

# HOUSE BILL No. 6044

May 17, 2018, Introduced by Reps. Hoitenga, Reilly and Johnson and referred to the Committee on Regulatory Reform.

A bill to amend 1980 PA 299, entitled  
"Occupational code,"  
by amending sections 2501, 2503, and 2505 (MCL 339.2501, 339.2503,  
and 339.2505), as amended by 2016 PA 502.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Sec. 2501. As used in this article:

2       (a) "Associate broker" or "associate real estate broker" means  
3       an individual who meets the requirements for licensure as a real  
4       estate broker under this article and who is licensed as an  
5       associate real estate broker under section 2505 to provide real  
6       estate brokerage services as an employee or independent contractor  
7       of a real estate broker.

8       (b) "Business entity" means a person described in section  
9       105(5) (b) or (c), except a sole proprietorship.

1 (c) "Classroom course" means an educational course of  
2 instruction that is provided at either of the following:

3 (i) A physical location where instruction is offered and  
4 students and an instructor are present.

5 (ii) A location where a student receives instruction provided  
6 by distance learning.

7 (d) "Clock hour" means either of the following:

8 (i) For a classroom course at a location described in  
9 subdivision (c) (i), a period of 50 to 60 minutes of actual  
10 classroom instruction, not including outside assignments and  
11 reading.

12 (ii) For a classroom course at a location described in  
13 subdivision (c) (ii), the period required for a student to process  
14 the amount of material provided in 50 minutes of distance learning  
15 instruction.

16 (e) "Control person" means an individual who is a sole  
17 proprietor, is a partner in a partnership or limited partnership,  
18 is an officer, director, or shareholder in a corporation, is a  
19 member or manager in a limited liability company, or holds a  
20 responsible position in any other form of business entity  
21 authorized under the laws of this state or the state in which the  
22 entity is organized or formed.

23 (f) "Distance learning" means the technology and educational  
24 process used to provide instruction to a student when the student  
25 and the instructor are not necessarily physically present at the  
26 same time or place. The term includes, but is not limited to,  
27 instruction provided through an interactive classroom, computer

1 conferencing, or an interactive computer system.

2 (g) "Employ" or "employment" means the relationship between a  
3 real estate broker and an associate real estate broker or a real  
4 estate salesperson which may include an independent contractor  
5 relationship. The existence of an independent contractor  
6 relationship between a real estate broker and an individual  
7 licensed to the real estate broker does not relieve the real estate  
8 broker of the responsibility to supervise acts of the licensee that  
9 are regulated under this article.

10 (h) "Independent contractor relationship" means a relationship  
11 between a real estate broker and an associate real estate broker or  
12 real estate salesperson that satisfies both of the following  
13 conditions:

14 (i) A written agreement exists in which the real estate broker  
15 does not consider the associate real estate broker or real estate  
16 salesperson as an employee for federal and state income tax  
17 purposes.

18 (ii) At least 75% of the annual compensation paid by the real  
19 estate broker to the associate real estate broker or real estate  
20 salesperson is from commissions from the sale of real estate.

21 (i) "License cycle" means the term of a license issued under  
22 this article.

23 (j) "Limited service agreement" means a written service  
24 provision agreement by which a real estate broker and client  
25 establish an agency relationship in which certain enumerated  
26 services, as set forth in section 2512d(3)(b), (c), and (d), are  
27 knowingly waived in whole or part by the client.

1 (k) "Negotiate the mortgage of real estate" means engaging in  
2 activity in connection with a mortgage that is not regulated under  
3 the mortgage brokers, lenders, and servicers licensing act, 1987 PA  
4 173, MCL 445.1651 to 445.1684, the secondary mortgage loan act,  
5 1981 PA 125, MCL 493.51 to ~~MCL~~493.81, or the mortgage loan  
6 originator licensing act, 2009 PA 75, MCL 493.131 to 493.171.

7 (l) A "nonprincipal" of a real estate broker means a control  
8 person who is licensed as an associate real estate broker under  
9 this article, but is not designated as a principal under section  
10 2505(1).

