEMENT AND SHALL SIGN  
8 AND DATE THE AGENCY DISCLOSURE STATEMENT.

9           (5) AS USED IN THIS SECTION:

10           (A) "PURCHASER" MEANS A PURCHASER, TENANT, OR LESSEE OF ANY  
11 LEGAL OR EQUITABLE INTEREST IN REAL ESTATE.

12           (B) "SELLER" MEANS THE EQUITABLE OR LEGAL OWNER OR LANDLORD  
13 OF REAL ESTATE.

14           (C) "TRANSACTIONAL BROKER" MEANS A LICENSEE WHO IS NOT  
15 ACTING AS THE AGENT OF EITHER THE PURCHASER OR SELLER AND IS PRO-  
16 VIDING SERVICES TO COMPLETE A REAL ESTATE TRANSACTION WHICH SERV-  
17 ICES ARE DESCRIBED IN A WRITTEN AGREEMENT WITH THE PURCHASER OR  
18 THE SELLER, OR BOTH.