

**SUBSTITUTE FOR
SENATE BILL NO. 602**

A bill to amend 1980 PA 299, entitled
"Occupational code,"
by amending sections 2501 and 2512 (MCL 339.2501 and 339.2512), as
amended by 2016 PA 502, and by adding section 2512g.

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

1 105(5) (b) or (c), except a sole proprietorship.

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

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

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

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

9 (i) For a classroom course at a location described in
10 subdivision (c) (i), a period of 50 to 60 minutes of actual classroom
11 instruction, not including outside assignments and 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
28 conferencing, or an interactive computer system.

29 (g) "Employ" or "employment" means the relationship between a

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

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

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

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

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

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

26 (k) "Negotiate the mortgage of real estate" means engaging in
27 activity in connection with a mortgage that is not regulated under
28 the mortgage brokers, lenders, and servicers licensing act, 1987 PA
29 173, MCL 445.1651 to 445.1684, the secondary mortgage loan act,

1 1981 PA 125, MCL 493.51 to MCL 493.81, or the mortgage loan
2 originator licensing act, 2009 PA 75, MCL 493.131 to 493.171.

3 (l) A "nonprincipal" of a real estate broker means a control
4 person who is licensed as an associate real estate broker under
5 this article, but is not designated as a principal under section
6 2505(1).

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

11 (n) "Pocket card" means the ~~pocket~~ card that contains
12 information about ~~the~~ **a licensee's** license that the department
13 provides under section 2506 when it issues a license under this
14 article.

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

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

21 (q) "Professional designation" means a certification from a
22 real estate professional association that demonstrates that an
23 individual has attained proven skills or education in a real estate
24 occupational area and may include the right to use a title or
25 letters after the licensee's name that represent the designation
26 awarded by the certifying entity.

27 (r) "Property management" means leasing or renting, or
28 offering to lease or rent, real property of others for a fee,
29 commission, compensation, or other valuable consideration pursuant

1 to a property management employment contract.

2 (s) "Property management account" means an interest-bearing or
3 noninterest-bearing account or instrument used in the operation of
4 property management.

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

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

29 (v) "Real estate salesperson" means an individual who for

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

14 **(w) "Right-to-list home sale agreement" means an agreement**
 15 **between an owner of residential real estate and a real estate**
 16 **broker that obligates the owner to list the residential real estate**
 17 **for sale with the real estate broker at a future date in exchange**
 18 **for consideration. As used in this subdivision, "residential real**
 19 **estate" means the type of real estate described in section 2517(3).**
 20 **Right-to-list home sale agreement does not include a service**
 21 **provision agreement.**

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

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

28 Sec. 2512. (1) A licensee that ~~commits~~**does** 1 or more of the
 29 following is subject to the penalties set forth in article 6:

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

4 (b) ~~Fails to~~ **Does not** provide a written agency disclosure to a
5 prospective buyer or seller in a real estate transaction as ~~defined~~
6 ~~in~~ **required under** section 2517.

7 (c) If the licensee is an associate real estate broker or real
8 estate salesperson, represents or attempts to represent a real
9 estate broker other than ~~his or her~~ **the licensee's** employer without
10 the express knowledge and consent of the employer.

11 (d) ~~Fails to~~ **Does not** account for or ~~to~~ **does not** remit money
12 that comes into the licensee's possession that belongs to others.

13 (e) Changes a business location without notification to the
14 department.

15 (f) If the licensee is a real estate broker, ~~fails to~~ **does not**
16 return a real estate salesperson's license within 5 days under
17 section 2507.

18 (g) If the licensee engaged in property management, violates
19 section 2512c(2), (5), or (6).

20 (h) Except as provided in section 2510(2), shares or pays a
21 fee, commission, or other valuable consideration to a person that
22 is not licensed under this article, including payment to any person
23 that provides the name of, or any other information regarding, a
24 potential seller or purchaser of real estate but excluding payment
25 for the purchase of a commercially prepared list of names. However,
26 a licensed real estate broker may pay a commission to a real estate
27 broker that is licensed by another state if the nonresident real
28 estate broker does not conduct in this state a negotiation for
29 which a commission is paid.

1 (i) Conducts or develops a market analysis that does not
2 comply with section 2601(a) (ii) .

3 (j) ~~Fails to~~ **Does not** provide the minimum services specified
4 under section 2512d(3) when providing services under a service
5 provision agreement unless expressly waived in writing by the
6 client under section 2517(2) .

