



# HOUSE BILL No. 6149

September 25, 1996, Introduced by Reps. Pitoniak, Brewer, DeMars and Parks and referred to the Committee on Local Government.

A bill to amend Act No. 299 of the Public Acts of 1980, entitled as amended "Occupational code," as amended, being sections 339.101 to 339.2721 of the Michigan Compiled Laws, by adding article 28; and to repeal acts and parts of acts.

**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 28 to read as  
4 follows:

5 ARTICLE 28

6 SEC. 2801. AS USED IN THIS ARTICLE:

7 (A) "AUCTION" MEANS THE SALE OR OFFER FOR SALE BY BIDDING OF  
8 REAL OR PERSONAL PROPERTY AT A PUBLIC OR PRIVATE LOCATION.

1 (B) "AUCTIONEER" MEANS AN INDIVIDUAL WHO, FOR COMPENSATION,  
2 IS ENGAGED IN THE BUSINESS OF OR OFFERS TO ENGAGE IN THE CONDUCT  
3 OF AN AUCTION.

4 SEC. 2803. THERE IS CREATED A BOARD OF AUCTIONEERS.

5 SEC. 2805. (1) AN INDIVIDUAL SHALL NOT ENGAGE IN THE BUSI-  
6 NESS OF THE CONDUCT OF OR OFFERING TO CONDUCT AN AUCTION UNLESS  
7 LICENSED OR EXEMPT FROM LICENSURE UNDER THIS ARTICLE.

8 (2) A CORPORATION, PARTNERSHIP, LIMITED LIABILITY COMPANY,  
9 ASSOCIATION, OR OTHER LEGAL ENTITY MAY APPLY FOR LICENSURE UNDER  
10 THIS ARTICLE IF NOT LESS THAN 1 OF ITS OFFICERS, PARTNERS, MEM-  
11 BERS, OR MANAGING AGENTS IS DESIGNATED AS A QUALIFYING MEMBER.  
12 THE DEPARTMENT SHALL ISSUE A LICENSE TO THE QUALIFYING MEMBER  
13 UPON THAT INDIVIDUAL'S FULFILLMENT OF THE REQUIREMENTS OF THIS  
14 ARTICLE. THE QUALIFYING MEMBER IS RESPONSIBLE FOR EXERCISING THE  
15 SUPERVISION AND CONTROL OF THE ACTIVITIES REGULATED BY THIS ARTI-  
16 CLE SO AS TO ASSURE FULL COMPLIANCE WITH THIS ARTICLE AND ANY  
17 RULES PROMULGATED UNDER THIS ARTICLE.

18 (3) THE DEPARTMENT SHALL SUSPEND, REVOKE, OR DENY THE  
19 LICENSE OF A CORPORATION, PARTNERSHIP, LIMITED LIABILITY COMPANY,  
20 ASSOCIATION, OR OTHER LEGAL ENTITY WHEN THE LICENSE OF THE QUALI-  
21 FYING MEMBER IS SUSPENDED, REVOKED, OR DENIED.

22 (4) IF THE QUALIFYING MEMBER OF A LICENSEE STOPS BEING ITS  
23 QUALIFYING MEMBER, SUCH CIRCUMSTANCE OPERATES AS AN AUTOMATIC  
24 SUSPENSION OF THE ENTITY'S LICENSE. UPON REQUEST, THE DEPARTMENT  
25 MAY PERMIT THE LICENSE TO REMAIN IN FORCE FOR A REASONABLE PERIOD  
26 OF TIME IN ORDER TO ALLOW THE QUALIFYING OF A NEW QUALIFYING  
27 MEMBER.

1 (5) A PERSON SHALL NOT ADVERTISE OR USE THE TERM "AUCTION",  
2 "AUCTIONEER", OR ANY OTHER TERM OF SIMILAR MEANING THAT CONNOTES  
3 THAT THE PERSON IS LICENSED UNDER THIS ARTICLE UNLESS THAT PERSON  
4 OBTAINS A LICENSE UNDER THIS ARTICLE OR IS SPECIFICALLY EXEMPT  
5 FROM LICENSURE UNDER THIS ARTICLE.

