

HOUSE BILL No. 4119

January 31, 2001, Introduced by Reps. Basham, Schermesser and Lemmons and referred to the Committee on Regulatory Reform.

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 THE CONDUCT OF OR OFFERS TO ENGAGE
23 IN THE CONDUCT OF AN AUCTION.

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

25 SEC. 2805. (1) AN INDIVIDUAL SHALL NOT CONDUCT OR OFFER TO
26 CONDUCT AN AUCTION UNLESS LICENSED OR EXEMPT FROM LICENSURE UNDER
27 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 THAT MAY BE 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:

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 DEALER OR BROKER LICENSED UNDER 1937 PA 284, MCL
14 287.121 TO 287.131, SELLING BY AUCTION LIVESTOCK. THIS SUBDIVI-
15 SION DOES NOT EXEMPT FROM LICENSURE UNDER THIS ARTICLE AN AUC-
16 TIONEER WHO CONTRACTS WITH A DEALER OR BROKER LICENSED UNDER 1937
17 PA 284, MCL 287.121 TO 287.131, FOR THE CONDUCT OF THE AUCTION.

18 (E) A DEALER LICENSED UNDER THE MICHIGAN VEHICLE CODE, 1949
19 PA 300, MCL 257.1 TO 257.923, SELLING BY AUCTION MOTOR VEHICLES.
20 THIS SUBDIVISION DOES NOT EXEMPT FROM LICENSURE UNDER THIS ARTI-
21 CLE AN AUCTIONEER WHO CONTRACTS WITH A DEALER LICENSED UNDER THE
22 MICHIGAN VEHICLE CODE, 1949 PA 300, MCL 257.1 TO 257.923, FOR THE
23 CONDUCT OF THE AUCTION.

24 (F) A DEALER OR MANUFACTURER SELLING BY AUCTION BOATS OR
25 WATERCRAFT REQUIRED TO HAVE A CERTIFICATE OF TITLE UNDER PART 801
26 OF THE NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION ACT, 1994
27 PA 451, MCL 324.80101 TO 324.80199. THIS SUBDIVISION DOES NOT

1 EXEMPT FROM LICENSURE UNDER THIS ARTICLE AN AUCTIONEER WHO
2 CONTRACTS WITH A DEALER OR MANUFACTURER LICENSED UNDER PART 801
3 OF THE NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION ACT, 1994
4 PA 451, MCL 324.80101 TO 324.80199, FOR THE CONDUCT OF THE
5 AUCTION.

6 SEC. 2809. THE DEPARTMENT SHALL ISSUE A LICENSE AS AN AUC-
7 TIONEER TO AN INDIVIDUAL WHO MEETS ALL OF THE FOLLOWING
8 CONDITIONS:

9 (A) HAS EITHER 2 YEARS OF APPRENTICE EXPERIENCE WITH A
10 LICENSED AUCTIONEER OR PROOF OF GRADUATION FROM AN ACCREDITED
11 AUCTION SCHOOL ACCEPTABLE TO THE BOARD AND 1 YEAR OF APPRENTICE
12 EXPERIENCE WITH A LICENSED AUCTIONEER. UNDER BOTH CIRCUMSTANCES,
13 THE INDIVIDUAL SHALL HAVE ACTIVELY PARTICIPATED IN THE CONDUCT OF
14 NOT LESS THAN 10 AUCTIONS. THE EXPERIENCE SHALL BE VERIFIED BY
15 AN AFFIDAVIT OF A LICENSED AUCTIONEER AND SHALL PROVIDE THE NAMES
16 AND ADDRESSES OF THE PARTIES ON WHOSE BEHALF THE AUCTION WAS HELD
17 AND THE DATES OF THE AUCTION.

18 (B) HAS COMPLETED AN EXAMINATION AS DESCRIBED IN
19 SECTION 2815.

20 (C) IS OF GOOD MORAL CHARACTER.

21 SEC. 2811. MONEY PAID BY ANY PERSON TO A LICENSEE IS CON-
22 sidered TO BE HELD IN TRUST FOR THE BENEFIT OF THE PERSON MAKING
23 THE PAYMENT AND THE LICENSEE IS CONSIDERED THE TRUSTEE FOR THE
24 MONEY.

25 SEC. 2813. (1) AN AUCTIONEER SHALL MAINTAIN A REGULAR PLACE
26 OF BUSINESS IN THIS STATE. IF MORE THAN 1 PLACE OF BUSINESS IS

1 MAINTAINED, THE DEPARTMENT SHALL ISSUE A DUPLICATE LICENSE AT NO
2 ADDITIONAL COST.

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

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

13 (A) CONSIGNMENT RECEIPTS.

14 (B) BIDDER REGISTRATIONS.

15 (C) DOCUMENTS RELATING TO FINAL SETTLEMENTS WITH
16 CONSIGNORS.

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

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

25 (6) A LICENSEE UNDER THIS ARTICLE SHALL ESTABLISH A CUSTO-
26 DIAL ACCOUNT IN THE MANNER DESCRIBED IN THIS SECTION. THE
27 LICENSEE SHALL DEPOSIT INTO THE CUSTODIAL ACCOUNT ALL CHECKS,

1 DRAFTS, NEGOTIABLE INSTRUMENTS, AND CASH TENDERED BY A BUYER FOR
2 THE PAYMENT OF AN ITEM SOLD BY AUCTION. THE LICENSEE SHALL MAKE
3 A DISBURSEMENT RELATIVE TO A SALE BY AUCTION THROUGH THAT CUSTO-
4 DIAL ACCOUNT IN THE TIME PERIOD AND MANNER DESCRIBED IN THIS
5 SECTION.

