

HOUSE BILL No. 4387

February 26, 1997, Introduced by Rep. Brewer and referred to the Committee on Regulatory Affairs.

A bill to amend 1980 PA 299, entitled
"Occupational code,"
by amending section 303a (MCL 339.303a), as amended by 1995 PA
183, and by adding article 28; and to repeal acts and parts of
acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 303a. The terms provided for in this act shall com-
2 mence on the following dates:

3	Accountancy	July 1
4	Architects	April 1
5	Athletic board of control	April 1
6	AUCTIONEERS	JANUARY 1
7	Barbers	October 1

1	Collection agencies	July 1
2	Community planners	July 1
3	Cosmetology	January 1
4	Employment agencies	October 1
5	Foresters	April 1
6	Hearing aid dealers	October 1
7	Land surveyors	April 1
8	Landscape architects	July 1
9	Marriage counselors	October 1
10	Mortuary science	July 1
11	Nursing home administrators	January 1
12	Professional engineers	April 1
13	Real estate appraisers	July 1
14	Real estate brokers and salespersons	July 1
15	Residential builders	April 1
16	Social workers	October 1

17 ARTICLE 28

18 SEC. 2801. AS USED IN THIS ARTICLE:

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

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

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

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

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

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

15 (4) IF THE QUALIFYING MEMBER OF A LICENSEE STOPS BEING ITS
16 QUALIFYING MEMBER, SUCH CIRCUMSTANCE OPERATES AS AN AUTOMATIC
17 SUSPENSION OF THE ENTITY'S LICENSE. UPON REQUEST, THE DEPARTMENT
18 MAY PERMIT THE LICENSE TO REMAIN IN FORCE FOR A REASONABLE PERIOD
19 OF TIME IN ORDER TO ALLOW THE QUALIFYING OF A NEW QUALIFYING
20 MEMBER.

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

26 SEC. 2807. THE FOLLOWING PERSONS ARE EXEMPT FROM LICENSURE
27 UNDER THIS ARTICLE:

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1 (A) A PERSON SELLING BY AUCTION HIS OR HER OWN REAL OR
2 PERSONAL PROPERTY WHERE THAT OWNER DOES NOT ACQUIRE THE REAL OR
3 PERSONAL PROPERTY SOLELY FOR THE PURPOSE OF RESALE BY AUCTION.

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

7 (C) AN AGENT OR EMPLOYEE OF A COURT OF COMPETENT JURISDIC-
8 TION SELLING BY AUCTION REAL OR PERSONAL PROPERTY PURSUANT TO A
9 COURT ORDER; A LAW ENFORCEMENT AGENCY SELLING BY AUCTION ABAN-
10 DONED OR SEIZED PROPERTY; OR A GOVERNMENTAL UNIT SELLING BY AUC-
11 TION REAL OR PERSONAL PROPERTY AS THE RESULT OF A TAX SALE OR AS
12 SURPLUS OR SALVAGE PERSONAL PROPERTY.

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

17 (E) A PERSON LICENSED UNDER 1937 PA 284, MCL 287.121 TO
18 287.131, SELLING BY AUCTION LIVESTOCK.

19 (F) A DEALER LICENSED UNDER THE MICHIGAN VEHICLE CODE, 1949
20 PA 300, MCL 257.1 TO 257.923, SELLING BY AUCTION MOTOR VEHICLES.

21 (G) A DEALER OR MANUFACTURER SELLING BY AUCTION BOATS OR
22 WATERCRAFT REQUIRED TO HAVE A CERTIFICATE OF TITLE UNDER PART 801
23 (MARINE SAFETY) OF THE NATURAL RESOURCES AND ENVIRONMENTAL PRO-
24 TECTION ACT, 1994 PA 451, MCL 324.80101 TO 324.80199.

