

HOUSE SUBSTITUTE FOR
SENATE BILL NO. 603

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 29.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

3	Accountancy	July 1
4	Architects	April 1
5	Athletic board of control	April 1
6	AUCTIONEERS	OCTOBER 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

ARTICLE 29

SEC. 2901. AS USED IN THIS ARTICLE:

(A) "APPRENTICE" MEANS AN INDIVIDUAL ENGAGED IN LEARNING THE BUSINESS OF CONDUCTING AN AUCTION, UNDER THE CONTROL AND SUPERVISION OF A REGISTERED AUCTIONEER.

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

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

(D) "DEPOSITORY" MEANS A STATE OR NATIONALLY CHARTERED BANK OR STATE OR FEDERALLY CHARTERED SAVINGS AND LOAN ASSOCIATION,

1 SAVINGS BANK, OR CREDIT UNION WHOSE DEPOSITS ARE INSURED BY AN
2 AGENCY OF THE UNITED STATES GOVERNMENT UNDER THE LAWS OF THIS
3 STATE OR THE UNITED STATES.

4 SEC. 2903. THERE IS CREATED A BOARD OF AUCTIONEERS.

5 SEC. 2905. (1) A PERSON SHALL NOT USE THE TITLE "REGISTERED
6 AUCTIONEER" UNLESS REGISTERED UNDER THIS ARTICLE.

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

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

21 (4) EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION, IF THE
22 QUALIFYING MEMBER OF A REGISTRANT STOPS BEING ITS QUALIFYING
23 MEMBER, SUCH CIRCUMSTANCE OPERATES AS AN AUTOMATIC SUSPENSION OF
24 THE ENTITY'S REGISTRATION. UPON REQUEST, THE DEPARTMENT MAY
25 PERMIT THE REGISTRATION TO REMAIN IN FORCE FOR 60 DAYS IN ORDER
26 TO ALLOW THE QUALIFYING OF A NEW QUALIFYING MEMBER.

27 SEC. 2907. EXCEPT AS OTHERWISE PROVIDED IN SECTION 2917, THE

1 DEPARTMENT SHALL ISSUE A REGISTRATION AS A REGISTERED AUCTIONEER
2 TO AN INDIVIDUAL OR TO THE QUALIFYING MEMBER OF A LEGAL ENTITY
3 WHO MEETS ALL OF THE FOLLOWING CONDITIONS:

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

13 (B) HAS COMPLETED AN EXAMINATION AS DESCRIBED IN SECTION
14 2915.

15 (C) IS OF GOOD MORAL CHARACTER.

16 SEC. 2909. (1) NOTWITHSTANDING SECTION 2907, THE DEPARTMENT
17 SHALL REGISTER AS AN AUCTIONEER, AFTER VERIFICATION OF THE
18 EXPERIENCE REQUIREMENTS IMPOSED IN THIS SECTION, AN INDIVIDUAL
19 WHO APPLIES NOT MORE THAN 2 YEARS AFTER THE EFFECTIVE DATE OF
20 THIS ARTICLE AND SUBMITS TO THE DEPARTMENT AN AFFIDAVIT ATTESTING
21 TO EXPERIENCE IN THE CONDUCT OF AUCTIONS FOR NOT LESS THAN 3
22 YEARS BEFORE THE EFFECTIVE DATE OF THIS ARTICLE.

23 (2) THE DEPARTMENT SHALL ISSUE A REGISTRATION UNDER THIS
24 SECTION ONLY IF THE APPLICANT'S EXPERIENCE INCLUDES CONDUCTING 12
25 OR MORE AUCTIONS.

26 SEC. 2911. MONEY PAID BY ANY PERSON TO A REGISTRANT IN
27 CONNECTION WITH AN AUCTION UNDER THIS ARTICLE IS CONSIDERED TO BE

1 HELD IN TRUST FOR THE BENEFIT OF THE PERSON MAKING THE PAYMENT
2 AND THE REGISTRANT IS CONSIDERED THE TRUSTEE FOR THE MONEY.

