

**SENATE SUBSTITUTE FOR
HOUSE BILL NO. 5106**

A bill to amend 1980 PA 299, entitled
"Occupational code,"
by amending sections 2501, 2504, and 2505 (MCL 339.2501,
339.2504, and 339.2505), section 2501 as amended by 1994 PA 333,
section 2504 as amended by 2002 PA 611, and section 2505 as
amended by 1988 PA 463.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2501. As used in this article:

2 (a) "Property management" means the leasing or renting, or
3 the offering to lease or rent, of real property of others for a
4 fee, commission, compensation, or other valuable consideration
5 pursuant to a property management employment contract.

6 (b) "Property management account" means an interest-bearing
7 or noninterest-bearing account or instrument used in the
8 operation of property management.

1 (c) "Property management employment contract" means the
2 written agreement entered into between a real estate broker and
3 client concerning the real estate broker's employment as a
4 property manager for the client; setting forth the real estate
5 broker's duties, responsibilities, and activities as a property
6 manager; and setting forth the handling, management, safekeeping,
7 investment, disbursement, and use of property management money,
8 funds, and accounts.

9 (d) "Real estate broker" means an individual, sole
10 proprietorship, partnership, association, corporation, common law
11 trust, or a combination of those entities who with intent to
12 collect or receive a fee, compensation, or valuable
13 consideration, sells or offers for sale, buys or offers to buy,
14 provides or offers to provide market analyses, lists or offers or
15 attempts to list, or negotiates the purchase or sale or exchange
16 or mortgage of real estate, or negotiates for the construction of
17 a building on real estate; who leases or offers or rents or
18 offers for rent real estate or the improvements on the real
19 estate for others, as a whole or partial vocation; who engages in
20 property management as a whole or partial vocation; who sells or
21 offers for sale, buys or offers to buy, leases or offers to
22 lease, or negotiates the purchase or sale or exchange of a
23 business, business opportunity, or the goodwill of an existing
24 business for others; or who, as owner or otherwise, engages in
25 the sale of real estate as a principal vocation.

26 (e) "Real estate salesperson" means a person who for
27 compensation or valuable consideration is employed either

1 directly or indirectly by a licensed real estate broker to sell
2 or offer to sell, to buy or offer to buy, to provide or offer to
3 provide market analyses, to list or offer or attempt to list, or
4 to negotiate the purchase or sale or exchange or mortgage of real
5 estate, or to negotiate for the construction of a building on
6 real estate, or to lease or offer to lease, rent or offer for
7 rent real estate, who is employed by a real estate broker to
8 engage in property management, or who sells or offers for sale,
9 buys or offers to buy, leases or offers to lease, or negotiates
10 the purchase or sale or exchange of a business, business
11 opportunity, or the goodwill of an existing business for others,
12 as a whole or partial vocation.

13 (f) "Employ" or "employment" means the relationship between a
14 real estate broker and an associate broker or a real estate
15 salesperson which may include an independent contractor
16 relationship. The existence of an independent contractor
17 relationship between a real estate broker and an individual
18 licensed to the real estate broker shall not relieve the real
19 estate broker of the responsibility to supervise acts of the
20 licensee regulated by this article.

21 (g) "Independent contractor relationship" means a
22 relationship between a real estate broker and an associate broker
23 or real estate salesperson that satisfies both of the following
24 conditions:

25 (i) A written agreement exists in which the real estate
26 broker does not consider the associate broker or real estate
27 salesperson as an employee for federal and state income tax

1 purposes.

2 (ii) Not less than 75% of the annual compensation paid by the
3 real estate broker to the associate broker or real estate
4 salesperson is from commissions from the sale of real estate.

5 (h) "Professional designation" means a certification from a
6 real estate professional association demonstrating attainment of
7 proven skills or education in a real estate occupational area,
8 and may include the right to use a title or letters after the
9 licensee's name that represent the designation bestowed by the
10 certifying entity.