6 SEC. 2807. THE FOLLOWING PERSONS ARE EXEMPT FROM LICENSURE  
7 UNDER THIS ARTICLE:

8 (A) A PERSON SELLING BY AUCTION HIS OR HER OWN REAL OR PER-  
9 SONAL PROPERTY WHERE THAT OWNER DOES NOT ACQUIRE THE REAL OR PER-  
10 SONAL PROPERTY SOLELY FOR THE PURPOSE OF RESALE BY AUCTION.

11 (B) A PERSON SELLING BY AUCTION REAL OR PERSONAL PROPERTY  
12 FOR THE BENEFIT OF A CHARITABLE, RELIGIOUS, OR CIVIC ORGANIZATION  
13 WHERE THE AUCTIONEER DOES NOT RECEIVE COMPENSATION.

14 (C) AN AGENT OR EMPLOYEE OF A COURT OF COMPETENT JURISDIC-  
15 TION SELLING BY AUCTION REAL OR PERSONAL PROPERTY PURSUANT TO A  
16 COURT ORDER; A LAW ENFORCEMENT AGENCY SELLING BY AUCTION ABAN-  
17 DONED OR SEIZED PROPERTY; OR A GOVERNMENTAL UNIT SELLING BY AUC-  
18 TION REAL OR PERSONAL PROPERTY AS THE RESULT OF A TAX SALE OR AS  
19 SURPLUS OR SALVAGE PERSONAL PROPERTY.

20 (D) A PERSON LICENSED UNDER ARTICLE 25 SELLING REAL PROPERTY  
21 BY AUCTION IF NOT MORE THAN 5 OF SUCH SALES OCCUR PER CALENDAR  
22 YEAR. THESE SALES MAY INCLUDE THE TOTAL CONTENTS OF A PIECE OF  
23 REAL PROPERTY.

24 (E) A PERSON LICENSED UNDER ACT NO. 284 OF THE PUBLIC ACTS  
25 OF 1937, BEING SECTIONS 287.121 TO 287.131 OF THE MICHIGAN  
26 COMPILED LAWS, SELLING BY AUCTION LIVESTOCK.

1 (F) A DEALER LICENSED UNDER THE MICHIGAN VEHICLE CODE, ACT  
2 NO. 300 OF THE PUBLIC ACTS OF 1949, BEING SECTIONS 257.1 TO  
3 257.923 OF THE MICHIGAN COMPILED LAWS, SELLING BY AUCTION MOTOR  
4 VEHICLES.

5 (G) A DEALER OR MANUFACTURER SELLING BY AUCTION BOATS OR  
6 WATERCRAFT REQUIRED TO HAVE A CERTIFICATE OF TITLE UNDER PART 801  
7 (MARINE SAFETY) OF THE NATURAL RESOURCES AND ENVIRONMENTAL PRO-  
8 TECTION ACT, ACT NO. 451 OF THE PUBLIC ACTS OF 1994, BEING SEC-  
9 TIONS 324.80101 TO 324.80199 OF THE MICHIGAN COMPILED LAWS.

10 SEC. 2809. THE DEPARTMENT SHALL ISSUE A LICENSE AS AN AUC-  
11 TIONEER TO AN INDIVIDUAL WHO MEETS ALL OF THE FOLLOWING  
12 CONDITIONS:

13 (A) HAS ACTIVELY PARTICIPATED IN THE CONDUCTING OF NOT LESS  
14 THAN 5 AUCTIONS. THE EXPERIENCE SHALL BE VERIFIED BY AN AFFIDA-  
15 VIT OF AN AUCTIONEER AND SHALL PROVIDE THE NAMES AND ADDRESSES OF  
16 THE PARTIES ON WHOSE BEHALF THE AUCTION WAS HELD AND THE DATES OF  
17 THE AUCTION.