3 SEC. 2913. (1) A REGISTERED AUCTIONEER SHALL MAINTAIN A
4 REGULAR PLACE OF BUSINESS IN THIS STATE. IF MORE THAN 1 PLACE OF
5 BUSINESS IS MAINTAINED, THE DEPARTMENT SHALL ISSUE A DUPLICATE
6 REGISTRATION AT NO ADDITIONAL COST. A REGULAR PLACE OF BUSINESS
7 DOES NOT INCLUDE A LOCATION USED ONLY AS A WAREHOUSE. RECORDS
8 REQUIRED TO BE KEPT UNDER THIS ARTICLE SHALL BE KEPT AT THAT
9 REGULAR PLACE OF BUSINESS.

10 (2) A REGISTERED AUCTIONEER SHALL NOT CONDUCT AN AUCTION
11 UNLESS A WRITTEN CONTRACT IS EXECUTED BETWEEN THE PERSON DESIRING
12 AUCTION SERVICES AND THE REGISTERED AUCTIONEER. A REGISTRANT
13 SHALL KEEP A COPY OF THE CONTRACT AS PART OF HIS OR HER RECORDS
14 AND, UPON REQUEST, MAKE THEM AVAILABLE TO THE DEPARTMENT FOR
15 INSPECTION OR AUDIT, OR BOTH, DURING NORMAL BUSINESS HOURS.

16 (3) A REGISTRANT UNDER THIS ARTICLE SHALL CONSPICUOUSLY POST
17 AT THE REGULAR PLACE OF BUSINESS A COPY OF THE REGISTRATION
18 ISSUED UNDER THIS ARTICLE.

19 (4) A REGISTRANT UNDER THIS ARTICLE SHALL ESTABLISH A TRUST
20 ACCOUNT, OR OTHER SEGREGATED TYPE OF ACCOUNT, IN THE MANNER
21 DESCRIBED IN THIS SECTION. THE REGISTRANT SHALL DEPOSIT INTO THE
22 TRUST ACCOUNT ALL CHECKS, DRAFTS, NEGOTIABLE INSTRUMENTS, AND
23 CASH TENDERED BY 1 OR MORE BUYERS FOR THE PAYMENT OF AN ITEM SOLD
24 BY AUCTION. THE REGISTRANT SHALL MAKE A DISBURSEMENT RELATIVE TO
25 A SALE BY AUCTION THROUGH THAT TRUST ACCOUNT IN THE TIME PERIOD
26 AND MANNER DESCRIBED IN THIS SECTION.

27 (5) A REGISTRANT SHALL NOT PERMIT AN ADVANCE PAYMENT OF

1 MONEY BY A CUSTOMER TO BE DEPOSITED IN THE REGISTRANT'S BUSINESS
2 OR PERSONAL ACCOUNT OR TO BE COMMINGLED IN ANY WAY WITH FUNDS
3 BELONGING TO THE REGISTRANT, EXCEPT AS PROVIDED IN THIS SECTION.
4 THE REGISTRANT SHALL DEPOSIT CUSTOMER MONEY INTO A TRUST ACCOUNT
5 UNTIL THE TRANSACTION INVOLVED IS CONSUMMATED OR TERMINATED,
6 WITHIN 2 BANKING DAYS AFTER THE AUCTION TRANSACTION BUT NOT LATER
7 THAN 5 DAYS AFTER ITS RECEIPT.

8 (6) THE TRUST ACCOUNT IS SUBJECT TO THE FOLLOWING
9 REQUIREMENTS:

10 (A) MAY BE AN INTEREST BEARING ACCOUNT MAINTAINED IN A
11 DEPOSITORY RECOGNIZED BY THE DEPARTMENT. INTEREST ACCRUED SHALL
12 BE ALLOCATED AS PROVIDED FOR IN THE CONTRACT BETWEEN THE PARTIES.