11 Sec. 2504. (1) Before receiving a real estate broker's
12 license, an applicant shall **submit an application as described in**
13 **section 2505 and shall** have successfully completed not less than
14 90 clock hours of approved classroom courses in real estate of
15 which not less than 9 clock hours shall be instruction on civil
16 rights law and equal opportunity in housing. ~~—, and shall submit~~
17 ~~an application as described in section 2505.~~ The 90 hours shall
18 be in addition to the hours required to obtain a real estate
19 salesperson's license.

20 (2) Before being permitted to take the real estate
21 salesperson's examination, an applicant shall show proof of
22 successful completion of not less than 40 clock hours of
23 classroom courses in principles of real estate, of which not less
24 than 4 clock hours shall be instruction on civil rights law and
25 equal opportunity in housing.

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

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

2 (b) Real property law, including property interests and
3 restrictions.

4 (c) Federal, state, and local tax laws affecting real
5 property.

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

7 (e) Financing, including mortgages, land contracts,
8 foreclosure, and limits on lending procedures and interest
9 rates.

10 (f) Appraisal of real property.

11 (g) Design and construction.

12 (h) Marketing, exchanging, and counseling.

13 (i) The law of agency.

14 (j) Sales and office management, including listing and
15 selling techniques.

16 (k) Real estate securities and syndications.

17 (l) Investments, including property management.

18 (4) Except as otherwise provided in this subsection, before
19 being permitted to renew an active real estate broker's or real
20 estate salesperson's license, a licensee shall have successfully
21 completed, within the preceding 12 months, not less than 6 clock
22 hours of continuing education approved by the department
23 involving any topics relevant to the management, operation, and
24 practice of real estate and covering changes in economic
25 conditions, law, rules, court cases, and interpretations, or any
26 combination of those changes, relating to real property which are
27 pertinent to the activities of a real estate broker or real

1 estate salesperson. Beginning November 1, 2003, a licensee shall
2 complete not less than 18 hours of continuing education per
3 3-year license cycle. A licensee shall complete at least 6 hours
4 of the required 18 hours of continuing education courses during
5 the time period from November 1, 2003 and ending on December 31,
6 2004. During calendar year 2005, a licensee shall complete at
7 least 6 hours of the required 18 hours of continuing education
8 courses. During calendar year 2006, a licensee shall complete at
9 least 4 hours of the required 18 hours of continuing education
10 courses. During calendar year 2007 and thereafter, a licensee
11 shall complete at least 2 hours **per calendar year** of the required
12 18 hours of continuing education courses. ~~per calendar year.~~
13 Any education ~~approved by the department that is received~~
14 **successfully completed** by a licensee for further professional
15 designation ~~shall~~ **and approved by the department as continuing**
16 **education may** be counted toward the total continuing education
17 credits required for the 3-year license cycle. Each licensee, in
18 completing the appropriate number of clock hours, will have the
19 option of selecting the education courses in that licensee's area
20 of expertise, as long as the education courses are approved by
21 the department and as long as at least 2 hours of an education
22 course per calendar year involve law, rules, and court cases
23 regarding real estate. Notwithstanding **the provisions of** this
24 subsection, the department may ~~relicense~~ **renew the license of** a
25 licensee who has completed not less than 18 hours of continuing
26 education in the subject matter areas required by this subsection
27 during the 3-year license cycle but has not otherwise met the

1 requirements of this section if the licensee provides evidence
 2 satisfactory to the department that he or she has good cause for
 3 not complying with the requirements in this subsection.

