

HOUSE BILL NO. 4549

March 23, 2021, Introduced by Rep. Hoytenga and referred to the Committee on Regulatory Reform.

A bill to amend 1980 PA 299, entitled "Occupational code," by amending sections 2501, 2503, and 2505 (MCL 339.2501, 339.2503, and 339.2505), as amended by 2016 PA 502.

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

1 associate real estate broker under section 2505 to provide real
2 estate brokerage services as an employee or independent contractor
3 of a real estate broker.

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

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

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

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

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

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

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

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

27 (f) "Distance learning" means the technology and educational
28 process used to provide instruction to a student when the student
29 and the instructor are not necessarily physically present at the

1 same time or place. The term includes, but is not limited to,
2 instruction provided through an interactive classroom, computer
3 conferencing, or an interactive computer system.

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

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

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

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

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

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

1 (k) "Negotiate the mortgage of real estate" means engaging in
2 activity in connection with a mortgage that is not regulated under
3 the mortgage brokers, lenders, and servicers licensing act, 1987 PA
4 173, MCL 445.1651 to 445.1684, the secondary mortgage loan act,
5 1981 PA 125, MCL 493.51 to ~~MCL~~493.81, or the mortgage loan
6 originator licensing act, 2009 PA 75, MCL 493.131 to 493.171.

7 (l) A "nonprincipal" of a real estate broker means a control
8 person who is licensed as an associate real estate broker under
9 this article, but is not designated as a principal under section
10 2505(1).

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

15 (n) "Pocket card" means the pocket card that contains
16 information about the license that the department provides under
17 section 2506 when it issues a license under this 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 ~~to~~**under** 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, **nonresidential** real estate; who is employed by a
12 real estate broker to engage in **nonresidential** property management;
13 or who sells or offers for sale, buys or offers to buy, leases or
14 offers to lease, or negotiates the purchase or sale or exchange of
15 a business, business opportunity, or the goodwill of an existing
16 business for others, as a whole or partial vocation.

17 (w) "Service provision agreement" means a buyer agency
18 agreement or listing agreement that is executed by a real estate
19 broker and a client and establishes an agency relationship.

20 (x) "Sponsor" means a person that represents to the public
21 that the courses it conducts for purposes of this article fulfill
22 the requirements of section 2504a for continuing education.

23 Sec. 2503. (1) This article does not apply to a person that,
24 as owner, sells or offers for sale a detached, single family
25 dwelling, duplex, triplex, or quadruplex, that has never been
26 occupied and that was built by the person while licensed under
27 article 24. This article does not apply to an owner or lessor, an
28 attorney-in-fact acting under a duly executed and recorded power of
29 attorney from the owner or lessor, or a person appointed by a

1 court, that performs an act as a real estate broker or real estate
2 salesperson with reference to property owned by it, unless
3 performed as a principal vocation not through a licensed real
4 estate broker.

5 **(2) This article does not apply to an employee or agent of a**
6 **real estate broker who is hired under a property management**
7 **employment contract to perform duties relating to property**
8 **management.**

9 **(3) ~~(2)~~**—This article does not apply to an attorney-at-law who
10 is ~~rendering~~**performing** services as an attorney-at-law; to a
11 receiver, trustee in bankruptcy, administrator, executor, a person
12 selling real estate under order of a court; or to a trustee selling
13 under a deed of trust, unless the trustee makes repeated or
14 successive sales of real estate not through a licensed real estate
15 broker.

16 **(4) ~~(3)~~**—This article does not apply to a person that is
17 regulated under the mortgage brokers, lenders, and servicers
18 licensing act, 1987 PA 173, MCL 445.1651 to 445.1684, and that does
19 not perform any other act requiring a license as a real estate
20 broker, associate broker, or real estate salesperson.

21 Sec. 2505. (1) An individual or business entity that is
22 applying for a real estate broker's license shall file an
23 application with the department. All of the following apply to an
24 application for a real estate broker's license:

25 (a) The application must include the applicant's current
26 business address; if the applicant is an individual, the address of
27 his or her residence; and the complete address of each former place
28 where the applicant resided or was engaged in business, or acted as
29 a real estate salesperson, for a period of 60 days or more, during

1 the 5 years immediately preceding the date of application.

2 (b) The application must include the name of the individual or
3 business entity that is the proposed licensee; the location of the
4 place for which the license is sought; and the period of time in
5 which the applicant has been engaged in the business.

6 (c) The application must be executed by the applicant, if the
7 applicant is an individual, or by a principal of the applicant if
8 the applicant is a business entity.

9 (d) If the applicant is a business entity, the application
10 ~~shall~~**must** designate which individuals who are control persons of
11 the entity will be performing acts regulated by this article as
12 principals. An applicant shall not designate a control person as a
13 principal unless that control person is licensed as an associate
14 real estate broker under this article.

15 (2) The department shall not issue a real estate broker's
16 license to an individual who has been convicted of embezzlement or
17 misappropriation of funds.

