

SENATE BILL No. 1313

June 20, 2000, Introduced by Senator MC COTTER and referred to the Committee on Economic Development, International Trade and Regulatory Affairs.

A bill to amend 1980 PA 299, entitled "Occupational code," by amending sections 2512 and 2517 (MCL 339.2512 and 339.2517), section 2512 as amended by 1996 PA 430 and section 2517 as added by 1993 PA 93.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2512. (1) A licensee who commits 1 or more of the fol-
2 lowing is subject to the penalties set forth in article 6:

3 (a) Except in a case involving property management, acts for
4 more than 1 party in a transaction without the knowledge of the
5 parties.

6 (b) ~~Beginning January 1, 1994, fails~~ FAILS to provide a
7 written agency disclosure to a prospective buyer or seller in a
8 real estate transaction.

1 (c) Represents or attempts to represent a real estate broker
2 other than the employer without the express knowledge and consent
3 of the employer.

4 (d) Fails to account for or to remit money coming into the
5 licensee's possession which belongs to others.

6 (e) Changes a business location without notification to the
7 department.

8 (f) In the case of a real estate broker, fails to return a
9 real estate salesperson's license within 5 days as provided in
10 section 2507.

11 (g) In the case of a licensee engaged in property manage-
12 ment, violates section 2512c(2), (5), or (6).

13 (h) Except as provided in section 2512b, shares or pays a
14 fee, commission, or other valuable consideration to a person not
15 licensed under this article including payment to any person pro-
16 viding the names of, or any other information regarding, a poten-
17 tial seller or purchaser of real estate but excluding payment for
18 the purchase of commercially prepared lists of names. However, a
19 licensed real estate broker may pay a commission to a licensed
20 real estate broker of another state if the nonresident real
21 estate broker does not conduct in this state a negotiation for
22 which a commission is paid.

23 (i) Conducts or develops a market analysis not in compliance
24 with section 2601(a)(ii).

25 (j) Except in the case of property management accounts,
26 fails to deposit in a custodial trust or escrow account money

1 belonging to others coming into the hands of the licensee in
2 compliance with the following:

3 (i) A real estate broker shall retain a deposit or other
4 money accepted by a person, partnership, corporation, or associa-
5 tion holding a real estate broker's license under this article
6 pending consummation or termination of the transaction involved
7 and shall account for the full amount of the money at the time of
8 the consummation or termination of the transaction.

9 (ii) A real estate salesperson shall pay over to the real
10 estate broker, upon receipt, a deposit or other money on a trans-
11 action in which the real estate salesperson is engaged on behalf
12 of the real estate broker.

13 (iii) A real estate broker shall not permit an advance pay-
14 ment of funds belonging to others to be deposited in the real
15 estate broker's business or personal account or to be commingled
16 with funds on deposit belonging to the real estate broker.

17 (iv) A real estate broker shall deposit, within 2 banking
18 days after the broker has received notice that an offer to pur-
19 chase is accepted by all parties, money belonging to others in a
20 separate custodial trust or escrow account maintained by the real
21 estate broker with a bank, savings and loan association, credit
22 union, or recognized depository until the transaction involved is
23 consummated or terminated, at which time the real estate broker
24 shall account for the full amount received.

25 (v) A real estate broker shall keep records of funds depos-
26 ited in a custodial trust or escrow account, which records shall
27 indicate clearly the date and from whom the money was received,

1 the date deposited, the date of withdrawal, and other pertinent
2 information concerning the transaction, and shall show clearly
3 for whose account the money is deposited and to whom the money
4 belongs. The records shall be subject to inspection by the
5 department. A separate custodial trust or escrow account shall
6 designate the real estate broker as trustee, and the custodial
7 trust or escrow account shall provide for withdrawal of funds
8 without previous notice. This article and the rules promulgated
9 pursuant to this article do not prohibit the deposit of money
10 accepted under this section in a noninterest bearing account of a
11 state or federally chartered savings and loan association or a
12 state or federally chartered credit union.

13 (2) AS USED IN THIS SECTION, "REAL ESTATE TRANSACTION" MEANS
14 THAT TERM AS DEFINED IN SECTION 2517(4)(D).

15 Sec. 2517. (1) A licensee shall disclose to a potential
16 buyer or seller IN A REAL ESTATE TRANSACTION OR IN A POTENTIAL
17 REAL ESTATE TRANSACTION all types of agency relationships avail-
18 able and the licensee's duties that each agency relationship cre-
19 ates, prior to the disclosure by the potential buyer or seller to
20 the licensee of any confidential information specific to that
21 potential buyer or seller.

