

SENATE BILL NO. 602

October 24, 2023, Introduced by Senator HERTEL and referred to the Committee on Regulatory Affairs.

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

1 estate brokerage services as an employee or independent contractor
2 of a real estate broker.

3 (b) "Business entity" means a person described in section
4 105(5) (b) or (c), except a sole proprietorship.

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

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

9 (ii) A location where a student receives instruction provided
10 by distance learning.

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

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

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

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

26 (f) "Distance learning" means the technology and educational
27 process used to provide instruction to a student when the student
28 and the instructor are not necessarily physically present at the
29 same time or place. The term includes, but is not limited to,

1 instruction provided through an interactive classroom, computer
2 conferencing, or an interactive computer system.

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

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

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

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

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

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

29 (k) "Negotiate the mortgage of real estate" means engaging in

1 activity in connection with a mortgage that is not regulated under
2 the mortgage brokers, lenders, and servicers licensing act, 1987 PA
3 173, MCL 445.1651 to 445.1684, the secondary mortgage loan act,
4 1981 PA 125, MCL 493.51 to MCL 493.81, or the mortgage loan
5 originator licensing act, 2009 PA 75, MCL 493.131 to 493.171.

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

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

14 (n) "Pocket card" means the ~~pocket~~ card that contains
15 information about ~~the~~ **a licensee's** license that the department
16 provides under section 2506 when it issues a license under this
17 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
28 letters after the licensee's name that represent the designation
29 awarded by the certifying entity.

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

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

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

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

1 owner or otherwise, engages in the sale of real estate as a
2 principal vocation.

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

17 (w) **"Right-to-list home sale agreement" means an agreement**
18 **between an owner of residential real estate and a real estate**
19 **broker that obligates the owner to list the residential real estate**
20 **with the real estate broker at a future date in exchange for**
21 **consideration. As used in this subdivision, "residential real**
22 **estate" means the type of real estate described in section 2517(3).**

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

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

29 Sec. 2512. (1) A licensee that ~~commits~~ **does** 1 or more of the

1 following is subject to the penalties set forth in article 6:

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

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

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

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

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

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

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

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

1 which a commission is paid.

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

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

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

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

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

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

28 (iv) A real estate broker may maintain more than 1 trust
29 account. A real estate broker may deposit not more than \$2,000.00

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

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

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

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

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

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

12 (a) The date of the alleged violation.

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

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

17 (a) It is not in writing.

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

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

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

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

29 (ii) The period of time that the agreement is effective and an

1 explanation of the early termination option on the first page of
2 the agreement in a conspicuous manner.

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