18 (3) A real estate broker shall maintain a place of business in
19 this state. If a real estate broker maintains more than 1 place of
20 business in this state, the real estate broker must obtain a branch
21 office license for each of those additional places of business. If
22 a branch office is located more than 25 miles from the nearest
23 boundary of the municipality in which the main office of the real
24 estate broker is located, the broker shall ensure that the branch
25 office is under the direct supervision of an associate broker. **This**
26 **subsection does not apply to an additional place of business**
27 **maintained by a real estate broker solely to engage in property**
28 **management.** As used in this subsection, "direct supervision" means
29 that an associate broker is physically present at the branch office

1 on a regular basis to supervise and manage the business during
2 ordinary business hours.

3 (4) An application for a real estate salesperson's license
4 shall ~~shall~~ **must** be signed by the real estate broker that will employ the
5 applicant. The department shall only issue a real estate
6 salesperson's license to an individual.

7 (5) Before issuing a license, the department may require and
8 procure satisfactory proof of the business experience, competence,
9 and good moral character of an applicant for a license under this
10 article if the applicant is an individual or of each principal if
11 the applicant is a business entity. Subject to subsection (6), the
12 department shall require that each of those individuals pass an
13 examination developed by the department or contracted for with a
14 recognized outside testing agency that establishes, in a manner
15 satisfactory to the department, that he or she has a fair knowledge
16 of the English language, including reading, writing, spelling, and
17 elementary arithmetic; a satisfactory understanding of the
18 fundamentals of real estate practice and of the laws and principles
19 of real estate conveyancing, deeds, mortgages, land contracts, and
20 leases; the obligations of a broker to the public and a principal;
21 and the law defining, regulating, and licensing real estate brokers
22 and salespersons. The department may require written examination or
23 written reexamination of an individual described in this
24 subsection, and if the department does require a written
25 examination or reexamination under this subsection, the department
26 shall not issue a license unless the individual taking the
27 examination or reexamination achieves a passing score satisfactory
28 to the department.

29 (6) ~~All~~ **Both** of the following apply to the written examination

1 requirement described in subsection (5):

2 (a) The department may relicense without examination an
 3 individual who is applying for a real estate broker's or associate
 4 real estate broker's license; has previously held a real estate
 5 broker's or associate real estate broker's license that has lapsed;
 6 and has been continuously licensed as a real estate salesperson
 7 since the lapse of the previous license.

8 (b) A passing score on an examination, or on a portion of an
 9 examination if the examination is given in separate parts, is valid
 10 for 1 year from the date of the examination.

11 (7) The department shall require proof that each applicant for
 12 a real estate broker's license, if the applicant is an individual,
 13 or each principal if the applicant is a business entity, has the
 14 equivalent of 3 years of full-time experience in the business of
 15 real estate. ~~All~~ **Both** of the following apply in determining whether
 16 an individual meets this experience requirement:

17 (a) If state law requires that a person hold a license ~~to be~~
 18 ~~licensed~~ to perform an activity that is considered the business of
 19 real estate, an individual ~~shall~~ **must** not receive credit for
 20 experience performing that activity without proper licensure.

21 (b) For purposes of calculating whether an individual has the
 22 equivalent of 3 years of experience, the department shall grant the
 23 following credit or credits toward that 3-year requirement:

24 (i) If the individual is a real estate salesperson, 1 year of
 25 credit for each 12-month period of licensure in which he or she
 26 closed 5 or more real estate transactions.

27 (ii) If the individual is a builder, 1 year of credit for each
 28 12-month period in which he or she built and personally sold or
 29 leased at least 5 residential units, commercial units, or

1 industrial units or a combination of those types of units.

2 (iii) If the individual is a real estate investor, 6 months of
3 credit for each 5 real property transactions personally negotiated
4 for a purchase or sale by the individual for his or her own
5 account, with a maximum of 1 year of credit allowed. However, an
6 individual ~~shall~~**must** not receive credit under this subdivision if
7 he or she engaged in more than 5 sales in any 12-month period in
8 violation of section 2502b.

9 (iv) If the individual is a land or condominium developer, 1
10 year of credit for each 2 developments or subdivisions that contain
11 at least 10 units or parcels that he or she bought, subdivided, and
12 improved for sale as lots or dwellings.

13 (v) If the individual is an attorney, 1 year of credit for
14 each year in which he or she acted as the attorney for at least 6
15 real estate transactions.

16 (vi) If the individual is a real estate appraiser who is
17 licensed under article 26, 1 year of credit for each period
18 equivalent to at least 40 hours per week, and at least 48 weeks per
19 year, in which he or she acted as a real estate appraiser.

20 (vii) One year of credit for each period equivalent to at least
21 40 hours per week, and at least 48 weeks per year, in which the
22 individual worked in a capacity directly related to the
23 acquisition, financing, or conveyance of real estate, or in a
24 position in which the individual was directly involved in a real
25 estate business, including serving as the decision-making authority
26 in any of the following positions:

27 (A) A loan or trust officer of a federal or state-regulated
28 depository institution.

29 (B) A loan or trust officer of a mortgage company.

1 (C) A real estate officer of a corporation, and who is not a
2 licensed real estate broker.

3 (D) A title insurance company officer engaged in the closing
4 of escrow accounts and real estate closings.

5 (viii) Credit for any other experience that is approved by the
6 department by rule, in consultation with the board, as equivalent
7 to the experience described in this subsection.

8 Enacting section 1. This amendatory act takes effect 90 days
9 after the date it is enacted into law.