22 (2) The disclosure of the type of agency relationship shall
23 be in writing and substantially conform to the following:

24 Disclosure Regarding Real Estate Agency Relationships

25 Before you disclose confidential information to a real
26 estate licensee regarding a real estate transaction, you should
27 understand what type of agency relationship you have with that

1 licensee. A REAL ESTATE TRANSACTION IS A TRANSACTION INVOLVING
2 THE SALE OR LEASE OF ANY LEGAL OR EQUITABLE INTEREST IN REAL
3 ESTATE CONSISTING OF NOT LESS THAN 1 OR NOT MORE THAN 4 RESIDEN-
4 TIAL DWELLING UNITS OR CONSISTING OF BUILDING SITES FOR RESIDEN-
5 TIAL UNITS.

6 Michigan law requires real estate licensees who are acting
7 as agents of sellers or buyers of real property to advise the
8 potential sellers or buyers with whom they work of the nature of
9 their agency relationship.

10 Seller's Agents

11 A seller's agent, under a listing agreement with the seller,
12 acts solely on behalf of the seller. A seller can authorize a
13 seller's agent to work with subagents, buyer's agents and/or
14 transaction coordinators. A subagent is one who has agreed to
15 work with the listing agent, and who, like the listing agent,
16 acts solely on behalf of the seller. Seller's agents and sub-
17 agents will disclose to the seller known information about the
18 buyer which may be used to the benefit of the seller.

19 Buyer's Agents

20 A buyer's agent, under a buyer's agency agreement with the
21 buyer, acts solely on behalf of the buyer. Buyer's agents and
22 subagents will disclose to the buyer known information about the
23 seller which may be used to benefit the buyer.

24 Dual Agents

25 A real estate licensee can be the agent of both the seller
26 and the buyer in a transaction, but only with the knowledge and
27 informed consent, in writing, of both the seller and the buyer.

1 In such a dual agency situation, the licensee will not be
2 able to disclose all known information to either the seller or
3 the buyer.

4 The obligations of a dual agent are subject to any specific
5 provisions set forth in any agreement between the dual agent, the
6 seller, and the buyer.

7 LICENSEE DISCLOSURE

8 I hereby disclose that the agency status I/we have with the
9 buyer and/or seller below is:

10 _____ Seller's Agent

11 _____ Buyer's Agent

12 _____ Dual Agent

13 _____ None of the above

14 Further, this form was provided to them before disclosure of
15 any confidential information.

16 _____
17 Licensee Date

18
19
20 _____
21 Licensee Date

22
23
24 Acknowledgment

25
26 By signing below, the parties confirm that they have
27 received and read the information in this agency disclosure
28 statement and that this form was provided to them before the dis-
29 closure of any confidential information specific to the potential
30 sellers or buyers.

31 _____
32 Potential Buyer/Seller (circle one) Date

33
34

1 _____
2 Potential Buyer/Seller (circle one) Date
3
4

5 (3) This article does not prevent a licensee from acting as
6 a transaction coordinator upon proper notice to all parties to a
7 real estate transaction.

8 (4) As used in this section:

9 (a) "Buyer" means a purchaser, tenant, or lessee of any
10 legal or equitable interest in real estate.

11 (b) "Buyer's agent" means a licensee acting on behalf of the
12 buyer IN A REAL ESTATE TRANSACTION who undertakes to accept the
13 responsibility of serving the buyer consistent with those fidu-
14 ciary duties existing under common law.

15 (c) "Dual agent" means a licensee who is acting as the agent
16 of both the buyer and the seller and provides services to com-
17 plete a real estate transaction without the full range of fidu-
18 ciary duties owed by a buyer's agent and a seller's agent.

19 (d) "Real estate transaction" means the sale or lease of any
20 legal or equitable interest in real estate WHERE THE INTEREST IN
21 REAL ESTATE CONSISTS OF NOT LESS THAN 1 OR NOT MORE THAN 4 RESI-
22 DENTIAL DWELLING UNITS OR CONSISTS OF BUILDING SITES FOR RESIDEN-
23 TIAL UNITS.

24 (e) "Seller" means the equitable or legal owner of real
25 estate.

26 (f) "Seller's agent" means a licensee acting on behalf of
27 the seller IN A REAL ESTATE TRANSACTION who undertakes to accept
28 the responsibility of serving the seller consistent with those
29 fiduciary duties existing under common law.

1 (g) "Transaction coordinator" means a licensee who is not
2 acting as the agent of either the buyer or the seller.