11 (m) "Place of business" means a physical location that a real  
12 estate broker, by advertisement, signage, or otherwise, represents  
13 to the public is a place where clients and customers may consult or  
14 do business with a licensee.

15 (n) "Pocket card" means the pocket card that contains  
16 information about the license that the department provides under  
17 section 2506 when it issues a license under this article.

18 (o) "Prelicensure course" means a course that is represented  
19 to the public as fulfilling, in whole or in part, the requirements  
20 of section 2504.

21 (p) A "principal" of a real estate broker means a control  
22 person who is licensed as an associate real estate broker and is  
23 designated as a principal under section 2505(1).

24 (q) "Professional designation" means a certification from a  
25 real estate professional association that demonstrates that an  
26 individual has attained proven skills or education in a real estate  
27 occupational area and may include the right to use a title or

1 letters after the licensee's name that represent the designation  
2 awarded by the certifying entity.

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

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

10 (t) "Property management employment contract" means a written  
11 agreement that is entered into between a real estate broker and  
12 client concerning the real estate broker's employment as a property  
13 manager for the client; that describes the real estate broker's  
14 duties, responsibilities, and activities as a property manager; and  
15 that describes the handling, management, safekeeping, investment,  
16 disbursement, and use of property management money, funds, and  
17 accounts.

18 (u) "Real estate broker" means an individual or business  
19 entity that, with intent to collect or receive a fee, compensation,  
20 or valuable consideration, sells or offers for sale, buys or offers  
21 to buy, provides or offers to provide market analyses of, lists or  
22 offers or attempts to list, or negotiates the purchase, sale, or  
23 exchange of real estate; that negotiates the mortgage of real  
24 estate; that negotiates for the construction of a building on real  
25 estate; that leases or offers or rents or offers for rent real  
26 estate or the improvements on the real estate for others, as a  
27 whole or partial vocation; that engages in property management as a

1 whole or partial vocation; that sells or offers for sale, buys or  
2 offers to buy, leases or offers to lease, or negotiates the  
3 purchase or sale or exchange of a business, business opportunity,  
4 or the goodwill of an existing business for others; or that, as  
5 owner or otherwise, engages in the sale of real estate as a  
6 principal vocation.

7 (v) "Real estate salesperson" means an individual who for  
8 compensation or valuable consideration is employed either directly  
9 or indirectly by a licensed real estate broker to sell or offer to  
10 sell, buy or offer to buy, provide or offer to provide market  
11 analyses of, list or offer or attempt to list, or negotiate the  
12 purchase, sale, or exchange of real estate; to negotiate the  
13 mortgage of real estate; to negotiate for the construction of a  
14 building on real estate, or to lease or offer to lease, or rent or  
15 offer for rent, **NONRESIDENTIAL** real estate; who is employed by a  
16 real estate broker to engage in **NONRESIDENTIAL** property management;  
17 or who sells or offers for sale, buys or offers to buy, leases or  
18 offers to lease, or negotiates the purchase or sale or exchange of  
19 a business, business opportunity, or the goodwill of an existing  
20 business for others, as a whole or partial vocation.

21 (w) "Service provision agreement" means a buyer agency  
22 agreement or listing agreement that is executed by a real estate  
23 broker and a client and establishes an agency relationship.

24 (x) "Sponsor" means a person that represents to the public  
25 that the courses it conducts for purposes of this article fulfill  
26 the requirements of section 2504a for continuing education.

27 Sec. 2503. (1) This article does not apply to a person that,

as owner, sells or offers for sale a detached, single family dwelling, duplex, triplex, or quadruplex, that has never been occupied and that was built by the person while licensed under article 24. This article does not apply to an owner or lessor, an attorney-in-fact acting under a duly executed and recorded power of attorney from the owner or lessor, or a person appointed by a court, that performs an act as a real estate broker or real estate salesperson with reference to property owned by it, unless performed as a principal vocation not through a licensed real estate broker.

