

**SUBSTITUTE FOR
HOUSE BILL NO. 4849**

A bill to amend 1980 PA 299, entitled
"Occupational code,"
by amending section 2512 (MCL 339.2512), as amended by 2002 PA 42,
and by adding section 2512d.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2512. A licensee who commits 1 or more of the following
2 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) Fails to provide a written agency disclosure to a
7 prospective buyer or seller in a real estate transaction as defined
8 in section 2517.

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 management,
12 violates section 2512c(2), (5), or (6).

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

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

25 **(J) FAILS TO PROVIDE THE MINIMUM SERVICES AS SPECIFIED IN**
26 **SECTION 2512D WHEN PROVIDING SERVICES PURSUANT TO AN EXCLUSIVE**
27 **SERVICE PROVISION AGREEMENT. A LICENSEE PROVIDING REAL ESTATE**

1 SERVICES PURSUANT TO AN AGREEMENT ALLOWED UNDER LAW THAT IS NOT A
2 SERVICE PROVISION AGREEMENT CREATING AN EXCLUSIVE AGENCY
3 RELATIONSHIP IS NOT CONSIDERED IN VIOLATION OF THIS SUBDIVISION.

4 (K) ~~-(j)-~~ Except in the case of property management accounts,
5 fails to deposit in the real estate broker's custodial trust or
6 escrow account money belonging to others coming into the hands of
7 the licensee in compliance with the following:

8 (i) A real estate broker shall retain a deposit or other money
9 made payable to a person, partnership, corporation, or association
10 holding a real estate broker's license under this article pending
11 consummation or termination of the transaction involved and shall
12 account for the full amount of the money at the time of the
13 consummation or termination of the transaction.

14 (ii) A real estate salesperson shall pay over to the real
15 estate broker, upon receipt, a deposit or other money on a
16 transaction in which the real estate salesperson is engaged on
17 behalf of the real estate broker.

18 (iii) A real estate broker shall not permit an advance payment
19 of funds belonging to others to be deposited in the real estate
20 broker's business or personal account or to be commingled with
21 funds on deposit belonging to the real estate broker.

22 (iv) A real estate broker shall deposit, within 2 banking days
23 after the broker has received notice that an offer to purchase is
24 accepted by all parties, money belonging to others made payable to
25 the real estate broker into a separate custodial trust or escrow
26 account maintained by the real estate broker with a bank, savings
27 and loan association, credit union, or recognized depository until

1 the transaction involved is consummated or terminated, at which
2 time the real estate broker shall account for the full amount
3 received.

4 (v) A real estate broker shall keep records of funds deposited
5 in its custodial trust or escrow account, which records shall
6 indicate clearly the date and from whom the money was received, the
7 date deposited, the date of withdrawal, and other pertinent
8 information concerning the transaction, and shall show clearly for
9 whose account the money is deposited and to whom the money belongs.
10 The records shall be subject to inspection by the department. A
11 real estate broker's separate custodial trust or escrow account
12 shall designate the real estate broker as trustee, and the
13 custodial trust or escrow account shall provide for withdrawal of
14 funds without previous notice. This article and the rules
15 promulgated pursuant to this article do not prohibit the deposit of
16 money accepted under this section in a noninterest bearing account
17 of a state or federally chartered savings and loan association or a
18 state or federally chartered credit union.

19 (vi) If a purchase agreement signed by a seller and purchaser
20 provides that a deposit be held by an escrowee other than a real
21 estate broker, a licensee in possession of such a deposit shall
22 cause the deposit to be delivered to the named escrowee within 2
23 banking days after the licensee has received notice that an offer
24 to purchase is accepted by all parties.

25 **SEC. 2512D. (1) A REAL ESTATE BROKER ACTING PURSUANT TO A**
26 **SERVICE PROVISION AGREEMENT CREATING AN EXCLUSIVE AGENCY**
27 **RELATIONSHIP SHALL, AT A MINIMUM, PROVIDE THE FOLLOWING SERVICES TO**

1 HIS OR HER CLIENT:

2 (A) WHEN THE REAL ESTATE BROKER IS REPRESENTING A SELLER OR
3 LESSOR, THE MARKETING OF THE CLIENT'S PROPERTY IN THE MANNER AGREED
4 UPON IN THE SERVICE PROVISION AGREEMENT.

5 (B) ACCEPTANCE OF DELIVERY AND PRESENTATION OF OFFERS AND
6 COUNTEROFFERS TO BUY, SELL, OR LEASE THE CLIENT'S PROPERTY OR THE
7 PROPERTY THE CLIENT SEEKS TO PURCHASE OR LEASE.

8 (C) ASSISTANCE IN DEVELOPING, COMMUNICATING, NEGOTIATING, AND
9 PRESENTING OFFERS, COUNTEROFFERS, AND RELATED DOCUMENTS OR NOTICES
10 UNTIL A PURCHASE OR LEASE AGREEMENT IS EXECUTED BY ALL PARTIES AND
11 ALL CONTINGENCIES ARE SATISFIED OR WAIVED.

12 (D) AFTER EXECUTION OF A PURCHASE AGREEMENT BY ALL PARTIES,
13 ASSISTANCE AS NECESSARY TO COMPLETE THE TRANSACTION UNDER THE TERMS
14 SPECIFIED IN THE PURCHASE AGREEMENT.

15 (E) FURNISHING, OR CAUSING TO BE FURNISHED, A COMPLETE AND
16 DETAILED CLOSING STATEMENT AS REQUIRED BY R 339.22311 OF THE
17 MICHIGAN ADMINISTRATIVE CODE.

18 (2) AS USED IN THIS SECTION AND SECTION 2512, "SERVICE
19 PROVISION AGREEMENT" MEANS AN AGREEMENT BETWEEN THE BROKER AND
20 CLIENT THAT ESTABLISHES AN AGENCY RELATIONSHIP THROUGH A LISTING
21 AGREEMENT OR A BUYER AGENCY AGREEMENT.

22 Enacting section 1. This amendatory act does not take effect
23 unless House Bill No. 4850 of the 93rd Legislature is enacted into
24 law.