

HOUSE BILL No. 4416

March 6, 2007, Introduced by Rep. Schuitmaker and referred to the Committee on Regulatory Reform.

A bill to amend 1980 PA 299, entitled "Occupational code," by amending sections 2501 and 2512 (MCL 339.2501 and 339.2512), section 2501 as amended by 2003 PA 196 and section 2512 as amended by 2002 PA 42, and by adding section 2512d.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2501. As used in this article:

2 (A) "EMPLOY" OR "EMPLOYMENT" MEANS THE RELATIONSHIP BETWEEN A
3 REAL ESTATE BROKER AND AN ASSOCIATE BROKER OR A REAL ESTATE
4 SALESPERSON WHICH MAY INCLUDE AN INDEPENDENT CONTRACTOR
5 RELATIONSHIP. THE EXISTENCE OF AN INDEPENDENT CONTRACTOR
6 RELATIONSHIP BETWEEN A REAL ESTATE BROKER AND AN INDIVIDUAL
7 LICENSED TO THE REAL ESTATE BROKER SHALL NOT RELIEVE THE REAL

1 ESTATE BROKER OF THE RESPONSIBILITY TO SUPERVISE ACTS OF THE
2 LICENSEE REGULATED BY THIS ARTICLE.

3 (B) "INDEPENDENT CONTRACTOR RELATIONSHIP" MEANS A RELATIONSHIP
4 BETWEEN A REAL ESTATE BROKER AND AN ASSOCIATE BROKER OR REAL ESTATE
5 SALESPERSON THAT SATISFIES BOTH OF THE FOLLOWING CONDITIONS:

6 (i) A WRITTEN AGREEMENT EXISTS IN WHICH THE REAL ESTATE BROKER
7 DOES NOT CONSIDER THE ASSOCIATE BROKER OR REAL ESTATE SALESPERSON
8 AS AN EMPLOYEE FOR FEDERAL AND STATE INCOME TAX PURPOSES.

9 (ii) NOT LESS THAN 75% OF THE ANNUAL COMPENSATION PAID BY THE
10 REAL ESTATE BROKER TO THE ASSOCIATE BROKER OR REAL ESTATE
11 SALESPERSON IS FROM COMMISSIONS FROM THE SALE OF REAL ESTATE.

12 (C) "LIMITED SERVICE AGREEMENT" MEANS A SERVICE PROVISION
13 AGREEMENT WHERE THE REAL ESTATE BROKER AND CLIENT ESTABLISH AN
14 AGENCY RELATIONSHIP IN WHICH CERTAIN ENUMERATED SERVICES, AS
15 PRESCRIBED BY LAW, ARE WAIVED BY THE CLIENT AS PROVIDED FOR IN
16 SECTION 2512D.

17 (D) "PROFESSIONAL DESIGNATION" MEANS A CERTIFICATION FROM A
18 REAL ESTATE PROFESSIONAL ASSOCIATION DEMONSTRATING ATTAINMENT OF
19 PROVEN SKILLS OR EDUCATION IN A REAL ESTATE OCCUPATIONAL AREA AND
20 MAY INCLUDE THE RIGHT TO USE A TITLE OR LETTERS AFTER THE
21 LICENSEE'S NAME THAT REPRESENT THE DESIGNATION BESTOWED BY THE
22 CERTIFYING ENTITY.

23 (E) ~~(a)~~-"Property management" means the leasing or renting, or
24 the offering to lease or rent, of real property of others for a
25 fee, commission, compensation, or other valuable consideration
26 pursuant to a property management employment contract.

27 (F) ~~(b)~~-"Property management account" means an interest-

1 bearing or noninterest-bearing account or instrument used in the
2 operation of property management.

3 (G) ~~(e)~~—"Property management employment contract" means the
4 written agreement entered into between a real estate broker and
5 client concerning the real estate broker's employment as a property
6 manager for the client; setting forth the real estate broker's
7 duties, responsibilities, and activities as a property manager; and
8 setting forth the handling, management, safekeeping, investment,
9 disbursement, and use of property management money, funds, and
10 accounts.

