

HOUSE BILL NO. 4160

February 07, 2019, Introduced by Reps. Hoitenga and Frederick 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

1 estate broker under this article and who is licensed as an
2 associate real estate broker under section 2505 to provide real
3 estate brokerage services as an employee or independent contractor
4 of a real estate broker.

5 (b) "Business entity" means a person described in section
6 105(5) (b) or (c), except a sole proprietorship.

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

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

11 (ii) A location where a student receives instruction provided
12 by distance learning.

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

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

17 (ii) For a classroom course at a location described in
18 subdivision (c) (ii), the period required for a student to process
19 the amount of material provided in 50 minutes of distance learning
20 instruction.

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

28 (f) "Distance learning" means the technology and educational
29 process used to provide instruction to a student when the student

1 and the instructor are not necessarily physically present at the
2 same time or place. The term includes, but is not limited to,
3 instruction provided through an interactive classroom, computer
4 conferencing, or an interactive computer system.

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

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

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

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

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

26 (j) "Limited service agreement" means a written service
27 provision agreement by which a real estate broker and client
28 establish an agency relationship in which certain enumerated
29 services, as set forth in section 2512d(3)(b), (c), and (d), are

1 knowingly waived in whole or part by the client.

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

8 (l) A "nonprincipal" of a real estate broker means a control
9 person who is licensed as an associate real estate broker under
10 this article, but is not designated as a principal under section
11 2505(1).

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

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

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

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

25 (q) "Professional designation" means a certification from a
26 real estate professional association that demonstrates that an
27 individual has attained proven skills or education in a real estate
28 occupational area and may include the right to use a title or
29 letters after the licensee's name that represent the designation

1 awarded by the certifying entity.

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

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

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

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

1 or the goodwill of an existing business for others; or that, as
2 owner or otherwise, engages in the sale of real estate as a
3 principal vocation.

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

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

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

24 Sec. 2503. (1) This article does not apply to a person that,
25 as owner, sells or offers for sale a detached, single family
26 dwelling, duplex, triplex, or quadruplex, that has never been
27 occupied and that was built by the person while licensed under
28 article 24. This article does not apply to an owner or lessor, an
29 attorney-in-fact acting under a duly executed and recorded power of

1 attorney from the owner or lessor, or a person appointed by a
 2 court, that performs an act as a real estate broker or real estate
 3 salesperson with reference to property owned by it, unless
 4 performed as a principal vocation not through a licensed real
 5 estate broker.

6 **(2) This article does not apply to an employee or agent of a**
 7 **real estate broker who is hired under a property management**
 8 **employment contract to perform duties relating to property**
 9 **management.**

10 **(3) ~~(2)~~**—This article does not apply to an attorney-at-law who
 11 is ~~rendering~~**performing** services as an attorney-at-law; to a
 12 receiver, trustee in bankruptcy, administrator, executor, a person
 13 selling real estate under order of a court; or to a trustee selling
 14 under a deed of trust, unless the trustee makes repeated or
 15 successive sales of real estate not through a licensed real estate
 16 broker.

17 **(4) ~~(3)~~**—This article does not apply to a person that is
 18 regulated under the mortgage brokers, lenders, and servicers
 19 licensing act, 1987 PA 173, MCL 445.1651 to 445.1684, and that does
 20 not perform any other act requiring a license as a real estate
 21 broker, associate broker, or real estate salesperson.

22 Sec. 2505. (1) An individual or business entity that is
 23 applying for a real estate broker's license shall file an
 24 application with the department. All of the following apply to an
 25 application for a real estate broker's license:

26 (a) The application must include the applicant's current
 27 business address; if the applicant is an individual, the address of
 28 his or her residence; and the complete address of each former place
 29 where the applicant resided or was engaged in business, or acted as

1 a real estate salesperson, for a period of 60 days or more, during
2 the 5 years immediately preceding the date of application.

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

7 (c) The application must be executed by the applicant, if the
8 applicant is an individual, or by a principal of the applicant if
9 the applicant is a business entity.

10 (d) If the applicant is a business entity, the application
11 shall designate which individuals who are control persons of the
12 entity will be performing acts regulated by this article as
13 principals. An applicant shall not designate a control person as a
14 principal unless that control person is licensed as an associate
15 real estate broker under this article.

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

19 (3) A real estate broker shall maintain a place of business in
20 this state. If a real estate broker maintains more than 1 place of
21 business in this state, the real estate broker must obtain a branch
22 office license for each of those additional places of business. If
23 a branch office is located more than 25 miles from the nearest
24 boundary of the municipality in which the main office of the real
25 estate broker is located, the broker shall ensure that the branch
26 office is under the direct supervision of an associate broker. **This**
27 **subsection does not apply to an additional place of business**
28 **maintained by a real estate broker solely to engage in property**
29 **management.** As used in this subsection, "direct supervision" means

1 that an associate broker is physically present at the branch office
2 on a regular basis to supervise and manage the business during
3 ordinary business hours.

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

8 (5) Before issuing a license, the department may require and
9 procure satisfactory proof of the business experience, competence,
10 and good moral character of an applicant for a license under this
11 article if the applicant is an individual or of each principal if
12 the applicant is a business entity. Subject to subsection (6), the
13 department shall require that each of those individuals pass an
14 examination developed by the department or contracted for with a
15 recognized outside testing agency that establishes, in a manner
16 satisfactory to the department, that he or she has a fair knowledge
17 of the English language, including reading, writing, spelling, and
18 elementary arithmetic; a satisfactory understanding of the
19 fundamentals of real estate practice and of the laws and principles
20 of real estate conveyancing, deeds, mortgages, land contracts, and
21 leases; the obligations of a broker to the public and a principal;
22 and the law defining, regulating, and licensing real estate brokers
23 and salespersons. The department may require written examination or
24 written reexamination of an individual described in this
25 subsection, and if the department does require a written
26 examination or reexamination under this subsection, the department
27 shall not issue a license unless the individual taking the
28 examination or reexamination achieves a passing score satisfactory
29 to the department.

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

3 (a) The department may relicense without examination an
4 individual who is applying for a real estate broker's or associate
5 real estate broker's license; has previously held a real estate
6 broker's or associate real estate broker's license that has lapsed;
7 and has been continuously licensed as a real estate salesperson
8 since the lapse of the previous license.

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

12 (7) The department shall require proof that each applicant for
13 a real estate broker's license, if the applicant is an individual,
14 or each principal if the applicant is a business entity, has the
15 equivalent of 3 years of full-time experience in the business of
16 real estate. All of the following apply in determining whether an
17 individual meets this experience requirement:

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

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

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

28 (ii) If the individual is a builder, 1 year of credit for each
29 12-month period in which he or she built and personally sold or

1 leased at least 5 residential units, commercial units, or
2 industrial units or a combination of those types of units.

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

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

14 (v) If the individual is an attorney, 1 year of credit for
15 each year in which he or she acted as the attorney for at least 6
16 real estate transactions.

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

21 (vii) One year of credit for each period equivalent to at least
22 40 hours per week, and at least 48 weeks per year, in which the
23 individual worked in a capacity directly related to the
24 acquisition, financing, or conveyance of real estate, or in a
25 position in which the individual was directly involved in a real
26 estate business, including serving as the decision-making authority
27 in any of the following positions:

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

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

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

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

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

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