18 (B) HAS COMPLETED AN EXAMINATION AS DESCRIBED IN  
19 SECTION 2815 IN THE CASE OF INITIAL LICENSURE AND HAS COMPLIED  
20 WITH THE CONTINUING EDUCATION REQUIREMENTS OF SECTION 2817 IN THE  
21 CASE OF A RENEWAL OF A LICENSE IF CONTINUING EDUCATION IS  
22 REQUIRED.

23 (C) IS OF GOOD MORAL CHARACTER.

24 SEC. 2811. MONEY PAID BY ANY PERSON TO A LICENSEE IS CON-  
25 SIDERED TO BE HELD IN TRUST FOR THE BENEFIT OF THE PERSON MAKING  
26 THE PAYMENT AND THE LICENSEE IS CONSIDERED THE TRUSTEE FOR THE  
27 MONEY.

1 SEC. 2813. (1) AN AUCTIONEER SHALL MAINTAIN A REGULAR PLACE  
2 OF BUSINESS IN THIS STATE. IF MORE THAN 1 PLACE OF BUSINESS IS  
3 MAINTAINED, A DUPLICATE LICENSE SHALL BE ISSUED BY THE DEPARTMENT  
4 AT NO ADDITIONAL COST.

5 (2) A LICENSED AUCTIONEER SHALL NOT CONDUCT AN AUCTION  
6 UNLESS A WRITTEN CONTRACT IS EXECUTED BETWEEN THE PERSON DESIRING  
7 AUCTION SERVICES AND THE LICENSED AUCTIONEER. A COPY OF THE CON-  
8 TRACT SHALL BE KEPT AS PART OF THE RECORDS OF THE LICENSEE AND,  
9 UPON REQUEST, MAY BE INSPECTED BY THE DEPARTMENT DURING NORMAL  
10 BUSINESS HOURS.

11 (3) A LICENSEE UNDER THIS ARTICLE SHALL MAINTAIN WRITTEN  
12 RECORDS OF EACH AUCTION SALE FOR A PERIOD OF NOT LESS THAN 1 YEAR  
13 FROM THE DATE OF THE AUCTION SALE. THE RECORDS SHALL INCLUDE,  
14 BUT NOT BE LIMITED TO, ALL OF THE FOLLOWING:

15 (A) CONSIGNMENT RECEIPTS.

16 (B) BIDDER REGISTRATIONS.

17 (C) DOCUMENTS RELATING TO FINAL SETTLEMENTS WITH  
18 CONSIGNORS.

19 (4) A LICENSEE UNDER THIS ARTICLE SHALL MAINTAIN RECORDS ON  
20 ALL CURRENT EMPLOYEES AND ON PAST EMPLOYEES FOR NOT LESS THAN 3  
21 YEARS AFTER A PAST EMPLOYEE LEAVES THE EMPLOYMENT OF THE LICENS-  
22 EE, WHICH RECORDS SHALL INCLUDE THE EMPLOYEE'S NAME, ADDRESS,  
23 SOCIAL SECURITY NUMBER, AND DATE OF BIRTH.

24 (5) A LICENSEE UNDER THIS ARTICLE SHALL CONSPICUOUSLY POST  
25 AT THE REGULAR PLACE OF BUSINESS A COPY OF THE LICENSE ISSUED  
26 UNDER THIS ARTICLE.

1 (6) A LICENSEE UNDER THIS ARTICLE SHALL ESTABLISH A  
2 CUSTODIAL ACCOUNT IN THE MANNER DESCRIBED IN THIS SECTION. ALL  
3 CHECKS, DRAFTS, NEGOTIABLE INSTRUMENTS, AND CASH TENDERED BY A  
4 BUYER FOR THE PAYMENT OF AN ITEM SOLD BY AUCTION SHALL BE DEPOS-  
5 ITED IN THE CUSTODIAL ACCOUNT. THE LICENSEE SHALL MAKE A DIS-  
6 BURSEMENT RELATIVE TO A SALE BY AUCTION THROUGH THAT CUSTODIAL  
7 ACCOUNT IN THE TIME PERIOD AND MANNER DESCRIBED IN THIS SECTION.