4 (5) ~~A license which has been inactive~~ **The department may**
 5 **relicense without examination a licensee whose license has lapsed**
 6 for less than 3 years ~~may be reinstated without examination~~ if
 7 the licensee shows proof of completion of not less than ~~the~~
 8 ~~appropriate number of~~ **6** clock hours of continuing education **for**
 9 **each year the license was lapsed, on topics as** described in
 10 subsection (4). ~~A broker's~~

11 (6) **The department may relicense a broker whose** license
 12 ~~which~~ has ~~been inactive~~ **lapsed** for 3 or more continuous years
 13 ~~may be reinstated without examination~~ if the licensee provides
 14 proof of the **successful** completion of ~~either 6~~ **1 of the**
 15 **following:**

16 (a) **Six** clock hours of continuing education **for each of the**
 17 **years the license was lapsed on topics** described in subsection
 18 (4). ~~for each of the years the license was inactive or 40~~

19 (b) **Ninety** clock hours of instruction described in
 20 ~~subsection~~ **subsections (1) and (3).**

21 (c) **Passing the examination required for licensure as a**
 22 **broker as provided for in section 2505(5).**

23 (7) A ~~salesperson's~~ **salesperson whose** license ~~which~~ has
 24 been ~~inactive~~ **lapsed** for 3 or more continuous years may be
 25 ~~reinstated~~ **relicensed** if the licensee provides proof of
 26 ~~meeting~~ **the successful completion of 1 of the following:**
 27 ~~requirements.~~

1 (a) ~~Completion of 6~~ **Six** clock hours of continuing education
2 **for each of the years the license was lapsed on topics** described
3 in subsection (4). ~~for each of the years the license was~~
4 ~~inactive.~~

5 (b) ~~Completion of 40~~ **Forty** clock hours of instruction
6 described in ~~subsection~~ **subsections (2) and (3)**.

7 (c) Passing the examination required for licensure as a
8 salesperson as provided in ~~subsection (2)~~ **section 2505(5)**.

9 **(8) ~~(6)~~ The department shall not apply the course credits**
10 **used to meet** continuing education requirements provided in
11 subsections (4) ~~and (5) shall not be applied through (7)~~
12 towards the real estate broker's license education requirements
13 provided in subsection (1), and ~~courses~~ **course credits** taken
14 under real estate broker's license education requirements shall
15 not be applied towards the continuing education requirements.
16 **The department shall apportion the approved course credits**
17 **eligible for education requirements in subsection (1) and**
18 **subsections (4) through (7) to meet either requirement upon the**
19 **licensee's request.**

20 **(9) ~~(7)~~ For real estate brokers, associate brokers, and**
21 **salespersons who receive a license issued in the second or third**
22 **years of a 3-year license cycle, continuing education shall be in**
23 **compliance with subsection (4), except for the following:**

24 (a) A real estate broker, associate broker, or salesperson
25 who receives a license issued in the second year of the 3-year
26 license cycle is required to complete 12 hours of continuing
27 education to renew his or her license.

1 (b) A real estate broker, associate broker, or salesperson
2 who receives a license issued in the third year of the 3-year
3 licensing cycle is required to complete 6 hours of continuing
4 education to renew his or her license.

5 (10) ~~(8)~~ A person who offers or conducts a course or
6 courses of study represented to meet the educational requirements
7 of this article ~~—~~ first shall obtain approval from the
8 department and shall ~~abide by~~ **comply with** the rules of the
9 department concerning curriculum, instructor qualification,
10 grading system, and other related matters. In addition to other
11 requirements imposed under rule, in order to receive approval ~~—~~
12 a course shall be designed to be taught for not less than 1 clock
13 hour, not including time spent on breaks, meals, or other
14 unrelated activities, provided the course is only approved for
15 less than 2 clock hours if, based upon the subject matter, course
16 outline, instructional materials, methodology, and other
17 considerations consistent with rules of the department, the
18 department determines that the course objectives can be
19 effectively met in the proposed time period. The department may
20 suspend or revoke the approval of a person for a violation of
21 this article or of the rules promulgated under this article. A
22 person **offering or conducting a course** shall not represent that
23 its students are assured of passing an examination required by
24 the department. A person shall not represent that the issuance
25 of departmental approval is a recommendation or indorsement of
26 the person to which it is issued or of a course of instruction
27 given by it. A pre-licensure course approved under this article

1 shall be conducted by a local public school district, a community
2 college, an institution of higher education authorized to grant
3 degrees, or a ~~private~~ **proprietary** school licensed by the
4 department of career development under 1943 PA 148, MCL 395.101
5 to 395.103.