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

14 (8) THE SEPARATE CUSTODIAL ACCOUNT IS SUBJECT TO THE FOLLOW-
15 ING REQUIREMENTS:

16 (A) SHALL BE AN INTEREST BEARING ACCOUNT MAINTAINED IN A
17 FEDERALLY INSURED BANK, SAVINGS AND LOAN ASSOCIATION, CREDIT
18 UNION, OR DEPOSITORY RECOGNIZED BY THE DEPARTMENT.

19 (B) SHALL DESIGNATE THE LICENSEE AS THE CUSTODIAN OR
20 TRUSTEE.

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

23 (D) SHALL NOT CONTAIN ANY MONEY OF THE LICENSEE EXCEPT FOR
24 SUCH AMOUNTS AS ARE NECESSARY TO PAY SERVICE CHARGES ON THE
25 ACCOUNT OR TO MAINTAIN THE ACCOUNT WHEN CUSTOMER MONEY IS NOT ON
26 DEPOSIT.

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

3 (A) PAYMENT AS A RESULT OF THE SALE OF AN ITEM BY THE
4 LICENSEE.

5 (B) REFUND OF AN AMOUNT TO THE CUSTOMER UPON TERMINATION OF
6 THE TRANSACTION.

7 (C) PAYMENT TO THE LICENSEE OF A COMMISSION AND DOCUMENTED
8 AND APPROVED EXPENSES FOLLOWING THE CONSUMMATION OF A TRANSACTION
9 UPON WHICH A COMMISSION IS PAYABLE TO THE LICENSEE.

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

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

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

16 (C) THE DATE THE MONEY WAS DEPOSITED IN THE CUSTODIAL
17 ACCOUNT.

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

21 (E) ANY OTHER PERTINENT INFORMATION REGARDING THE
22 TRANSACTION.

23 (11) THE DEPARTMENT AND THE BOARD MAY, UPON NOTICE GIVEN TO
24 A LICENSEE, INSPECT THE RECORDS REQUIRED TO BE KEPT PURSUANT TO
25 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 REAL ESTATE 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. (1) THE DEPARTMENT SHALL ISSUE A LICENSE WITHOUT
21 EXAMINATION TO A NONRESIDENT INDIVIDUAL WHO, AT THE TIME OF
22 APPLICATION, IS LICENSED, REGISTERED, CERTIFIED, OR OTHERWISE
23 REGULATED BY ANOTHER STATE IF THE REQUIREMENTS OF THAT STATE, AS
24 DETERMINED BY THE BOARD, ARE SUBSTANTIALLY THE EQUIVALENT OF THE
25 REQUIREMENTS OF THIS ARTICLE AND IF THE OTHER STATE OFFERS LICEN-
26 SURE, CERTIFICATION, OR REGISTRATION ON A RECIPROCAL BASIS
27 SIMILAR TO THIS SECTION TO LICENSEES UNDER THIS ARTICLE.

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

9 SEC. 2819. THE DEPARTMENT SHALL LICENSE AS AN AUCTIONEER,
10 AFTER VERIFICATION OF THE EXPERIENCE REQUIREMENTS IMPOSED IN THIS
11 SECTION, AN INDIVIDUAL WHO APPLIES NOT MORE THAN 2 YEARS AFTER
12 THE EFFECTIVE DATE OF THIS ARTICLE AND SUBMITS AN AFFIDAVIT
13 ATTESTING TO EXPERIENCE IN THE CONDUCT OF AUCTIONS FOR NOT LESS
14 THAN 3 YEARS BEFORE THE EFFECTIVE DATE OF THIS ARTICLE, WHICH
15 EXPERIENCE SHALL HAVE INCLUDED THE CONDUCT OF NOT LESS THAN 12
16 AUCTIONS.

17 SEC. 2821. A LICENSEE WHO COMMITS ANY OF THE FOLLOWING ACTS
18 IS SUBJECT TO THE SANCTIONS AND PENALTIES CONTAINED IN
19 ARTICLE 6:

20 (A) FAILS TO ENTER INTO A WRITTEN CONTRACT WITH A SELLER OR
21 CONSIGNOR BEFORE PLACING OR AUTHORIZING ANY ADVERTISING FOR AN
22 AUCTION.

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

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

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

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

4 (F) FAILS TO DISCLOSE HIS OR HER LICENSE NUMBER ON ALL
5 ADVERTISING.

6 (G) KNOWINGLY MISREPRESENTS THE NATURE OR VALUE OF AN ITEM
7 BEING AUCTIONED.

8 (H) VIOLATES THE REQUIREMENTS OF THIS ARTICLE OR A RULE
9 PROMULGATED UNDER THIS ARTICLE.

10 SEC. 2823. IT IS THE INTENT OF THE LEGISLATURE THAT THIS
11 ARTICLE EXEMPT FROM LICENSURE THE CONDUCT OF AUCTIONS UNDER ANY
12 OTHER ACT ALLOCATING POWERS FOR LOCAL UNITS OF GOVERNMENT.

13 Enacting section 1. The following acts and parts of acts
14 are repealed:

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

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

17 Enacting section 2. This amendatory act does not take
18 effect unless all of the following bills of the 91st Legislature
19 are enacted into law:

20 (a) Senate Bill No. _____ or House Bill No. 4120 (request
21 no. 00890'01 a).

22 (b) Senate Bill No. _____ or House Bill No. 4121 (request
23 no. 00890'01 b).

24 (c) Senate Bill No. _____ or House Bill No. 4122 (request
25 no. 00890'01 c).