25 SEC. 2809. THE DEPARTMENT SHALL ISSUE A LICENSE AS AN AUC-
26 TIONEER TO AN INDIVIDUAL WHO MEETS ALL OF THE FOLLOWING
27 CONDITIONS:

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

6 (B) HAS COMPLETED AN EXAMINATION AS DESCRIBED IN
7 SECTION 2815 IN THE CASE OF INITIAL LICENSURE AND HAS COMPLIED
8 WITH THE CONTINUING EDUCATION REQUIREMENTS OF SECTION 2817 IN THE
9 CASE OF A RENEWAL OF A LICENSE IF CONTINUING EDUCATION IS
10 REQUIRED.

11 (C) IS OF GOOD MORAL CHARACTER.

12 SEC. 2811. MONEY PAID BY ANY PERSON TO A LICENSEE IS CON-
13 sidered TO BE HELD IN TRUST FOR THE BENEFIT OF THE PERSON MAKING
14 THE PAYMENT AND THE LICENSEE IS CONSIDERED THE TRUSTEE FOR THE
15 MONEY.

16 SEC. 2813. (1) AN AUCTIONEER SHALL MAINTAIN A REGULAR PLACE
17 OF BUSINESS IN THIS STATE. IF MORE THAN 1 PLACE OF BUSINESS IS
18 MAINTAINED, THE DEPARTMENT SHALL ISSUE A DUPLICATE LICENSE AT NO
19 ADDITIONAL COST.

20 (2) A LICENSED AUCTIONEER SHALL NOT CONDUCT AN AUCTION
21 UNLESS A WRITTEN CONTRACT IS EXECUTED BETWEEN THE PERSON DESIRING
22 AUCTION SERVICES AND THE LICENSED AUCTIONEER. A LICENSEE SHALL
23 KEEP A COPY OF THE CONTRACT AS PART OF HIS OR HER RECORDS AND,
24 UPON REQUEST, MAKE THEM AVAILABLE TO THE DEPARTMENT FOR INSPEC-
25 TION DURING NORMAL BUSINESS HOURS.

26 (3) A LICENSEE UNDER THIS ARTICLE SHALL MAINTAIN WRITTEN
27 RECORDS OF EACH AUCTION SALE FOR A PERIOD OF NOT LESS THAN 1 YEAR

1 FROM THE DATE OF THE AUCTION SALE. THE RECORDS SHALL INCLUDE,
2 BUT NOT BE LIMITED TO, ALL OF THE FOLLOWING:

3 (A) CONSIGNMENT RECEIPTS.

4 (B) BIDDER REGISTRATIONS.

5 (C) DOCUMENTS RELATING TO FINAL SETTLEMENTS WITH
6 CONSIGNORS.

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

12 (5) A LICENSEE UNDER THIS ARTICLE SHALL CONSPICUOUSLY POST
13 AT THE REGULAR PLACE OF BUSINESS A COPY OF THE LICENSE ISSUED
14 UNDER THIS ARTICLE.

15 (6) A LICENSEE UNDER THIS ARTICLE SHALL ESTABLISH A CUSTO-
16 DIAL ACCOUNT IN THE MANNER DESCRIBED IN THIS SECTION. THE
17 LICENSEE SHALL DEPOSIT INTO THE CUSTODIAL ACCOUNT ALL CHECKS,
18 DRAFTS, NEGOTIABLE INSTRUMENTS, AND CASH TENDERED BY A BUYER FOR
19 THE PAYMENT OF AN ITEM SOLD BY AUCTION. THE LICENSEE SHALL MAKE
20 A DISBURSEMENT RELATIVE TO A SALE BY AUCTION THROUGH THAT CUSTO-
21 DIAL ACCOUNT IN THE TIME PERIOD AND MANNER DESCRIBED IN THIS
22 SECTION.

23 (7) A LICENSEE SHALL NOT PERMIT AN ADVANCE PAYMENT OF MONEY
24 BY A CUSTOMER TO BE DEPOSITED IN THE LICENSEE'S BUSINESS OR PER-
25 SONAL ACCOUNT OR TO BE COMMINGLED IN ANY WAY WITH FUNDS BELONGING
26 TO THE LICENSEE, EXCEPT AS PROVIDED IN THIS SECTION. THE
27 LICENSEE SHALL DEPOSIT CUSTOMER MONEY INTO A SEPARATE CUSTODIAL

1 ACCOUNT UNTIL THE TRANSACTION INVOLVED IS CONSUMMATED OR
2 TERMINATED WITHIN 2 BANKING DAYS AFTER THE AUCTION TRANSACTION,
3 BUT NOT LATER THAN 5 DAYS AFTER ITS RECEIPT.