13 (B) SHALL DESIGNATE THE REGISTRANT AS THE TRUSTEE OR
14 CUSTODIAN.

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

17 (D) SHALL NOT CONTAIN ANY MONEY OF THE REGISTRANT EXCEPT FOR
18 AN AMOUNT SUFFICIENT TO PAY SERVICE CHARGES ON THE ACCOUNT OR TO
19 MAINTAIN THE ACCOUNT WHEN CUSTOMER MONEY IS NOT ON DEPOSIT, THAT
20 AMOUNT NOT TO EXCEED \$500.00.

21 (7) DISBURSEMENTS FROM THE TRUST ACCOUNT SHALL BE MADE ONLY
22 FOR THE FOLLOWING PURPOSES:

23 (A) PAYMENT AS A RESULT OF THE SALE OF AN ITEM BY THE
24 REGISTRANT PURSUANT TO THE CONTRACT.

25 (B) REFUND OF AN AMOUNT TO THE CUSTOMER UPON TERMINATION OF
26 THE TRANSACTION.

27 (C) PAYMENT TO THE REGISTRANT OF A COMMISSION AND DOCUMENTED

1 AND APPROVED EXPENSES FOLLOWING THE CONSUMMATION OF A TRANSACTION
2 UPON WHICH A COMMISSION IS PAYABLE TO THE REGISTRANT.

3 (8) THE REGISTRANT SHALL KEEP RECORDS OF MONEY DEPOSITED IN
4 THE TRUST ACCOUNT. THE RECORDS SHALL SHOW ALL OF THE FOLLOWING:

5 (A) THE DATE OF THE RECEIPT OF MONEY FROM A CUSTOMER, THE
6 AMOUNT RECEIVED, AND THE NAME OF THE CUSTOMER ON WHOSE BEHALF THE
7 MONEY WAS PAID.

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

9 (C) THE DATE THE MONEY WAS DEPOSITED IN THE TRUST ACCOUNT.

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

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

15 (9) THE DEPARTMENT AND THE BOARD MAY, UPON NOTICE GIVEN TO A
16 REGISTRANT, INSPECT OR AUDIT, OR BOTH, THE RECORDS OR OTHER
17 RELEVANT DOCUMENTS REQUIRED TO BE KEPT PURSUANT TO THIS SECTION.

18 (10) A REGISTRANT SHALL CREATE, ELECTRONICALLY OR OTHERWISE,
19 A CASH RECEIPTS AND DISBURSEMENTS JOURNAL AND LEDGERS. THE
20 LEDGERS ARE TO BE MAINTAINED SEPARATELY FOR EACH TRANSACTION AND
21 SHALL CONTAIN THE FOLLOWING:

22 (A) NAMES OF BOTH PARTIES.

23 (B) POSTINGS OF ALL TRANSACTIONS.

24 (C) DATE OF EACH TRANSACTION, IN CHRONOLOGICAL SEQUENCE.

25 (D) AMOUNT RECEIVED OR DISBURSED, OR BOTH; NAME OF PARTY
26 GIVING MONEY; NAME OF PRINCIPAL OR PAYEE; AND PURPOSE OF
27 DISBURSEMENTS.

1 (E) CHECK NUMBERS OF DISBURSEMENTS.

2 (F) A RUNNING BALANCE AFTER EACH RECEIPT AND DISBURSEMENT.

3 (G) DESCRIPTION OF PROPERTY BEING SOLD.

4 (11) A REGISTRANT SHALL CREATE, ELECTRONICALLY OR OTHERWISE,
5 AND MAINTAIN A PERSONAL MONEY LEDGER TO ACCOUNT FOR PERSONAL
6 MONEY MAINTAINED IN THE TRUST ACCOUNT. THE PERSONAL MONEY LEDGER
7 SHALL INCLUDE THE FOLLOWING:

8 (A) CHRONOLOGICAL SEQUENCE OF FUNDS RECEIVED AND DISBURSED.