8 (7) A LICENSEE SHALL NOT PERMIT AN ADVANCE PAYMENT OF MONEY  
9 BY A CUSTOMER TO BE DEPOSITED IN THE LICENSEE'S BUSINESS OR PER-  
10 SONAL ACCOUNT OR TO BE COMMINGLED IN ANY WAY WITH FUNDS BELONGING  
11 TO THE LICENSEE, EXCEPT AS PROVIDED IN THIS SECTION. CUSTOMER  
12 MONEY SHALL BE DEPOSITED INTO A SEPARATE CUSTODIAL ACCOUNT UNTIL  
13 THE TRANSACTION INVOLVED IS CONSUMMATED OR TERMINATED. DEPOSITS  
14 OF CUSTOMER MONEY SHALL BE MADE WITHIN 2 BANKING DAYS AFTER THE  
15 AUCTION TRANSACTION, BUT NOT LATER THAN 5 DAYS AFTER ITS RECEIPT  
16 BY THE LICENSEE.

17 (8) THE SEPARATE CUSTODIAL ACCOUNT IS SUBJECT TO THE FOLLOW-  
18 ING REQUIREMENTS:

19 (A) SHALL BE A NONINTEREST BEARING ACCOUNT MAINTAINED IN A  
20 FEDERALLY INSURED BANK, SAVINGS AND LOAN ASSOCIATION, CREDIT  
21 UNION, OR RECOGNIZED DEPOSITORY.

22 (B) SHALL DESIGNATE THE LICENSEE AS THE CUSTODIAN OR  
23 TRUSTEE.

24 (C) SHALL PROVIDE FOR WITHDRAWAL OF MONEY WITHOUT PREVIOUS  
25 NOTICE AND SHALL NOT BE ENCUMBERED IN ANY MANNER.

26 (D) SHALL NOT CONTAIN ANY MONEY OF THE LICENSEE EXCEPT FOR  
27 SUCH AMOUNTS AS ARE NECESSARY TO PAY SERVICE CHARGES ON THE

1 ACCOUNT OR TO MAINTAIN THE ACCOUNT WHEN CUSTOMER MONEY IS NOT ON  
2 DEPOSIT.

3 (9) DISBURSEMENTS FROM THE SEPARATE CUSTODIAL ACCOUNT SHALL  
4 BE MADE ONLY FOR THE FOLLOWING PURPOSES:

5 (A) PAYMENT AS A RESULT OF THE SALE OF AN ITEM BY THE  
6 LICENSEE.

7 (B) REFUND OF AN AMOUNT TO THE CUSTOMER UPON TERMINATION OF  
8 THE TRANSACTION.

9 (C) PAYMENT TO THE LICENSEE OF A COMMISSION FOLLOWING THE  
10 CONSUMMATION OF A TRANSACTION UPON WHICH A COMMISSION IS PAYABLE  
11 TO THE LICENSEE.

12 (10) THE LICENSEE SHALL KEEP RECORDS OF MONEY DEPOSITED IN  
13 THE SEPARATE CUSTODIAL ACCOUNT. THE RECORDS SHALL SHOW ALL OF  
14 THE FOLLOWING:

15 (A) THE DATE OF THE RECEIPT OF MONEY FROM A CUSTOMER AND THE  
16 NAME OF THE CUSTOMER ON WHOSE BEHALF THE MONEY WAS PAID.

17 (B) THE PURPOSE FOR WHICH THE MONEY WAS PAID.

18 (C) THE DATE THE MONEY WAS DEPOSITED IN THE CUSTODIAL  
19 ACCOUNT.