4 (8) THE SEPARATE CUSTODIAL ACCOUNT IS SUBJECT TO THE FOLLOW-
5 ING REQUIREMENTS:

6 (A) SHALL BE A NONINTEREST BEARING ACCOUNT MAINTAINED IN A
7 FEDERALLY INSURED BANK, SAVINGS AND LOAN ASSOCIATION, CREDIT
8 UNION, OR DEPOSITORY RECOGNIZED BY THE DEPARTMENT.

9 (B) SHALL DESIGNATE THE LICENSEE AS THE CUSTODIAN OR
10 TRUSTEE.

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

13 (D) SHALL NOT CONTAIN ANY MONEY OF THE LICENSEE EXCEPT FOR
14 SUCH AMOUNTS AS ARE NECESSARY TO PAY SERVICE CHARGES ON THE
15 ACCOUNT OR TO MAINTAIN THE ACCOUNT WHEN CUSTOMER MONEY IS NOT ON
16 DEPOSIT.

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

19 (A) PAYMENT AS A RESULT OF THE SALE OF AN ITEM BY THE
20 LICENSEE.

21 (B) REFUND OF AN AMOUNT TO THE CUSTOMER UPON TERMINATION OF
22 THE TRANSACTION.

23 (C) PAYMENT TO THE LICENSEE OF A COMMISSION FOLLOWING THE
24 CONSUMMATION OF A TRANSACTION UPON WHICH A COMMISSION IS PAYABLE
25 TO THE LICENSEE.

1 (10) THE LICENSEE SHALL KEEP RECORDS OF MONEY DEPOSITED IN
2 THE SEPARATE CUSTODIAL ACCOUNT. THE RECORDS SHALL SHOW ALL OF
3 THE FOLLOWING:

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

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

7 (C) THE DATE THE MONEY WAS DEPOSITED IN THE CUSTODIAL
8 ACCOUNT.

9 (D) THE DATE OF WITHDRAWAL OF THE MONEY, THE PURPOSE OF THE
10 WITHDRAWAL, AND THE NAME OF THE PERSON TO WHOM THE MONEY WAS PAID
11 UPON WITHDRAWAL.

12 (E) ANY OTHER PERTINENT INFORMATION REGARDING THE
13 TRANSACTION.

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

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

20 (2) THE EXAMINATION DESCRIBED IN SUBSECTION (1) SHALL
21 INCLUDE, BUT NOT BE LIMITED TO, THE FOLLOWING SUBJECT MATTER
22 AREAS:

23 (A) THE PROVISIONS OF THIS ARTICLE.

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

26 (C) ELEMENTARY MATHEMATICS.

(D) ELEMENTARY PRINCIPLES OF LAND ECONOMICS.

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

(3) THE DEPARTMENT SHALL ADMINISTER THE EXAMINATIONS ON AT LEAST A QUARTERLY BASIS. THE DEPARTMENT MAY ADMINISTER THE EXAMINATIONS MORE OFTEN THAN ON A QUARTERLY BASIS IF THE BOARD DETERMINES THAT CIRCUMSTANCES EXIST THAT WARRANT THE FURTHER ADMINISTRATION OF THE EXAMINATION.

SEC. 2817. THE DIRECTOR MAY PROMULGATE RULES SETTING STANDARDS FOR MANDATORY PROGRAM CONTINUING EDUCATION. THE RULES SHALL PROVIDE FOR NOT LESS THAN 4 CLOCK HOURS OF CONTINUING EDUCATION PER YEAR.

