



SENATE BILL No. 603

May 4, 1993, Introduced by Senator PRIDNIA and referred to
to the Committee on State Affairs and Military/Veteran
Affairs.

A bill to amend the title and sections 2501, 2512, and 2515
of Act No. 299 of the Public Acts of 1980, entitled as amended
"Occupational code,"
section 2501 as amended by Act No. 269 of the Public Acts of 1990
and section 2515 as amended by Act No. 83 of the Public Acts of
1981, being sections 339.2501, 339.2512, and 339.2515 of the
Michigan Compiled Laws; and to add section 2517.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. The title and sections 2501, 2512, and 2515 of
2 Act No. 299 of the Public Acts of 1980, section 2501 as amended
3 by Act No. 269 of the Public Acts of 1990 and section 2515 as
4 amended by Act No. 83 of the Public Acts of 1981, being
5 sections 339.2501, 339.2512, and 339.2515 of the Michigan
6 Compiled Laws, are amended and section 2517 is added to read as
7 follows:

1

TITLE

2 An act to revise, consolidate, and classify the laws of this
3 state regarding the regulation of certain occupations; to create
4 a board for each of those occupations; to establish the powers
5 and duties of ~~the department of licensing and regulation~~
6 CERTAIN DEPARTMENTS AND AGENCIES and the boards of each occupa-
7 tion; to provide for the promulgation of rules; to provide for
8 certain fees; to provide for penalties and civil fines; TO ESTAB-
9 LISH RIGHTS AND REMEDIES OF CERTAIN PERSONS UNDER CERTAIN
10 CIRCUMSTANCES; to repeal certain parts of this act on a specific
11 date; and to repeal certain acts and parts of acts.

12 Sec. 2501. As used in this article:

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

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

3 (b) "Real estate salesperson" means a person who for compen-
4 sation or valuable consideration is employed either directly or
5 indirectly by a licensed real estate broker to sell or offer to
6 sell, to buy or offer to buy, to provide or offer to provide
7 market analyses, to list or offer or attempt to list, or to nego-
8 tiate the purchase or sale or exchange or mortgage of real
9 estate, or to negotiate for the construction of a building on
10 real estate, or to lease or offer to lease, rent or offer for
11 rent real estate, or who sells or offers for sale, buys or offers
12 to buy, leases or offers to lease, or negotiates the purchase or
13 sale or exchange of a business, business opportunity, or the
14 goodwill of an existing business for others, as a whole or par-
15 tial vocation.

16 (c) "EMPLOY" OR "EMPLOYMENT" MEANS THE RELATIONSHIP BETWEEN
17 A REAL ESTATE BROKER AND AN ASSOCIATE BROKER OR A REAL ESTATE
18 SALESPERSON WHICH MAY INCLUDE AN INDEPENDENT CONTRACTOR
19 RELATIONSHIP. THE EXISTENCE OF AN INDEPENDENT CONTRACTOR RELA-
20 TIONSHIP BETWEEN A REAL ESTATE BROKER AND AN INDIVIDUAL LICENSED
21 TO THE REAL ESTATE BROKER SHALL NOT RELIEVE THE REAL ESTATE
22 BROKER OF THE RESPONSIBILITY TO SUPERVISE ACTS OF THE LICENSEE
23 REGULATED BY THIS ARTICLE.

24 (d) "INDEPENDENT CONTRACTOR RELATIONSHIP" MEANS A RELATION-
25 SHIP BETWEEN A REAL ESTATE BROKER AND AN ASSOCIATE BROKER OR REAL
26 ESTATE SALESPERSON THAT SATISFIES BOTH OF THE FOLLOWING
27 CONDITIONS:

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

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

8 Sec. 2512. ~~(1)~~ A licensee shall be subject to the penal-
9 ties set forth in article 6 who commits 1 of the following:

10 (a) Acting for more than 1 party in a transaction without
11 the knowledge of the parties.

12 (b) Representing or attempting to represent a real estate
13 broker other than the employer, without the express knowledge and
14 consent of the employer.

15 (c) Failure to account for or to remit money coming into the
16 licensee's possession which belongs to others.

17 (d) Changing a business location without notification to the
18 ~~commission~~ DEPARTMENT.

19 (e) ~~If~~ IN THE CASE OF a real estate broker, failing to
20 return a real estate salesperson's license within 5 days as pro-
21 vided in section 2507.

