## SUBSTITUTE FOR HOUSE BILL NO. 5719

A bill to amend 1980 PA 299, entitled "Occupational code,"

by amending section 2517 (MCL 339.2517), as added by 1993 PA 93.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

- 1 Sec. 2517. (1) A licensee shall disclose to a potential
- 2 buyer or seller all types of agency relationships available and
- 3 the licensee's duties that each agency relationship creates —,
- 4 prior to BEFORE the disclosure by the potential buyer or seller
- 5 to the licensee of any confidential information specific to that
- 6 potential buyer or seller.
- 7 (2) The disclosure of the type of agency relationship shall
- 8 be in writing and substantially conform to the following:

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- 1 DISCLOSURE REGARDING REAL ESTATE AGENCY RELATIONSHIPS
- 2 Before you disclose confidential information to a real
- 3 estate licensee regarding a real estate transaction, you should
- 4 understand what type of agency relationship you have with that
- 5 licensee.
- 6 Michigan law requires real estate licensees who are acting
- 7 as agents of sellers or buyers of real property to advise the
- 8 potential sellers or buyers with whom they work of the nature of
- 9 their agency relationship.
- 10 Seller's Agents
- 11 A seller's agent, under a listing agreement with the seller,
- 12 acts solely on behalf of the seller. A seller can authorize a
- 13 seller's agent to work with subagents, buyer's agents and/or
- 14 transaction coordinators. A subagent is one who has agreed to
- 15 work with the listing agent, and who, like the listing agent,
- 16 acts solely on behalf of the seller. Seller's agents and sub-
- 17 agents will disclose to the seller known information about the
- 18 buyer which may be used to the benefit of the seller.
- 19 Buyer's Agents
- 20 A buyer's agent, under a buyer's agency agreement with the
- 21 buyer, acts solely on behalf of the buyer. Buyer's agents and
- 22 subagents will disclose to the buyer known information about the
- 23 seller which may be used to benefit the buyer.
- 24 Dual Agents
- 25 A real estate licensee can be the agent of both the seller
- 26 and the buyer in a transaction, but only with the knowledge and
- 27 informed consent, in writing, of both the seller and the buyer.

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| 1                    | In such a dual agency situation, the licensee will not be         |
| 2                    | able to disclose all known information to either the seller or    |
| 3                    | the buyer.  |
| 4                    | The obligations of a dual agent are subject to any specific       |
| 5                    | provisions set forth in any agreement between the dual agent, the |
| 6                    | seller, and the buyer.  |
| 7                    | Licensee Disclosure (CHECK ONE)                                   |
| 8                    | I hereby disclose that the agency status — I/we have with the     |
| 9                    | buyer and/or seller OF THE LICENSEE NAMED below is:               |
| 10                   | Seller's Agent  |
| 11                   | Buyer's Agent   |
| 12                   | Dual Agent  |
| 13                   | None of the above   |
| 14                   | AFFILIATED LICENSEE DISCLOSURE (CHECK ONE)                        |
| 15                   | ONLY THE LICENSEE'S BROKER AND A NAMED SUPERVISORY                |
| 16                   | BROKER HAVE THE SAME AGENCY RELATIONSHIP AS THE LICENSEE NAMED    |
| 17                   | BELOW. IF THE OTHER PARTY IN A TRANSACTION IS REPRESENTED BY AN   |
| 18                   | AFFILIATED LICENSEE, THEN THE LICENSEE'S BROKER AND ALL NAMED     |
| 19                   | SUPERVISORY BROKERS SHALL BE CONSIDERED DISCLOSED CONSENSUAL DUAL |
| 20                   | AGENTS.   |
| 21                   | ALL AFFILIATED LICENSEES HAVE THE SAME AGENCY RELATION-           |
| 22                   | SHIP AS THE LICENSEE NAMED BELOW.                                 |
| 23                   | Further, this form was provided to $\frac{1}{2}$ THE BUYER OR     |
| 24                   | SELLER before disclosure of any confidential information.         |
| 25<br>26<br>27<br>28 | Licensee Date   |

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Sub. H.B. 5719 (H-1) as amended May 11, 2000 1 2 Licensee Date 3 4 Acknowledgment 5 By signing below, the parties confirm that they have 7 received and read the information in this agency disclosure 8 statement and that this form was provided to them before the dis-9 closure of any confidential information specific to the potential 10 sellers or buyers. 11 Potential Buyer/Seller (circle one) 12 Date 13 14 15 16 Potential Buyer/Seller (circle one) Date 17 18 19 (3) This article does not prevent a licensee from acting as 20 a transaction coordinator upon proper notice to all parties to a 21 real estate transaction. (4) A BROKER AND A CLIENT MAY ENTER INTO A DESIGNATED AGENCY 22 23 AGREEMENT. IN THE ABSENCE OF A WRITTEN DESIGNATED AGENCY AGREE-24 MENT, A CLIENT IS CONSIDERED TO HAVE AN AGENCY RELATIONSHIP WITH 25 THE BROKER AND ALL AFFILIATED LICENSEES. 26 (5) A DESIGNATED AGENCY AGREEMENT SHALL CONTAIN THE NAME OF 27 ALL ASSOCIATE BROKERS WHO ARE AUTHORIZED TO ACT AS SUPERVISORY IF DESIGNATED AGENTS WHO ARE AFFILIATED LICENSEES REP-28 BROKERS. 29 RESENT DIFFERENT PARTIES IN THE SAME REAL ESTATE TRANSACTION, THE 30 BROKER AND ALL SUPERVISORY BROKERS ARE CONSIDERED DISCLOSED CON-31 SENSUAL DUAL AGENTS FOR THAT REAL ESTATE TRANSACTION. [DESIGNATED AGENTS WHO ARE AFFILIATED LICENSEES REPRESENTING DIFFERENT PARTIES IN THE SAME TRANSACTION SHALL NOTIFY THEIR CLIENTS THAT THEIR BROKER REPRESENTS BOTH BUYER AND SELLER BEFORE AN OFFER TO PURCHASE IS MADE OR PRESENTED.] (6) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (5), A CLIENT 32 33 WITH A DESIGNATED AGENCY AGREEMENT IS NOT CONSIDERED TO HAVE AN 34 AGENCY RELATIONSHIP WITH ANY AFFILIATED LICENSEES OF THE H06086'00 (H-1)

