



# SENATE BILL No. 589

April 28, 1993, Introduced by Senator DI NELLO and referred to the Committee on State Affairs and Military/Veteran Affairs.

A bill to amend sections 2504 and 2512 of Act No. 299 of the Public Acts of 1980, entitled as amended

"Occupational code,"

section 2504 as amended by Act No. 413 of the Public Acts of 1984, being sections 339.2504 and 339.2512 of the Michigan Compiled Laws; and to add section 2518.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1 Section 1. Sections 2504 and 2512 of Act No. 299 of the  
2 Public Acts of 1980, section 2504 as amended by Act No. 413 of  
3 the Public Acts of 1984, being sections 339.2504 and 339.2512 of  
4 the Michigan Compiled Laws, are amended and section 2518 is added  
5 to read as follows:

6 Sec. 2504. (1) Before receiving a real estate broker's  
7 license, an applicant shall have successfully completed not less  
8 than 90 clock hours of approved classroom courses in real estate

1 of which not less than 9 clock hours shall be instruction on  
2 civil rights law and equal opportunity in housing, and shall  
3 submit an application as described in section 2505. The 90 hours  
4 shall be in addition to the hours required to obtain a real  
5 estate salesperson's license.

6 (2) Before being permitted to take the real estate  
7 salesperson's examination, an applicant shall show proof of suc-  
8 cessful completion of not less than 40 clock hours of classroom  
9 courses in principles of real estate, of which not less than 4  
10 clock hours shall be instruction on civil rights law and equal  
11 opportunity in housing.

12 (3) For purposes of subsections (1) and (2), approved  
13 courses may be on the following topics:

14 (a) Real estate license law and related regulatory laws.

15 (b) Real property law, including property interests and  
16 restrictions.

17 (c) Federal, state, and local tax laws affecting real  
18 property.

19 (d) Conveyances, including contracts, deeds, and leases.

20 (e) Financing, including mortgages, land contracts, foreclo-  
21 sure, and limits on lending procedures and interest rates.

22 (f) Appraisal of real property.

23 (g) Design and construction.

24 (h) Marketing, exchanging, and counseling.

25 (i) The law of agency.

26 (j) Sales and office management, including listing and  
27 selling techniques.

1 (k) Real estate securities and syndications.

2 (l) Investments, including property management.

3 (4) ~~Before~~ UNTIL JANUARY 1, 1996, BEFORE being permitted

4 to renew an active real estate broker's or real estate

5 salesperson's license, a licensee shall have successfully com-

6 pleted, within the preceding 12 months, not less than 6 clock

7 hours of continuing education approved by the department covering

8 changes in economic conditions, law, rules, court cases, and

9 interpretations relating to real property which are pertinent to

10 the activities of a real estate broker or real estate

11 salesperson. Each licensee, in completing 6 clock hours, will

12 have the option of selecting the education courses in that

13 licensee's area of expertise, as long as the education courses

14 are approved by the department.