6 (11) ~~(9)~~ A person who in operating a school violates
7 subsection ~~(8)~~ (10) is subject to the penalties set forth in
8 article 6.

9 (12) ~~(10)~~ The department may conduct, hold, or assist in
10 conducting or holding, a real estate clinic, meeting, course, or
11 institute, which shall be open to a person licensed under this
12 article, and may incur the necessary expenses in connection with
13 the clinic, meeting, course, or institute. The department, in
14 the public interest, may assist educational institutions within
15 this state in sponsoring studies, research, and programs for the
16 purpose of raising the standards of professional practice in real
17 estate and the competence of a licensee.

18 Sec. 2505. (1) An applicant for a real estate broker's
19 license shall file an application setting forth the applicant's
20 present address, both of business and residence; the complete
21 address of each former place where the applicant has resided or
22 been engaged in business, or acted as a real estate salesperson,
23 for a period of 60 days or more, during the 5 years immediately
24 preceding the date of application. An applicant for a real
25 estate broker's license shall state the name of the individual,
26 sole proprietorship, partnership, association, corporation,
27 **limited liability company**, common law trust, or a combination of

1 those entities and the location of the place for which the
2 license is desired, and set forth the period of time which the
3 applicant has been engaged in the business. The application
4 shall be executed by the person, or by an officer or member of
5 the applicant. An applicant for a real estate broker's license
6 which is a partnership, association, corporation, **limited**
7 **liability company**, common law trust, or a combination of those
8 entities shall designate which individuals who are officers or
9 members of the partnership, association, **limited liability**
10 **company**, or corporation will be performing acts regulated by this
11 article as principals.

12 (2) ~~A~~ **The department shall not issue a** real estate broker's
13 license ~~shall not be issued~~ to a new applicant who has been
14 convicted of embezzlement or misappropriation of funds.

15 (3) A real estate broker shall maintain a place of business
16 in this state. If a real estate broker maintains more than 1
17 place of business within the state, a branch office license shall
18 be secured by the real estate broker for each branch office
19 maintained. A branch office maintained in excess of 25 miles
20 from the city limits in which the broker maintains a main office
21 shall be under the personal, direct supervision of an associate
22 broker.

23 (4) An applicant for a salesperson's license shall set forth
24 the period of time during which the individual has been engaged
25 in the business, stating the name of the applicant's last
26 employer and the name and the place of business of the
27 individual, partnership, association, ~~or~~ **limited liability**

1 **company, corporation, common law trust, or combination of those**
2 **entities** then employing the applicant or in whose employ the
3 applicant is to enter. The application shall be signed by the
4 real estate broker in whose employ the applicant is to enter.

5 (5) Before issuing a license, the department may require and
6 procure satisfactory proof of the business experience,
7 competence, and good moral character of an applicant for a real
8 estate broker's or salesperson's license or of an officer or
9 member of an applicant. The department shall require an
10 applicant for a broker's or salesperson's license to pass an
11 examination developed by the department or contracted for with a
12 recognized outside testing agency establishing, in a manner
13 satisfactory to the department, that the applicant has a fair
14 knowledge of the English language, including reading, writing,
15 spelling, and elementary arithmetic; a satisfactory understanding
16 of the fundamentals of real estate practice and of the laws and
17 principles of real estate conveyancing, deeds, mortgages, land
18 contracts, and leases; the obligations of a broker to the public
19 and a principal; and the law defining, regulating, and licensing
20 real estate brokers and salespersons. The department may require
21 written examination or written reexamination of a broker or
22 salesperson, and in that case a passing score satisfactory to the
23 department is required as a condition precedent to ~~reinstatement~~
24 ~~of a license to a broker or salesperson or~~ relicensure of a
25 broker or salesperson. The department shall require proof that
26 each applicant for a real estate broker's license has the
27 equivalent of 3 years of full-time experience in the business of

1 real estate or in a field that is determined by the department to
2 be relevant and related to the business of real estate.