

AMENDED IN SENATE APRIL 23, 2009

AMENDED IN SENATE APRIL 15, 2009

SENATE BILL

No. 496

Introduced by Senator Maldonado
(Coauthor: Senator Correa)
(Coauthor: Assembly Member Harkey)

February 26, 2009

An act to add Section 10150.5 to the Business and Professions Code, relating to real estate.

LEGISLATIVE COUNSEL'S DIGEST

SB 496, as amended, Maldonado. Real estate: sex offenders.

The Real Estate Law provides for the licensing and regulation of real estate salespersons and real estate brokers by the Real Estate Commissioner, and authorizes the commissioner to deny, revoke, or suspend a license for specified reasons. Existing law requires persons convicted of certain sex offenses to register as sex offenders, as specified. A violation of various provisions of the Real Estate Law is a crime.

This bill would, with regard to an individual who is required to register as a sex offender, require the commissioner to deny an application for licensure, renewal, or reinstatement of, or to revoke, a license under the Real Estate Law, with specified exceptions. The bill would require an individual who is convicted of an offense that requires registration as a sex offender to notify the commissioner within 5 days of the imposition of sentence, with specified exceptions. *The bill would allow an individual, under specified circumstances, to petition the superior court to hold a hearing in order for the court to determine whether the individual no longer poses a possible risk to the public, and would*

provide for the court to order the commissioner to restore the individual's license if it so finds. Because a failure to comply with this requirement would be a crime, the bill would thereby impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 10150.5 is added to the Business and
2 Professions Code, to read:

3 10150.5. (a) Notwithstanding any other provision of law,
4 except as provided in subdivision (c), with regard to an individual
5 who is required to register as a sex offender pursuant to Section
6 290 of the Penal Code, or the equivalent in another state or territory
7 or under military or federal law, the commissioner shall be subject
8 to the following requirements:

9 (1) The commissioner shall deny an application as a real estate
10 salesperson or real estate broker pursuant to this part.

11 (2) If the individual is licensed under this part, the commissioner
12 shall revoke the license of the individual. The commissioner shall
13 not stay the revocation and place the license on probation.

14 (3) The commissioner shall not renew or reinstate the
15 individual's license under this part. The commissioner shall not
16 issue a stay of license denial and place the license on probation.

17 (b) Except as provided in subdivision (c), a person licensed
18 pursuant to this division as a real estate salesperson or real estate
19 broker who is convicted of an offense that requires the individual
20 to register as a sex offender pursuant to Section 290 of the Penal
21 Code, or the equivalent in another state or territory or under
22 military or federal law, shall, within five days of the imposition
23 of sentence, notify the commissioner.

24 (c) This section shall not apply to any of the following:

25 (1) An individual who has been relieved under Section 290.5
26 of the Penal Code of his or her duty to register as a sex offender,

1 or whose duty to register has otherwise been formally terminated
2 under California law or the law of the jurisdiction that requires his
3 or her registration as a sex offender.

4 (2) *An individual who has obtained a certificate of rehabilitation*
5 *and pardon under Chapter 3.5 (commencing with Section 4852.01)*
6 *of Title 6 of Part 3 of the Penal Code, and his or her probation*
7 *has been terminated and the information or accusation has been*
8 *dismissed pursuant to Section 1203.4 of the Penal Code.*

9 ~~(2)~~

10 (3) An individual who is required to register as a sex offender
11 pursuant to Section 290 of the Penal Code solely because of a
12 misdemeanor conviction under Section 314 of the Penal Code.
13 However, nothing in this paragraph shall prohibit the commissioner
14 from exercising his or her discretion to discipline a licensee under
15 other provisions of state law based upon the licensee's conviction
16 under Section 314 of the Penal Code.

17 ~~(3)~~

18 (4) Any administrative adjudication proceeding under Chapter
19 5 (commencing with Section 11500) of Part 1 of Title 2 of the
20 Government Code that is fully adjudicated prior to January 1, 2010.
21 A petition for reinstatement of a revoked or surrendered license
22 shall be considered a new proceeding for purposes of this
23 paragraph, and the prohibition against reinstating a license to an
24 individual who is required to register as a sex offender shall be
25 applicable.

26 (d) (1) *Five years after the effective date of the revocation and*
27 *three years after successful discharge from parole, probation, or*
28 *both parole and probation, an individual may petition the superior*
29 *court in the county in which the individual has resided for, at a*
30 *minimum, five years prior to filing the petition, to hold a hearing*
31 *within one year of the date of the petition, in order for the court*
32 *to determine whether the individual no longer poses a possible*
33 *risk to the public. The individual shall provide notice of the petition*
34 *to the Attorney General and to the commissioner at the time of its*
35 *filing. The Attorney General and the commissioner may present*
36 *written and oral argument to the court on the merits of the petition.*

37 (2) *If the court finds that the individual no longer poses a*
38 *possible risk to the public, and there are no other underlying*
39 *reasons for disciplinary action previously taken by the*
40 *commissioner, the court shall order, in writing, the commissioner*

1 to reinstate the individual’s license within 180 days of the date of
 2 the order. The commissioner may issue a restricted license as
 3 prescribed in Sections 10156.5 and 10156.7 to an individual
 4 subject to this section subject to the terms and conditions,
 5 including, but not limited to, any of the conditions as specified in
 6 Sections 10156.6 and 10156.8.

7 (3) If the court finds that the individual continues to pose a
 8 possible risk to the public, the court shall deny relief. The court’s
 9 decision shall be binding on the individual and the commissioner,
 10 and the individual is prohibited from filing a subsequent petition
 11 under this subdivision based on the same conviction.

12 (4) If a court denies the individual a certificate of rehabilitation
 13 and pardon under Chapter 3.5 (commencing with Section 4852.01)
 14 of Title 6 of Part 3 of the Penal Code, the individual may not
 15 petition the superior court for reinstatement of the individual’s
 16 license pursuant to this subdivision.

17 SEC. 2. No reimbursement is required by this act pursuant to
 18 Section 6 of Article XIII B of the California Constitution because
 19 the only costs that may be incurred by a local agency or school
 20 district will be incurred because this act creates a new crime or
 21 infraction, eliminates a crime or infraction, or changes the penalty
 22 for a crime or infraction, within the meaning of Section 17556 of
 23 the Government Code, or changes the definition of a crime within
 24 the meaning of Section 6 of Article XIII B of the California
 25 Constitution.