20 (D) THE DATE OF WITHDRAWAL OF THE MONEY, THE PURPOSE OF THE  
21 WITHDRAWAL, AND THE NAME OF THE PERSON TO WHOM THE MONEY WAS PAID  
22 UPON WITHDRAWAL.

23 (E) ANY OTHER PERTINENT INFORMATION REGARDING THE  
24 TRANSACTION.

25 (11) THE DEPARTMENT AND THE BOARD MAY, UPON NOTICE GIVEN TO  
26 A LICENSEE, INSPECT THE RECORDS REQUIRED TO BE KEPT PURSUANT TO  
27 THIS SECTION.

1           SEC. 2815. (1) THE DEPARTMENT AND THE BOARD SHALL DEVELOP  
2 AN EXAMINATION FOR APPLICANTS FOR LICENSURE UNDER THIS ARTICLE IN  
3 THE MANNER PROVIDED FOR IN SECTION 316.

4           (2) THE EXAMINATION DESCRIBED IN SUBSECTION (1) SHALL  
5 INCLUDE, BUT NOT BE LIMITED TO, THE FOLLOWING SUBJECT MATTER  
6 AREAS:

7           (A) THE PROVISIONS OF THIS ARTICLE.

8           (B) ETHICS AND ETHICAL PRACTICES AS THEY RELATE TO THE BUSI-  
9 NESS OF CONDUCTING AUCTIONS.

10          (C) ELEMENTARY MATHEMATICS.

11          (D) ELEMENTARY PRINCIPLES OF LAND ECONOMICS.

12          (E) ELEMENTARY PRINCIPLES OF THE LAW REGARDING BULK SALES,  
13 DEEDS, MORTGAGES, CONTRACTS OF SALE, AGENCY, LEASES, AUCTIONS,  
14 AND BROKERAGE.

15          (3) THE DEPARTMENT SHALL ADMINISTER THE EXAMINATIONS ON AT  
16 LEAST A QUARTERLY BASIS. THE DEPARTMENT MAY ADMINISTER THE EXAM-  
17 INATIONS MORE OFTEN THAN ON A QUARTERLY BASIS IF THE BOARD DETER-  
18 MINES THAT CIRCUMSTANCES EXIST THAT WARRANT THE FURTHER ADMINIS-  
19 TRATION OF THE EXAMINATION.

20          SEC. 2817. THE BOARD MAY PROMULGATE RULES SETTING STANDARDS  
21 FOR MANDATORY PROGRAM CONTINUING EDUCATION. THE RULES SHALL PRO-  
22 VIDE FOR NOT LESS THAN 4 CLOCK HOURS OF CONTINUING EDUCATION PER  
23 YEAR.

24          SEC. 2819. (1) THE DEPARTMENT SHALL ISSUE A LICENSE WITHOUT  
25 EXAMINATION TO A NONRESIDENT INDIVIDUAL WHO, AT THE TIME OF  
26 APPLICATION, IS LICENSED, REGISTERED, CERTIFIED, OR OTHERWISE  
27 REGULATED BY ANOTHER STATE IF THE REQUIREMENTS OF THAT STATE, AS

1 DETERMINED BY THE BOARD, ARE SUBSTANTIALLY THE EQUIVALENT OF THE  
2 REQUIREMENTS OF THIS ARTICLE AND IF THE OTHER STATE OFFERS LICEN-  
3 SURE, CERTIFICATION, OR REGISTRATION ON A BASIS SIMILAR TO THIS  
4 SECTION TO LICENSEES UNDER THIS ARTICLE.