SEC. 2819. (1) THE DEPARTMENT SHALL ISSUE A LICENSE WITHOUT EXAMINATION TO A NONRESIDENT INDIVIDUAL WHO, AT THE TIME OF APPLICATION, IS LICENSED, REGISTERED, CERTIFIED, OR OTHERWISE REGULATED BY ANOTHER STATE IF THE REQUIREMENTS OF THAT STATE, AS DETERMINED BY THE BOARD, ARE SUBSTANTIALLY THE EQUIVALENT OF THE REQUIREMENTS OF THIS ARTICLE AND IF THE OTHER STATE OFFERS LICENSE, CERTIFICATION, OR REGISTRATION ON A BASIS SIMILAR TO THIS SECTION TO LICENSEES UNDER THIS ARTICLE.

(2) A NONRESIDENT SHALL FILE AN IRREVOCABLE CONSENT TO SERVICE OF PROCESS WHICH CONSENT SHALL BE SIGNED BY THE LICENSEE. A PROCESS OR PLEADING SERVED UPON THE DEPARTMENT SHALL BE SUFFICIENT SERVICE UPON THE LICENSEE. A PROCESS OR PLEADING SERVED UPON THE DEPARTMENT UNDER THIS SECTION SHALL BE IN DUPLICATE. THE DEPARTMENT SHALL IMMEDIATELY SERVE BY FIRST-CLASS MAIL A COPY

1 OF THE PROCESS OR PLEADING TO THE LICENSEE'S LAST KNOWN ADDRESS
2 AS DETERMINED BY THE RECORDS OF THE DEPARTMENT.

3 SEC. 2821. THE DEPARTMENT SHALL LICENSE AS AN AUCTIONEER,
4 AFTER VERIFICATION OF THE EXPERIENCE REQUIREMENTS IMPOSED IN THIS
5 SECTION, AN INDIVIDUAL WHO APPLIES NOT MORE THAN 2 YEARS AFTER
6 THE EFFECTIVE DATE OF THIS ARTICLE AND SUBMITS AN AFFIDAVIT
7 ATTESTING TO EXPERIENCE IN THE PRACTICE OF THE CONDUCT OF AUC-
8 TIONS FOR NOT LESS THAN 3 YEARS BEFORE THE EFFECTIVE DATE OF THIS
9 ARTICLE, WHICH EXPERIENCE SHALL HAVE INCLUDED THE CONDUCT OF NOT
10 LESS THAN 12 AUCTIONS.

11 SEC. 2823. A LICENSEE WHO COMMITS ANY OF THE FOLLOWING ACTS
12 IS SUBJECT TO THE PENALTIES CONTAINED IN ARTICLE 6:

13 (A) FAILS TO ENTER INTO A WRITTEN CONTRACT WITH A SELLER OR
14 CONSIGNOR BEFORE PLACING OR AUTHORIZING ANY ADVERTISING FOR AN
15 AUCTION.

16 (B) FAILS TO REDUCE TO WRITING OR FAILS TO ISSUE ANY APPRO-
17 PRIATE DOCUMENTATION RELATIVE TO AN AUCTION-RELATED TRANSACTION.

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

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

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

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

25 (G) KNOWINGLY MISREPRESENTS THE NATURE OR VALUE OF AN ITEM
26 BEING AUCTIONED.

1 (H) VIOLATES THE REQUIREMENTS OF THIS ARTICLE OR A RULE
2 PROMULGATED UNDER THIS ARTICLE.

3 Enacting section 1. The following acts and parts of acts
4 are repealed:

5 (a) 1955 PA 224, MCL 446.51 to 446.60.

6 (b) 1846 RS 21, MCL 446.26 to 446.35.

7 Enacting section 2. This amendatory act does not take
8 effect unless all of the following bills of the 89th Legislature
9 are enacted into law:

10 (a) Senate Bill No. _____ or House Bill No. _____
11 (request no. 02112'97 a).

12 (b) Senate Bill No. _____ or House Bill No. _____
13 (request no. 02112'97 b).

14 (c) Senate Bill No. _____ or House Bill No. _____
15 (request no. 02112'97 c).