15 (5) BEGINNING JANUARY 1, 1996, A LICENSEE SHALL HAVE SUC-

16 CESSFULLY COMPLETED, WITHIN THE PRECEDING 24 MONTHS, NOT LESS

17 THAN 8 CLOCK HOURS OF CONTINUING EDUCATION APPROVED BY THE

18 DEPARTMENT COVERING CHANGES IN ECONOMIC CONDITIONS, LAW, RULES,

19 COURT CASES, AND INTERPRETATIONS RELATING TO REAL PROPERTY WHICH

20 ARE PERTINENT TO THE EXPERTISE OF THE LICENSEE. THE BOARD SHALL

21 PROMULGATE RULES DESIGNATING CATEGORIES OF LICENSEE EXPERTISE AND

22 DESIGNATING SUBJECT MATTER AREAS APPROPRIATE TO EACH CATEGORY.

23 (6) ~~(5)~~ A license which has been inactive for less than 3

24 years may be reinstated without examination if the licensee shows

25 proof of completion of not less than ~~6~~ THE clock hours of con-

26 tinuing education described in subsection (4) OR (5). A broker's

27 license which has been inactive for 3 or more continuous years

1 may be reinstated without examination if the licensee provides  
2 proof of the completion of either ~~6~~ THE clock hours of continu-  
3 ing education described in subsection (4) OR (5) for each of the  
4 years the license was inactive or 40 clock hours of instruction  
5 described in subsection (3). A salesperson's license which has  
6 been inactive for 3 or more continuous years may be reinstated if  
7 the licensee provides proof of meeting 1 of the following  
8 requirements:

9 (a) Completion of ~~6~~ THE clock hours of continuing educa-  
10 tion described in subsection (4) OR (5) for each of the years the  
11 license was inactive.

12 (b) Completion of 40 clock hours of instruction described in  
13 subsection (3).

14 (c) Passing the examination required for licensure as a  
15 salesperson as provided in subsection (2).

16 (7) ~~(6)~~ The continuing education requirements provided in  
17 subsections (4), ~~and~~ (5), AND (6) shall not be applied towards  
18 the real estate broker's license education requirements provided  
19 in subsection (1) ~~, nor shall~~ AND THE courses taken under real  
20 estate broker's license education requirements SHALL NOT be  
21 applied towards the continuing education requirements.

22 (8) ~~(7)~~ The continuing education requirements provided in  
23 subsections (4), ~~and~~ (5), AND (6) do not apply to a real estate  
24 salesperson or real estate broker renewing his or her license in  
25 the year in which the original license was issued.

26 (9) ~~(8)~~ A person who offers or conducts a course or  
27 courses of study represented to meet the educational requirements

1 of this article, first shall obtain approval from the department  
2 and shall abide by the rules of the department concerning curric-  
3 ulum, instructor qualification, grading system, and other related  
4 matters. The department may suspend or revoke the approval of a  
5 person for a violation of this article or of the rules promul-  
6 gated under this article. A person shall not represent that its  
7 students are assured of passing an examination required by the  
8 department. A person shall not represent that the issuance of  
9 departmental approval is a recommendation or indorsement of the  
10 person to which it is issued or of a course of instruction given  
11 by it. A pre-licensure course approved under this article shall  
12 be conducted by a local public school district, a community col-  
13 lege, an institution of higher education authorized to grant  
14 degrees, or a private school licensed by the department of educa-  
15 tion under Act No. 148 of the Public Acts of 1943, being sections  
16 395.101 to 395.103 of the Michigan Compiled Laws.

17 (10) ~~(9)~~ A person who in operating a school violates sub-  
18 section ~~(8)~~ (9) shall be subject to the penalties set forth in  
19 article 6.

20 (11) ~~(10)~~ The department may conduct, hold, or assist in  
21 conducting or holding, a real estate clinic, meeting, course, or  
22 institute, which shall be open to a person licensed under this  
23 article, and may incur the necessary expenses in connection with  
24 the clinic, meeting, course, or institute. The department, in  
25 the public interest, may assist educational institutions within  
26 this state in sponsoring studies, research, and programs for the

1 purpose of raising the standards of professional practice in real  
2 estate and the competence of a licensee.

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

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

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

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

12       (d) Changing a business location without notification to the  
13 commission.

14       (e) If a real estate broker, failing to return a real estate  
15 salesperson's license within 5 days as provided in section 2507.

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

22       (G) SHARING OR PAYING A FEE, COMMISSION, OR VALUABLE CONSID-  
23 ERATION TO A LICENSEE UNDER THIS ARTICLE WHO IS AN EMPLOYEE, COM-  
24 PENSATED ON A SALARY OR NONCOMMISSION BASIS, OF A PARTY TO A REAL  
25 ESTATE TRANSACTION WHERE THAT LICENSEE DID NOT ACT AS AN AGENT OR  
26 BROKER OF RECORD FOR THE PARTY TO THE REAL ESTATE TRANSACTION.