**(2) THIS ARTICLE DOES NOT APPLY TO AN EMPLOYEE OR AGENT OF A REAL ESTATE BROKER WHO IS HIRED UNDER A PROPERTY MANAGEMENT EMPLOYMENT CONTRACT TO PERFORM DUTIES RELATING TO PROPERTY MANAGEMENT.**

**(3)** ~~(2)~~—This article does not apply to an attorney-at-law who is ~~rendering~~ **PERFORMING** services as an attorney-at-law; to a receiver, trustee in bankruptcy, administrator, executor, a person selling real estate under order of a court; or to a trustee selling under a deed of trust, unless the trustee makes repeated or successive sales of real estate not through a licensed real estate broker.

**(4)** ~~(3)~~—This article does not apply to a person that is regulated under the mortgage brokers, lenders, and servicers licensing act, 1987 PA 173, MCL 445.1651 to 445.1684, and that does not perform any other act requiring a license as a real estate broker, associate broker, or real estate salesperson.

Sec. 2505. (1) An individual or business entity that is

1 applying for a real estate broker's license shall file an  
2 application with the department. All of the following apply to an  
3 application for a real estate broker's license:

4 (a) The application must include the applicant's current  
5 business address; if the applicant is an individual, the address of  
6 his or her residence; and the complete address of each former place  
7 where the applicant resided or was engaged in business, or acted as  
8 a real estate salesperson, for a period of 60 days or more, during  
9 the 5 years immediately preceding the date of application.

10 (b) The application must include the name of the individual or  
11 business entity that is the proposed licensee; the location of the  
12 place for which the license is sought; and the period of time in  
13 which the applicant has been engaged in the business.

14 (c) The application must be executed by the applicant, if the  
15 applicant is an individual, or by a principal of the applicant if  
16 the applicant is a business entity.

17 (d) If the applicant is a business entity, the application  
18 shall designate which individuals who are control persons of the  
19 entity will be performing acts regulated by this article as  
20 principals. An applicant shall not designate a control person as a  
21 principal unless that control person is licensed as an associate  
22 real estate broker under this article.

23 (2) The department shall not issue a real estate broker's  
24 license to an individual who has been convicted of embezzlement or  
25 misappropriation of funds.

26 (3) A real estate broker shall maintain a place of business in  
27 this state. If a real estate broker maintains more than 1 place of



1 business in this state, the real estate broker must obtain a branch  
2 office license for each of those additional places of business. If  
3 a branch office is located more than 25 miles from the nearest  
4 boundary of the municipality in which the main office of the real  
5 estate broker is located, the broker shall ensure that the branch  
6 office is under the direct supervision of an associate broker. **THIS**

7 **SUBSECTION DOES NOT APPLY TO AN ADDITIONAL PLACE OF BUSINESS**

8 **MAINTAINED BY A REAL ESTATE BROKER SOLELY TO ENGAGE IN PROPERTY**

9 **MANAGEMENT.** As used in this subsection, "direct supervision" means  
10 that an associate broker is physically present at the branch office  
11 on a regular basis to supervise and manage the business during  
12 ordinary business hours.

13 (4) An application for a real estate salesperson's license  
14 shall be signed by the real estate broker that will employ the  
15 applicant. The department shall only issue a real estate  
16 salesperson's license to an individual.

17 (5) Before issuing a license, the department may require and  
18 procure satisfactory proof of the business experience, competence,  
19 and good moral character of an applicant for a license under this  
20 article if the applicant is an individual or of each principal if  
21 the applicant is a business entity. Subject to subsection (6), the  
22 department shall require that each of those individuals pass an  
23 examination developed by the department or contracted for with a  
24 recognized outside testing agency that establishes, in a manner  
25 satisfactory to the department, that he or she has a fair knowledge  
26 of the English language, including reading, writing, spelling, and  
27 elementary arithmetic; a satisfactory understanding of the

1 fundamentals of real estate practice and of the laws and principles  
2 of real estate conveyancing, deeds, mortgages, land contracts, and  
3 leases; the obligations of a broker to the public and a principal;  
4 and the law defining, regulating, and licensing real estate brokers  
5 and salespersons. The department may require written examination or  
6 written reexamination of an individual described in this  
7 subsection, and if the department does require a written  
8 examination or reexamination under this subsection, the department  
9 shall not issue a license unless the individual taking the  
10 examination or reexamination achieves a passing score satisfactory  
11 to the department.