11 (H) ~~(d)~~—"Real estate broker" means an individual, sole
12 proprietorship, partnership, association, corporation, common law
13 trust, or a combination of those entities who with intent to
14 collect or receive a fee, compensation, or valuable consideration,
15 sells or offers for sale, buys or offers to buy, provides or offers
16 to provide market analyses, lists or offers or attempts to list, or
17 negotiates the purchase or sale or exchange or mortgage of real
18 estate, or negotiates for the construction of a building on real
19 estate; who leases or offers or rents or offers for rent real
20 estate or the improvements on the real estate for others, as a
21 whole or partial vocation; who engages in property management as a
22 whole or partial vocation; who sells or offers for sale, buys or
23 offers to buy, leases or offers to lease, or negotiates the
24 purchase or sale or exchange of a business, business opportunity,
25 or the goodwill of an existing business for others; or who, as
26 owner or otherwise, engages in the sale of real estate as a
27 principal vocation.

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

14 ~~—— (f) "Employ" or "employment" means the relationship between a~~
15 ~~real estate broker and an associate broker or a real estate~~
16 ~~salesperson which may include an independent contractor~~
17 ~~relationship. The existence of an independent contractor~~
18 ~~relationship between a real estate broker and an individual~~
19 ~~licensed to the real estate broker shall not relieve the real~~
20 ~~estate broker of the responsibility to supervise acts of the~~
21 ~~licensee regulated by this article.~~

22 ~~—— (g) "Independent contractor relationship" means a relationship~~
23 ~~between a real estate broker and an associate broker or real estate~~
24 ~~salesperson that satisfies both of the following conditions:~~

25 ~~—— (i) A written agreement exists in which the real estate broker~~
26 ~~does not consider the associate broker or real estate salesperson~~
27 ~~as an employee for federal and state income tax purposes.~~

1 ~~—— (ii) Not less than 75% of the annual compensation paid by the~~
2 ~~real estate broker to the associate broker or real estate~~
3 ~~salesperson is from commissions from the sale of real estate.~~

4 ~~—— (h) "Professional designation" means a certification from a~~
5 ~~real estate professional association demonstrating attainment of~~
6 ~~proven skills or education in a real estate occupational area, and~~
7 ~~may include the right to use a title or letters after the~~
8 ~~licensee's name that represent the designation bestowed by the~~
9 ~~certifying entity.~~

10 **(J) "SERVICE PROVISION AGREEMENT" MEANS AN AGREEMENT BETWEEN**
11 **THE REAL ESTATE BROKER AND A CLIENT THAT ESTABLISHES AN AGENCY**
12 **RELATIONSHIP THROUGH A BUYER AGENCY AGREEMENT OR A LISTING**
13 **AGREEMENT.**

14 Sec. 2512. A licensee who commits 1 or more of the following
15 is subject to the penalties set forth in article 6:

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

19 (b) Fails to provide a written agency disclosure to a
20 prospective buyer or seller in a real estate transaction as defined
21 in section 2517.

22 (c) Represents or attempts to represent a real estate broker
23 other than the employer without the express knowledge and consent
24 of the employer.

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

27 (e) Changes a business location without notification to the

1 department.

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

5 (g) In the case of a licensee engaged in property management,
6 violates section 2512c(2), (5), or (6).

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

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

19 **(J) FAILS TO PROVIDE THE MINIMUM SERVICES AS SPECIFIED IN**
20 **SECTION 2512D WHEN PROVIDING SERVICES PURSUANT TO A SERVICE**
21 **PROVISION AGREEMENT UNLESS EXPRESSLY WAIVED BY THE CLIENT IN**
22 **ACCORDANCE WITH SECTION 2517(3).**

23 **(K) ~~(j)~~**—Except in the case of property management accounts,
24 fails to deposit in the real estate broker's custodial trust or
25 escrow account money belonging to others coming into the hands of
26 the licensee in compliance with the following:

27 (i) A real estate broker shall retain a deposit or other money

1 made payable to a person, partnership, corporation, or association
2 holding a real estate broker's license under this article pending
3 consummation or termination of the transaction involved and shall
4 account for the full amount of the money at the time of the
5 consummation or termination of the transaction.

6 (ii) A real estate salesperson shall pay over to the real
7 estate broker, upon receipt, a deposit or other money on a
8 transaction in which the real estate salesperson is engaged on
9 behalf of the real estate broker.