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- 2 LICENSEES MAY EACH REPRESENT A DIFFERENT PARTY IN THE SAME TRANS-

1 DESIGNATED AGENT. TWO DESIGNATED AGENTS WHO ARE AFFILIATED

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- 3 ACTION AND SHALL NOT BE CONSIDERED DUAL AGENTS. THE DESIGNATED
- 4 AGENT'S KNOWLEDGE OF CONFIDENTIAL INFORMATION OF A CLIENT IS NOT
- 5 IMPUTED TO ANY AFFILIATED LICENSEE NOT HAVING AN AGENCY RELATION-
- 6 SHIP WITH THAT CLIENT.
- 7 (7) A DESIGNATED AGENT SHALL NOT DISCLOSE CONFIDENTIAL
- 8 INFORMATION OF A CLIENT TO ANY LICENSEE, WHETHER OR NOT AN AFFIL-
- 9 IATED LICENSEE, EXCEPT THAT A DESIGNATED AGENT MAY DISCLOSE TO
- 10 ANY SUPERVISORY BROKER CONFIDENTIAL INFORMATION OF A CLIENT FOR
- 11 PURPOSES OF SEEKING ADVICE OR ASSISTANCE FOR THE BENEFIT OF THE
- 12 CLIENT. A LICENSEE WHO REPRESENTS A CLIENT IN AN AGENCY CAPACITY
- 13 DOES NOT BREACH ANY DUTY OR OBLIGATION OWED TO THAT CLIENT BY
- 14 FAILING TO DISCLOSE TO THAT CLIENT INFORMATION OBTAINED THROUGH A
- 15 PRESENT OR PRIOR AGENCY RELATIONSHIP.
- 16 (8) A LISTING AGREEMENT OR A BUYER'S AGENCY AGREEMENT MAY BE
- 17 AMENDED TO ESTABLISH A DESIGNATED AGENCY RELATIONSHIP, TO CHANGE
- 18 A DESIGNATED AGENT, OR TO CHANGE SUPERVISORY BROKERS AT ANY TIME
- 19 PURSUANT TO A WRITTEN ADDENDUM SIGNED BY THE PARTIES.
- 20 (9)  $\overline{(4)}$  As used in this section:
- 21 (A) "AFFILIATED LICENSEES" MEANS INDIVIDUALS LICENSED AS
- 22 SALESPERSONS OR ASSOCIATE BROKERS WHO ARE EMPLOYED BY THE SAME
- 23 BROKER.
- 24 (B) (a) "Buyer" means a purchaser, tenant, or lessee of
- 25 any legal or equitable interest in real estate.
- 26 (C) (Buyer's agent" means a licensee acting on behalf
- 27 of the buyer who undertakes to accept the responsibility of

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1 serving the buyer consistent with those fiduciary duties existing

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- 2 under common law.
- (D) "DESIGNATED AGENT" MEANS AN INDIVIDUAL SALESPERSON OR AN 3
- 4 ASSOCIATE BROKER WHO IS DESIGNATED BY THE BROKER AS THE CLIENT'S
- 5 LEGAL AGENT PURSUANT TO A DESIGNATED AGENCY AGREEMENT.
- (E) "DESIGNATED AGENCY AGREEMENT" MEANS A WRITTEN AGREEMENT 6
- 7 BETWEEN A BROKER AND A CLIENT IN WHICH AN INDIVIDUAL SALESPERSON
- 8 OR ASSOCIATE BROKER AFFILIATED WITH THAT BROKER IS NAMED AS THAT
- 9 CLIENT'S DESIGNATED AGENT.
- (F) "Dual agent" means a licensee who is acting as the 10
- 11 agent of both the buyer and the seller and provides services to
- 12 complete a real estate transaction without the full range of
- 13 fiduciary duties owed by a buyer's agent and a seller's agent.
- (G)  $\overline{(d)}$  "Real estate transaction" means the sale or lease
- 15 of any legal or equitable interest in real estate.
- (H) (e) "Seller" means the equitable or legal owner of
- 17 real estate.
- (I) (I) "Seller's agent" means a licensee acting on behalf
- 19 of the seller who undertakes to accept the responsibility of
- 20 serving the seller consistent with those fiduciary duties exist-
- 21 ing under common law.
- 22 (J) "SUPERVISORY BROKER" MEANS AN ASSOCIATE BROKER DESIG-
- 23 NATED IN A WRITTEN AGENCY AGREEMENT TO ACT IN A SUPERVISORY ROLE
- 24 IN AN AGENCY RELATIONSHIP.
- 25 (K)  $\frac{}{}$  "Transaction coordinator" means a licensee who is
- 26 not acting as the agent of either the buyer or the seller.