27 IN ADDITION TO ANY PENALTIES PROVIDE FOR UNDER THIS ACT, A

1 LICENSEE SHALL BE LIABLE FOR A FINE OF NOT LESS THAN 2-1/2 TIMES  
2 THE FEE, COMMISSION, OR THE VALUE OF ANY OTHER CONSIDERATION  
3 EARNED FROM THE TRANSACTION.

4 (H) THE FAILURE OF A LICENSEE TO DISCLOSE TO ALL PARTIES TO  
5 A TRANSACTION WHETHER THE COMPENSATION OF A NONLICENSED INDIVID-  
6 UAL IS DIRECTLY OR INDIRECTLY PART OF THE COMMISSION PAID TO THE  
7 LICENSEE.

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

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

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

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

25 (iv) A real estate broker shall deposit within 2 banking  
26 days after the signing of a purchase agreement by all parties,  
27 but not later than 5 days after receipt, money belonging to

1 others in a separate custodial or trust fund account maintained  
2 by the real estate broker with a bank, savings and loan associa-  
3 tion, credit union, or recognized depository until the transac-  
4 tion involved is consummated or terminated, at which time the  
5 real estate broker shall account for the full amount received.

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

20 SEC. 2518. (1) A LIEN IS CREATED UPON COMMERCIAL REAL  
21 ESTATE IN THE AMOUNT OF COMMISSION AGREED UPON BY AND BETWEEN A  
22 LICENSEE AND THE LICENSEE'S CLIENT OR CUSTOMER IF 1 OR MORE OF  
23 THE FOLLOWING CIRCUMSTANCES EXIST:

24 (A) THE COMMERCIAL REAL ESTATE IS LISTED BY THE LICENSEE.

25 (B) THE LICENSEE PROCURES FOR THE OWNER OF THE COMMERCIAL  
26 REAL ESTATE A PERSON READY, WILLING, AND ABLE TO PURCHASE, LEASE,  
27 OR OTHERWISE ACCEPT CONVEYANCE OF COMMERCIAL REAL ESTATE UPON

1 TERMS OF THE OWNER'S WRITTEN AGREEMENT OR TERMS OTHERWISE  
2 ACCEPTABLE TO THE OWNER PURSUANT TO A WRITTEN AGREEMENT.

3 (C) THE LICENSEE HAS A WRITTEN AGREEMENT AS A BUYER'S AGENT  
4 WITH A PROSPECTIVE BUYER AND THE LICENSEE BECOMES ENTITLED TO  
5 COMPENSATION PURSUANT TO THAT WRITTEN AGREEMENT.

6 (2) A LIEN SHALL ATTACH ON COMMERCIAL REAL ESTATE IF BOTH OF  
7 THE FOLLOWING CIRCUMSTANCES EXIST:

8 (A) THE LICENSEE PROCURES A PERSON READY, WILLING, AND ABLE  
9 TO PURCHASE, LEASE, OR OTHERWISE ACCEPT CONVEYANCE OF COMMERCIAL  
10 REAL ESTATE UPON TERMS OF A WRITTEN AGREEMENT WITH THE OWNER OR  
11 ON TERMS OTHERWISE ACCEPTABLE TO THE OWNER PURSUANT TO A WRITTEN  
12 AGREEMENT.

13 (B) SUBJECT TO SUBSECTION (3), (4), OR (5), THE LICENSEE  
14 RECORDS A NOTICE OF LIEN IN THE REGISTER OF DEEDS OFFICE OF THE  
15 COUNTY IN WHICH THE COMMERCIAL REAL ESTATE IS LOCATED BEFORE THE  
16 ACTUAL CONVEYANCE OF THE COMMERCIAL REAL ESTATE AGAINST WHICH THE  
17 LICENSEE IS CLAIMING THE LIEN.