9 (B) RUNNING BALANCE AFTER EACH RECEIPT AND DISBURSEMENT.

10 (C) RECEIPT POSTINGS TO INCLUDE DATE OF RECEIPT, DATE OF
11 DEPOSIT, NAME OF PARTY GIVING MONEY, NAME OF PRINCIPAL, AND
12 AMOUNT RECEIVED.

13 (D) DISBURSEMENT POSTINGS TO INCLUDE THE DATE; CHECK NUMBER,
14 IF APPLICABLE; PAYEE; AMOUNT; PURPOSE; AND A RUNNING BALANCE
15 AFTER EACH RECEIPT AND DISBURSEMENT.

16 (12) THE LEDGERS AND JOURNALS, AS WELL AS TRUST ACCOUNT BANK
17 STATEMENTS, DEPOSIT TICKETS, AND COPIES OF DEPOSIT RECEIPTS,
18 CANCELED CHECKS, AND VOIDED CHECKS SHALL BE MAINTAINED FOR NOT
19 LESS THAN 3 YEARS FROM THE DATE OF INCEPTION OF THE RECORDS OR
20 NOT LESS THAN 3 YEARS FROM THE CONSUMMATION OR TERMINATION OF THE
21 TRANSACTION, WHICHEVER IS LATER.

22 (13) A REGISTRANT UNDER THIS ARTICLE SHALL MAINTAIN WRITTEN
23 RECORDS OF EACH AUCTION SALE FOR A PERIOD OF NOT LESS THAN 3
24 YEARS FROM THE DATE OF THE AUCTION SALE OR NOT LESS THAN 3 YEARS
25 FROM CONSUMMATION OR TERMINATION OF THE TRANSACTION, WHICHEVER IS
26 LATER. THE RECORDS SHALL INCLUDE, BUT NOT BE LIMITED TO, ALL OF
27 THE FOLLOWING:

1 (A) CONSIGNMENT RECEIPTS.

2 (B) BIDDER REGISTRATIONS.

3 (C) DOCUMENTS RELATING TO FINAL SETTLEMENTS WITH CONSIGNORS.

4 SEC. 2915. (1) THE DEPARTMENT AND THE BOARD SHALL DEVELOP AN
5 EXAMINATION FOR APPLICANTS FOR REGISTRATION UNDER THIS ARTICLE IN
6 THE MANNER PROVIDED FOR IN SECTION 316. IN DEVELOPING THE
7 EXAMINATION, THE DEPARTMENT AND THE BOARD SHALL CONSULT WITH AND
8 ACCEPT ADVICE FROM PROMINENT INDUSTRY AND TRADE GROUPS. THE
9 DEPARTMENT MAY ADOPT ALL OR PART OF ANY EXISTING EXAMINATIONS
10 DEVELOPED BY INDUSTRY AND TRADE GROUPS.

11 (2) THE EXAMINATION DEVELOPED UNDER SUBSECTION (1) SHALL
12 INCLUDE, BUT NOT BE LIMITED TO, THE FOLLOWING SUBJECT MATTER
13 AREAS:

14 (A) THE PROVISIONS OF THIS ARTICLE.

15 (B) ETHICS AND ETHICAL PRACTICES AS THEY RELATE TO THE
16 BUSINESS OF CONDUCTING AUCTIONS.

17 (C) RECORD KEEPING.

18 (D) ELEMENTARY MATHEMATICS.

19 (E) ELEMENTARY PRINCIPLES OF REAL ESTATE AND PERSONAL
20 PROPERTY ECONOMICS.