5 (2) A NONRESIDENT SHALL FILE AN IRREVOCABLE CONSENT TO SERV-  
6 ICE OF PROCESS WHICH CONSENT SHALL BE SIGNED BY THE LICENSEE. A  
7 PROCESS OR PLEADING SERVED UPON THE DEPARTMENT SHALL BE SUFFI-  
8 CIENT SERVICE UPON THE LICENSEE. A PROCESS OR PLEADING SERVED  
9 UPON THE DEPARTMENT UNDER THIS SECTION SHALL BE IN DUPLICATE.  
10 THE DEPARTMENT SHALL IMMEDIATELY SERVE BY FIRST-CLASS MAIL A COPY  
11 OF THE PROCESS OR PLEADING TO THE LICENSEE'S LAST KNOWN ADDRESS  
12 AS DETERMINED BY THE RECORDS OF THE DEPARTMENT.

13 SEC. 2821. THE DEPARTMENT SHALL LICENSE AS AN AUCTIONEER,  
14 AFTER VERIFICATION OF THE EXPERIENCE REQUIREMENTS IMPOSED IN THIS  
15 SECTION, AN INDIVIDUAL WHO APPLIES NOT MORE THAN 2 YEARS AFTER  
16 THE 1996 AMENDATORY ACT THAT ADDED THIS ARTICLE AND SUBMITS AN  
17 AFFIDAVIT ATTESTING TO EXPERIENCE IN THE PRACTICE OF THE CONDUCT  
18 OF AUCTIONS FOR NOT LESS THAN 3 YEARS BEFORE THE EFFECTIVE DATE  
19 OF THIS ARTICLE, WHICH EXPERIENCE SHALL HAVE INCLUDED THE CONDUCT  
20 OF NOT LESS THAN 12 AUCTIONS.

21 SEC. 2823. A LICENSEE WHO COMMITS ANY OF THE FOLLOWING ACTS  
22 SHALL BE SUBJECT TO THE PENALTIES CONTAINED IN ARTICLE 6:

23 (A) FAILS TO ENTER INTO A WRITTEN CONTRACT WITH A SELLER OR  
24 CONSIGNOR PRIOR TO PLACING OR AUTHORIZING ANY ADVERTISING FOR AN  
25 AUCTION.

1 (B) FAILS TO REDUCE TO WRITING OR FAILS TO ISSUE ANY  
2 APPROPRIATE DOCUMENTATION RELATIVE TO AN AUCTION-RELATED  
3 TRANSACTION.

4 (C) FAILS TO APPROPRIATELY USE OR ISSUE PAYMENT FROM A CUS-  
5 TODIAL FUND.

6 (D) PERMITS AN UNLICENSED AUCTIONEER TO CONDUCT AN AUCTION.

7 (E) IS INVOLVED IN CAPPING, SHILLING, OR STEERING RELATIVE  
8 TO AN AUCTION.

9 (F) HAS AN UNDISCLOSED FINANCIAL INTEREST IN AN AUCTION CON-  
10 DUCTED BY THE LICENSEE.

11 (G) KNOWINGLY MISREPRESENTS THE NATURE OR VALUE OF AN ITEM  
12 BEING AUCTIONED.

13 (H) VIOLATES THE REQUIREMENTS OF THIS ARTICLE OR A RULE  
14 PROMULGATED UNDER THIS ARTICLE.

15 Section 2. The following acts and parts of acts are  
16 repealed:

17 (a) Act No. 224 of the Public Acts of 1955, being sections  
18 446.51 to 446.60 of the Michigan Compiled Laws.

19 (b) Chapter 21 of the Revised Statutes of 1846, being sec-  
20 tions 446.26 to 446.35 of the Michigan Compiled Laws.

21 Section 3. This amendatory act shall not take effect unless  
22 all of the following bills of the 88th Legislature are enacted  
23 into law:

24 (a) Senate Bill No. \_\_\_\_\_ or House Bill No. 6148  
25 (request no. 07035'96 a).

26 (b) Senate Bill No. \_\_\_\_\_ or House Bill No. 6147  
27 (request no. 07035'96 b).

1 (c) Senate Bill No. \_\_\_\_\_ or House Bill No. 6146  
2 (request no. 07035'96 c).