18 (3) EXCEPT AS PROVIDED FOR IN SUBSECTION (4), WHEN PAYMENT  
19 IS DUE IN INSTALLMENTS, A PORTION OF WHICH IS DUE ONLY AFTER THE  
20 CONVEYANCE OF THE COMMERCIAL REAL ESTATE, A NOTICE OF LIEN FOR  
21 THOSE PAYMENTS DUE AFTER THE DATE OF THE CONVEYANCE MAY BE  
22 RECORDED AFTER THE CONVEYANCE AND BEFORE THE DATE ON WHICH THE  
23 PAYMENTS ARE DUE. THE CLAIM FOR LIEN BY THE LICENSEE IS ONLY  
24 EFFECTIVE AS A LIEN AGAINST THE COMMERCIAL REAL ESTATE TO THE  
25 EXTENT PAYMENT IS STILL OWED TO THE OWNER BY THE TRANSFEREE. A  
26 SINGLE NOTICE FOR THE CLAIM OF LIEN RECORDED BEFORE THE  
27 CONVEYANCE OF THE COMMERCIAL REAL ESTATE CLAIMING A COMMISSION

1 DUE UNDER AN INSTALLMENT AGREEMENT IS NOT ENFORCEABLE AS TO A  
2 CLAIM FOR A COMMISSION DUE AFTER THE CONVEYANCE. THE LIEN  
3 ATTACHES ON THE DATE OF THE RECORDING OF THE NOTICE OF LIEN.

4 (4) IF PAYMENT TO THE OWNER OF COMMERCIAL REAL ESTATE IS  
5 BASED UPON A LEASE, THEN THE NOTICE OF LIEN SHALL BE RECORDED BY  
6 THE LICENSEE WITHIN 90 DAYS AFTER THE LEASEE OR THE LEASEE'S  
7 TENANT TAKES POSSESSION OF THE LEASED PREMISES. HOWEVER, IF  
8 WRITTEN NOTICE OF THE INTENDED SIGNING OF THE LEASE IS PERSONALLY  
9 SERVED UPON THE LICENSEE WHO IS ENTITLED TO CLAIM THE LIEN AT  
10 LEAST 10 DAYS BEFORE THE DATE OF THE INTENDED SIGNING OF THE  
11 LEASE, THE LICENSEE SHALL FILE THE NOTICE OF LIEN BEFORE THE DATE  
12 DESIGNATED IN THE WRITTEN NOTICE AS THE INTENDED DATE OF THE  
13 SIGNING OF THE LEASE. THE LIEN ATTACHES ON THE DATE OF THE  
14 RECORDING OF THE NOTICE OF LIEN.

15 (5) IF A LICENSEE HAS A WRITTEN AGREEMENT WITH A POTENTIAL  
16 BUYER TO ACT AS A BUYER'S AGENT, THE LIEN ATTACHES UPON THE BUYER  
17 PURCHASING OR OTHERWISE ACCEPTING THE CONVEYANCE OF COMMERCIAL  
18 REAL ESTATE AND RECORDING A LIEN WITHIN 90 DAYS AFTER THE PUR-  
19 CHASE OR CONVEYANCE.

20 (6) THE LICENSEE SHALL PROVIDE A COPY OF THE NOTICE OF LIEN  
21 TO THE OWNER OF THE COMMERCIAL REAL ESTATE BY CERTIFIED MAIL.

22 (7) A LIEN NOT RECORDED IN COMPLIANCE WITH THIS SECTION IS  
23 VOID AND UNENFORCEABLE.

24 (8) A LIEN ATTACHING PURSUANT TO THIS SECTION DOES NOT TAKE  
25 PRIORITY OVER ANY OTHER VALIDLY PERFECTED LIEN OR MORTGAGE ON  
26 COMMERCIAL REAL ESTATE.