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

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

23 (v) A real estate broker shall keep records of funds deposited
24 in its custodial trust or escrow account, which records shall
25 indicate clearly the date and from whom the money was received, the
26 date deposited, the date of withdrawal, and other pertinent
27 information concerning the transaction, and shall show clearly for

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

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

17 **SEC. 2512D. (1) A REAL ESTATE BROKER OR REAL ESTATE**
18 **SALESPERSON ACTING PURSUANT TO A SERVICE PROVISION AGREEMENT SHALL**
19 **PERFORM THE DUTIES IMPOSED IN SUBSECTION (2). A REAL ESTATE BROKER**
20 **MAY AUTHORIZE A DESIGNATED AGENT TO REPRESENT THE CLIENT, SO LONG**
21 **AS THAT AUTHORIZATION IS IN WRITING.**

22 (2) A REAL ESTATE BROKER OR REAL ESTATE SALESPERSON ACTING
23 PURSUANT TO A SERVICE PROVISION AGREEMENT OWES, AT A MINIMUM, THE
24 FOLLOWING DUTIES TO HIS OR HER CLIENT:

25 (A) THE EXERCISE OF REASONABLE CARE AND SKILL IN REPRESENTING
26 THE CLIENT AND CARRYING OUT THE RESPONSIBILITIES OF THE AGENCY
27 RELATIONSHIP.

1 (B) THE PERFORMANCE OF THE TERMS OF THE SERVICE PROVISION
2 AGREEMENT.

3 (C) LOYALTY TO THE INTEREST OF THE CLIENT.

4 (D) COMPLIANCE WITH THE LAWS, RULES, AND REGULATIONS OF THIS
5 STATE AND ANY APPLICABLE FEDERAL STATUTES OR REGULATIONS.

6 (E) THE RECOMMENDATION TO THE CLIENT TO OBTAIN EXPERT ADVICE
7 RELATED TO MATERIAL MATTERS WHEN NECESSARY OR APPROPRIATE.

8 (F) AN ACCOUNTING IN A TIMELY MANNER OF ALL MONEY AND PROPERTY
9 RECEIVED BY THE AGENT IN WHICH THE CLIENT HAS OR MAY HAVE AN
10 INTEREST.

11 (G) CONFIDENTIALITY OF ALL INFORMATION, UNLESS DISCLOSED WITH
12 THE CLIENT'S PERMISSION OR AS PROVIDED BY LAW, INCLUDING THE DUTY
13 NOT TO DISCLOSE CONFIDENTIAL INFORMATION TO ANY LICENSEE WHO IS NOT
14 AN AGENT OF THE CLIENT.

15 (3) A REAL ESTATE BROKER OR REAL ESTATE SALESPERSON ACTING
16 PURSUANT TO A SERVICE PROVISION AGREEMENT SHALL PROVIDE THE
17 FOLLOWING SERVICES TO HIS OR HER CLIENT:

18 (A) WHEN THE REAL ESTATE BROKER OR REAL ESTATE SALESPERSON IS
19 REPRESENTING A SELLER OR LESSOR, THE MARKETING OF THE CLIENT'S
20 PROPERTY IN THE MANNER AGREED UPON IN THE SERVICE PROVISION
21 AGREEMENT.

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

25 (C) ASSISTANCE IN DEVELOPING, COMMUNICATING, NEGOTIATING, AND
26 PRESENTING OFFERS, COUNTEROFFERS, AND RELATED DOCUMENTS OR NOTICES
27 UNTIL A PURCHASE OR LEASE AGREEMENT IS EXECUTED BY ALL PARTIES AND

1 ALL CONTINGENCIES ARE SATISFIED OR WAIVED.

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

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

8 (4) A REAL ESTATE BROKER OR REAL ESTATE SALESPERSON
9 REPRESENTING A SELLER UNDER A SERVICE PROVISION AGREEMENT SHALL NOT
10 ADVERTISE THE PROPERTY TO THE PUBLIC AS "FOR SALE BY OWNER" OR
11 OTHERWISE MISLEAD THE PUBLIC TO BELIEVE THAT THE SELLER IS NOT
12 REPRESENTED BY A REAL ESTATE BROKER.

13 (5) THE SERVICES DESCRIBED IN SUBSECTION (3) (B), (C), AND (D)
14 MAY BE WAIVED UNDER A LIMITED SERVICE AGREEMENT.

15 Enacting section 1. This amendatory act does not take effect
16 unless Senate Bill No. ____ or House Bill No. 4417(request no.
17 00403'07) of the 94th Legislature is enacted into law.

18 Enacting section 2. This amendatory act takes effect July 1,
19 2007.