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

24 (3) THE DEPARTMENT SHALL ADMINISTER THE EXAMINATIONS ON AT
25 LEAST A QUARTERLY BASIS. THE DEPARTMENT MAY ADMINISTER THE
26 EXAMINATIONS MORE OFTEN THAN ON A QUARTERLY BASIS IF THE BOARD
27 DETERMINES THAT CIRCUMSTANCES EXIST THAT WARRANT THE FURTHER

1 ADMINISTRATION OF THE EXAMINATION.

2 SEC. 2917. (1) THE DEPARTMENT SHALL ISSUE A REGISTRATION
3 WITHOUT EXAMINATION TO A NONRESIDENT INDIVIDUAL WHO, AT THE TIME
4 OF APPLICATION, IS LICENSED, REGISTERED, CERTIFIED, OR OTHERWISE
5 REGULATED BY ANOTHER STATE IF THE REQUIREMENTS OF THAT STATE, AS
6 DETERMINED BY THE BOARD, ARE SUBSTANTIALLY THE EQUIVALENT OF THE
7 REQUIREMENTS OF THIS ARTICLE AND IF THE OTHER STATE OFFERS
8 LICENSURE, CERTIFICATION, OR REGISTRATION ON A RECIPROCAL BASIS
9 SIMILAR TO THIS SECTION TO REGISTRANTS UNDER THIS ARTICLE.

10 (2) A NONRESIDENT APPLICANT SHALL FILE WITH THE DEPARTMENT
11 AN IRREVOCABLE CONSENT TO SERVICE OF PROCESS, SIGNED BY THE
12 REGISTRANT. A PROCESS OR PLEADING SERVED UPON THE DEPARTMENT
13 SHALL BE SUFFICIENT SERVICE UPON THE REGISTRANT. A PROCESS OR
14 PLEADING SERVED UPON THE DEPARTMENT UNDER THIS SECTION SHALL BE
15 IN DUPLICATE. THE DEPARTMENT SHALL IMMEDIATELY SERVE BY FIRST-
16 CLASS MAIL A COPY OF THE PROCESS OR PLEADING TO THE REGISTRANT'S
17 LAST KNOWN ADDRESS AS DETERMINED BY THE RECORDS OF THE
18 DEPARTMENT.

19 SEC. 2919. A REGISTRANT WHO COMMITS ANY OF THE FOLLOWING
20 ACTS IS SUBJECT TO THE SANCTIONS AND PENALTIES CONTAINED IN
21 ARTICLE 6:

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

25 (B) FAILS TO REDUCE TO WRITING OR FAILS TO ISSUE ANY
26 APPROPRIATE DOCUMENTATION RELATIVE TO AN AUCTION-RELATED
27 TRANSACTION.

(C) FAILS TO APPROPRIATELY USE OR ISSUE PAYMENT FROM A TRUST
ACCOUNT.

(D) IS INVOLVED IN CAPPING, SHILLING, OR STEERING RELATIVE
TO AN AUCTION.

(E) FAILS TO DISCLOSE HIS OR HER REGISTRATION NUMBER ON ALL
ADVERTISING.

(F) KNOWINGLY MISREPRESENTS THE NATURE OR VALUE OF AN ITEM
BEING AUCTIONED.

(G) FAILS TO ACCOUNT FOR ALL MONEY DEPOSITED INTO A TRUST
ACCOUNT.

(H) FAILS TO ACCOUNT FOR OR REMIT MONEY COMING INTO THE
REGISTRANT'S POSSESSION, WHICH MONEY BELONGS TO OTHERS.

(I) FAILS TO DEPOSIT MONEY BELONGING TO OTHERS, IN
COMPLIANCE WITH SECTION 2913.

(J) FAILS TO ESTABLISH AND MAINTAIN RECORDS AS REQUIRED BY
THIS ARTICLE.

(K) VIOLATES THE REQUIREMENTS OF THIS ARTICLE OR A RULE
PROMULGATED UNDER THIS ARTICLE.

Enacting section 1. This amendatory act does not take effect
unless Senate Bill No. 604 of the 93rd Legislature is enacted
into law.

Enacting section 2. This amendatory act takes effect October
1, 2007.