22 (f) ~~Paying a~~ EXCEPT AS PROVIDED IN SECTION 2512B, SHARING
23 OR PAYING A FEE, commission, or valuable consideration to a
24 person not licensed under this article INCLUDING PAYMENT TO ANY
25 PERSON PROVIDING THE NAMES OF, OR ANY OTHER INFORMATION REGARD-
26 ING, A POTENTIAL SELLER OR PURCHASER OF REAL ESTATE BUT EXCLUDING
27 PAYMENT FOR THE PURCHASE OF COMMERCIALY PREPARED LISTS OF

1 NAMES. However, a licensed real estate broker may pay a
2 commission to a licensed real estate broker of another state if
3 the nonresident real estate broker does not conduct in this state
4 a negotiation for which a commission is paid.

5 (g) Failing to deposit in a custodial trust or escrow
6 account money belonging to others coming into the hands of the
7 licensee in compliance with the following:

8 (i) A deposit or other money accepted by a person, partner-
9 ship, corporation, or association holding a real estate broker's
10 license under this article shall be retained by a real estate
11 broker pending consummation or termination of the transaction
12 involved, and shall be accounted for in the full amount of the
13 money at the time of the consummation or termination.

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

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

22 (iv) A real estate broker shall deposit within 2 banking
23 days after the signing of a purchase agreement by all parties,
24 but not later than 5 days after receipt, money belonging to
25 others in a separate custodial ~~or~~ trust ~~fund~~ OR ESCROW
26 account maintained by the real estate broker with a bank, savings
27 and loan association, credit union, or recognized depository

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

4 (v) A real estate broker shall keep records of funds depos-
5 ited in ~~an~~ A CUSTODIAL TRUST OR ESCROW account, which records
6 shall indicate clearly the date and from whom the money was
7 received, the date deposited, the date of withdrawal, and other
8 pertinent information concerning the transaction, and shall show
9 clearly for whose account the money is deposited and to whom the
10 money belongs. The records shall be subject to inspection by the
11 department. A separate custodial ~~or~~ trust ~~fund~~ OR ESCROW
12 account shall designate the real estate broker as trustee, and
13 the CUSTODIAL TRUST OR ESCROW account shall provide for with-
14 drawal of funds without previous notice. This act and the rules
15 promulgated pursuant to this act shall not be construed to pro-
16 hibit the deposit of money accepted under this act in a noninter-
17 est bearing account of a state or federally chartered savings and
18 loan association ~~—~~ or a state or federally chartered credit
19 union.

20 Sec. 2515. (1) A listing agreement entered into between the
21 broker and seller or lessor of property shall contain language
22 that discrimination because of religion, race, color, national
23 origin, age, sex, HANDICAP, FAMILIAL STATUS, or marital status on
24 the part of the real estate broker, real estate salesperson,
25 seller, or lessor is prohibited. ~~Nothing in this~~

26 (2) THIS article shall NOT authorize the department to
27 assume any facts not in evidence or compel a party to prove

1 innocence of charges before the charges have been proven by the
2 department. The department shall at all times bear the burden of
3 proof to all charges made against a party. ~~Nothing contained in~~
4 ~~this~~

5 (3) THIS article shall NOT diminish the right of a party to
6 PURSUE AND UTILIZE direct and immediate legal or equitable reme-
7 dies in ~~the courts of this state~~ A COURT OF COMPETENT
8 JURISDICTION.

9 SEC. 2517. AN ACTION SHALL NOT BE BROUGHT AGAINST A REAL
10 ESTATE BROKER, AN ASSOCIATE BROKER, OR A REAL ESTATE SALESPERSON
11 UNDER THE FOLLOWING CIRCUMSTANCES:

12 (A) FOR FAILURE TO DISCLOSE TO A PURCHASER OR LESSEE OF REAL
13 PROPERTY THAT A FORMER OCCUPANT HAS OR IS SUSPECTED OF HAVING A
14 HANDICAP AS THAT TERM IS DEFINED AND INTERPRETED UNDER, AND DIS-
15 CLOSURE OF WHICH WOULD CONSTITUTE UNLAWFUL DISCRIMINATION UNDER,
16 SECTIONS 804, 805, 806, OR 818 OF THE FAIR HOUSING ACT, TITLE
17 VIII OF PUBLIC LAW 90-284, 42 U.S.C. 3604, 3605, 3606, AND 3617.

18 (B) FOR FAILURE TO DISCLOSE TO A PURCHASER OR LESSEE OF REAL
19 PROPERTY THAT THE REAL PROPERTY WAS OR WAS SUSPECTED TO HAVE BEEN
20 THE SITE OF A HOMICIDE, SUICIDE, OR OTHER OCCURRENCE PROHIBITED
21 BY LAW WHICH HAD NO MATERIAL EFFECT ON THE CONDITION OF THE REAL
22 PROPERTY OR IMPROVEMENTS LOCATED ON THE REAL PROPERTY.