1 (9) IF A LIEN FILED PURSUANT TO THIS SECTION PREVENTS THE  
2 CLOSING OF A TRANSACTION INVOLVING COMMERCIAL REAL ESTATE, THE  
3 PARTIES SHALL ESTABLISH AN ESCROW ACCOUNT FROM THE PROCEEDS OF  
4 THE TRANSACTION IN AN AMOUNT SUFFICIENT TO SATISFY THE LIEN. THE  
5 REQUIREMENT OF ESTABLISHING AN ESCROW ACCOUNT PURSUANT TO THIS  
6 SUBSECTION IS NOT CAUSE FOR A PARTY TO REFUSE TO CLOSE THE  
7 TRANSACTION. THE MONEY SHALL REMAIN IN THE ESCROW ACCOUNT UNTIL  
8 THE RIGHTS OF THE ESCROWED MONEY HAVE BEEN DETERMINED BY A WRIT-  
9 TEN AGREEMENT OF THE PARTIES, A JUDGMENT OR ORDER RESULTING FROM  
10 AN ACTION COMMENCED IN A COURT OF COMPETENT JURISDICTION, OR ANY  
11 OTHER METHOD AGREEABLE TO THE PARTIES. THE PARTIES ARE NOT  
12 REQUIRED TO ESTABLISH AN ESCROW ACCOUNT IF ALTERNATIVE PROCEDURES  
13 ARE AVAILABLE WHICH WOULD ALLOW THE TRANSACTION TO CLOSE AND  
14 THESE PROCEDURES ARE ACCEPTABLE TO THE TRANSFEREE. IF THE PRO-  
15 CEEDS FROM THE TRANSACTION ARE INSUFFICIENT TO RELEASE ALL LIENS  
16 FOR A LICENSEE'S COMMISSION THAT ARE CLAIMED AGAINST THE COMMER-  
17 CIAL REAL ESTATE, THE PARTIES ARE NOT REQUIRED TO ESCROW THE  
18 MONEY.

19 (10) A PERSON CLAIMING A LIEN SHALL COMMENCE AN ACTION IN A  
20 COURT OF COMPETENT JURISDICTION NOT LATER THAN 2 YEARS AFTER THE  
21 RECORDING OF THE NOTICE OF LIEN EXCEPT THAT IF THE CLAIM FOR LIEN  
22 IS FOR AN OPTION TO PURCHASE COMMERCIAL REAL ESTATE, THE ACTION  
23 SHALL BE COMMENCED NOT LATER THAN 6 MONTHS AFTER THE CONVEYANCE  
24 OF THE COMMERCIAL REAL ESTATE PURSUANT TO THE EXERCISE OF THE  
25 OPTION.

26 (11) THE COURT SHALL AWARD COSTS TO A PREVAILING PARTY  
27 BRINGING AN ACTION UNDER THIS SECTION. THE COSTS INCLUDE

1 REASONABLE ATTORNEY FEES, COURT AND LITIGATION COSTS, AND  
2 PREJUDGMENT INTEREST.

3 (12) AS USED IN THIS SECTION, "COMMERCIAL REAL ESTATE" MEANS  
4 REAL ESTATE OTHER THAN REAL ESTATE CONTAINING 1 TO 6 RESIDENTIAL  
5 UNITS, REAL ESTATE ON WHICH NO BUILDING OR STRUCTURES ARE  
6 LOCATED, AND AGRICULTURAL REAL ESTATE. COMMERCIAL REAL ESTATE  
7 DOES NOT INCLUDE SINGLE FAMILY RESIDENTIAL UNITS IN A SUBDIVISION  
8 WHEN SOLD, LEASED, OR OTHERWISE CONVEYED ON A UNIT-BY-UNIT BASIS  
9 EVEN THOUGH THESE UNITS MAY BE PART OF A LARGER BUILDING OR  
10 PARCEL OF REAL ESTATE CONTAINING MORE THAN 6 RESIDENTIAL UNITS.