12 (6) All of the following apply to the written examination  
13 requirement described in subsection (5):

14 (a) The department may relicense without examination an  
15 individual who is applying for a real estate broker's or associate  
16 real estate broker's license; has previously held a real estate  
17 broker's or associate real estate broker's license that has lapsed;  
18 and has been continuously licensed as a real estate salesperson  
19 since the lapse of the previous license.

20 (b) A passing score on an examination, or on a portion of an  
21 examination if the examination is given in separate parts, is valid  
22 for 1 year from the date of the examination.

23 (7) The department shall require proof that each applicant for  
24 a real estate broker's license, if the applicant is an individual,  
25 or each principal if the applicant is a business entity, has the  
26 equivalent of 3 years of full-time experience in the business of  
27 real estate. All of the following apply in determining whether an

1 individual meets this experience requirement:

2 (a) If state law requires that a person hold a license ~~to be~~  
3 ~~licensed~~ to perform an activity that is considered the business of  
4 real estate, an individual shall not receive credit for experience  
5 performing that activity without proper licensure.

6 (b) For purposes of calculating whether an individual has the  
7 equivalent of 3 years of experience, the department shall grant the  
8 following credit or credits toward that 3-year requirement:

9 (i) If the individual is a real estate salesperson, 1 year of  
10 credit for each 12-month period of licensure in which he or she  
11 closed 5 or more real estate transactions.

12 (ii) If the individual is a builder, 1 year of credit for each  
13 12-month period in which he or she built and personally sold or  
14 leased at least 5 residential units, commercial units, or  
15 industrial units or a combination of those types of units.

16 (iii) If the individual is a real estate investor, 6 months of  
17 credit for each 5 real property transactions personally negotiated  
18 for a purchase or sale by the individual for his or her own  
19 account, with a maximum of 1 year of credit allowed. However, an  
20 individual shall not receive credit under this subdivision if he or  
21 she engaged in more than 5 sales in any 12-month period in  
22 violation of section 2502b.

23 (iv) If the individual is a land or condominium developer, 1  
24 year of credit for each 2 developments or subdivisions that contain  
25 at least 10 units or parcels that he or she bought, subdivided, and  
26 improved for sale as lots or dwellings.

27 (v) If the individual is an attorney, 1 year of credit for

1 each year in which he or she acted as the attorney for at least 6  
2 real estate transactions.

3 (vi) If the individual is a real estate appraiser who is  
4 licensed under article 26, 1 year of credit for each period  
5 equivalent to at least 40 hours per week, and at least 48 weeks per  
6 year, in which he or she acted as a real estate appraiser.

7 (vii) One year of credit for each period equivalent to at  
8 least 40 hours per week, and at least 48 weeks per year, in which  
9 the individual worked in a capacity directly related to the  
10 acquisition, financing, or conveyance of real estate, or in a  
11 position in which the individual was directly involved in a real  
12 estate business, including serving as the decision-making authority  
13 in any of the following positions:

14 (A) A loan or trust officer of a federal or state-regulated  
15 depository institution.

16 (B) A loan or trust officer of a mortgage company.

17 (C) A real estate officer of a corporation, and who is not a  
18 licensed real estate broker.

19 (D) A title insurance company officer engaged in the closing  
20 of escrow accounts and real estate closings.

21 (viii) Credit for any other experience that is approved by the  
22 department by rule, in consultation with the board, as equivalent  
23 to the experience described in this subsection.

24 Enacting section 1. This amendatory act takes effect 90 days  
25 after the date it is enacted into law.