7 (k) Except in connection with a property management account,
8 ~~fails to~~ **does not** deposit money in ~~its~~ **the licensee's** possession
9 that belongs to another person in a custodial trust or escrow
10 account that is maintained by the real estate broker, in a manner
11 that complies with all of the following:

12 (i) A real estate broker shall retain a deposit or other money
13 made payable to a person that holds a real estate broker's license
14 under this article pending consummation or termination of the
15 transaction involved and shall account for the full amount of the
16 money at the time of the consummation or termination of the
17 transaction.

18 (ii) A real estate salesperson shall pay or deliver to the real
19 estate broker, on receipt, a deposit or other money paid in
20 connection with a transaction in which the real estate salesperson
21 is engaged on behalf of the real estate broker.

22 (iii) A real estate broker shall not deposit or permit the
23 deposit of an advance payment of money that belongs to others in
24 the real estate broker's business or personal account or commingle
25 or permit the commingling of that money with funds on deposit that
26 belong to the real estate broker.

27 (iv) A real estate broker may maintain more than 1 trust
28 account. A real estate broker may deposit not more than \$2,000.00
29 of its own money in each trust account to cover bank service

1 charges and bank minimum balance requirements or to avoid the
2 closing of the account because there is no money in the account.
3 The real estate broker shall account for any of its own money in a
4 trust account in the records described in subparagraph (vi).

5 (v) A real estate broker shall deposit, ~~within~~ **not later than**
6 2 banking days after the broker has received notice that an offer
7 to purchase is accepted by all parties, money that belongs to
8 others and is made payable to the real estate broker into a
9 separate custodial trust or escrow account maintained by the real
10 estate broker with a bank, savings and loan association, credit
11 union, or recognized depository until the transaction involved is
12 consummated or terminated, at which time the real estate broker
13 shall account for the full amount received.

14 (vi) A real estate broker shall keep records of money deposited
15 in its custodial trust or escrow account, and indicate clearly in
16 those records the date and from whom the money was received, the
17 date deposited, the date of withdrawal, and other pertinent
18 information concerning the transaction and shall show clearly for
19 whose account the money is deposited and to whom the money belongs.
20 The records are subject to inspection by the department. A real
21 estate broker's separate custodial trust or escrow account shall
22 designate the real estate broker as trustee, and the custodial
23 trust or escrow account shall provide for withdrawal of funds
24 without previous notice. This article and the rules promulgated
25 under this article do not prohibit the deposit of money accepted
26 under this section in a noninterest bearing account of a state or
27 federally chartered savings and loan association or a state or
28 federally chartered credit union.

29 (vii) If a purchase agreement signed by a seller and purchaser

1 provides that an escrowee other than a real estate broker shall
 2 hold a deposit, a licensee in possession of that deposit shall
 3 cause the deposit to be delivered to the named escrowee ~~within~~**not**
 4 **later than** 2 banking days after the licensee receives notice that
 5 an offer to purchase is accepted by all parties.

6 **(l) Enters into a void and unenforceable right-to-list home**
 7 **sale agreement as described in section 2512g.**

8 (2) A complaint that seeks a penalty under article 5 for a
 9 violation of this section must be filed ~~within~~**not later than** 18
 10 months after 1 of the following dates, whichever occurs later:

11 (a) The date of the alleged violation.

12 (b) If the alleged violation occurs in connection with a real
 13 estate transaction, the date the transaction is completed.

14 **Sec. 2512g. (1) A right-to-list home sale agreement is void**
 15 **and unenforceable if any of the following apply to the agreement:**

16 (a) It is not in writing.

17 (b) It is not signed by all persons that have an ownership
 18 interest in the residential real estate considered in the
 19 agreement.

20 (c) It is for a period of more than 2 years.

21 (d) It does not include both of the following:

22 (i) An option for the owner to terminate the agreement before
 23 its expiration date for an amount of consideration payable to the
 24 real estate broker that is not more than the initial consideration
 25 the broker paid to the owner with interest of 6% per annum that
 26 starts from the date the broker provided the initial consideration
 27 through the date that the owner terminated the agreement.

28 (ii) The period of time that the agreement is effective and an
 29 explanation of the early termination option on the first page of

1 the agreement in a conspicuous manner.

2 (2) This section applies to a right-to-list home sale
3 agreement that is entered into, extended, or renewed on or after
4 the effective date of the amendatory act that added this section.