

AMENDED IN ASSEMBLY MAY 25, 2012

AMENDED IN SENATE JANUARY 4, 2012

AMENDED IN SENATE MARCH 25, 2011

SENATE BILL

No. 875

Introduced by Senator Price

February 18, 2011

An act to amend ~~Section~~ *Sections 10087, 10100, and 10152* of, to add *Section 10153.01* to, and to repeal Section 10154 of, the Business and Professions Code, relating to real estate.

LEGISLATIVE COUNSEL'S DIGEST

SB 875, as amended, Price. Real estate licensees.

Existing law, the Real Estate Law, provides for the licensure and regulation of real estate brokers and real estate salespersons by the Department of Real Estate *and makes a willful violation of that law a misdemeanor*. Existing law authorizes the department to deny, suspend, or revoke a license on various grounds using specified procedures generally applicable to state agencies. Under existing law, a hearing to determine whether to issue a license must be initiated by filing a statement of issues. Existing law provides additional procedures with respect to certain licensing boards, including, among other things, the authority to notify an applicant that the application is denied in lieu of filing a statement of issues, as specified.

This bill would require the Department of Real Estate to use those additional procedures when denying a license or a license endorsement and would also delete an obsolete provision.

Existing law authorizes the commissioner to require any proof he or she may deem advisable concerning the honesty and truthfulness of an

applicant for a real estate license or license examination before authorizing the issuance of a real estate license. Existing law authorizes a person whose license has been revoked or suspended to petition the agency for reinstatement of the license or reduction of a penalty, as specified.

This bill would require the commissioner to require a person submitting a petition for reinstatement of a license or reduction of a penalty to submit his or her fingerprints with the petition.

Existing law authorizes the commissioner to suspend or bar a person from a position of employment, management, or control (1) where that action is in the public interest and the person has committed or caused a violation of the Real Estate Law or a rule or order adopted thereunder or (2) where the person has been convicted of a crime or held liable in a civil action where the judgment involves an offense involving dishonesty, fraud, or deceit or any other offense reasonably related to the qualifications, functions, or duties of a person engaged in the real estate business.

This bill would also authorize the commissioner to bar that person from participation in examinations for licensure and would specify that a person who is suspended or barred from a position of employment, management, or control is also barred from participation in examinations for licensure.

The bill would prohibit a person from cheating on, subverting, or attempting to subvert a licensing examination and would authorize the commissioner to bar a person who willfully engages in that conduct from taking a licensing examination and from holding an active real estate license for a period of up to 3 years. Because a willful violation of the prohibition on cheating or subverting a licensing examination would be a crime, the bill would 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: ~~no~~-yes.

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

1 **SECTION 1.** *Section 10087 of the Business and Professions*
2 *Code is amended to read:*

3 10087. (a) In addition to acting pursuant to the authority
4 provided under Sections 10086, 10176, and 10177, the
5 commissioner may, after appropriate notice and opportunity for a
6 hearing, by order, suspend,~~or~~ bar from any position of
7 employment, management, or control, *or bar from participation*
8 *in an examination for licensure*, for a period not exceeding 36
9 months, a real estate salesperson or real estate broker, or an
10 unlicensed person issued an order under Section 10086, if the
11 commissioner finds either of the following:

12 (1) That the suspension or bar is in the public interest and that
13 the person has committed or caused a violation of this division or
14 rule or order of the commissioner, which violation was either
15 known or should have been known by the person committing or
16 causing it or has caused material damage to the public.

17 (2) That the person has been convicted of or pleaded nolo
18 contendere to any crime, or has been held liable in any civil action
19 by final judgment, or any administrative judgment by any public
20 agency, if that crime or civil or administrative judgment involved
21 any offense involving dishonesty, fraud, or deceit, or any other
22 offense reasonably related to the qualifications, functions, or duties
23 of a person engaged in the real estate business in accordance with
24 the provisions of this division.

25 (b) Within 15 days from the date of a notice of intention to issue
26 an order pursuant to subdivision (a), the person may request a
27 hearing under the Administrative Procedure Act (Chapter 4.5
28 (commencing with Section 11400) of Division 3 of Title 2 of the
29 Government Code). If no hearing is requested within 15 days after
30 the mailing or service of that notice and none is ordered by the
31 commissioner, the failure to request a hearing shall constitute a
32 waiver of the right to a hearing.

33 (c) Upon receipt of a notice of intention to issue an order
34 pursuant to this section, the person who is the subject of the
35 proposed order is immediately prohibited from engaging in any
36 business activity involving real estate that is subject to regulation
37 under this division.

1 (d) Persons suspended or barred under this section are prohibited
2 from participating in any business activity of a real estate
3 salesperson or a real estate broker and from engaging in any real
4 estate-related business activity on the premises where a real estate
5 salesperson or real estate broker is conducting business. Persons
6 suspended or barred under this section are also prohibited from
7 participating in any real estate-related business activity of a finance
8 lender, residential mortgage lender, bank, credit union, escrow
9 company, title company, or underwritten title company. *Persons*
10 *suspended or barred from a position of employment, management,*
11 *or control under this section are also barred from participating*
12 *in examinations for licensure.*

13 ~~SECTION 1.~~

14 *SEC. 2.* Section 10100 of the Business and Professions Code
15 is amended to read:

16 10100. (a) Before suspending or revoking any license or
17 license endorsement issued under the provisions of this part, the
18 department shall proceed as prescribed by Chapter 5 (commencing
19 with Section 11500) of Part 1 of Division 3 of Title 2 of the
20 Government Code, and the department shall have all the powers
21 granted therein.

22 (b) Upon denial of an application for a license or license
23 endorsement issuable under the provisions of this part, the
24 department shall proceed under Sections 485 to 488, inclusive.

25 *SEC. 3. Section 10152 of the Business and Professions Code*
26 *is amended to read:*

27 10152. (a) The commissioner may require any other proof he
28 or she may deem advisable concerning the honesty and truthfulness
29 of any applicant for a real estate license or license examination,
30 or of the officers, directors, or persons owning more than 10 percent
31 of the stock, of any corporation making application therefor, before
32 authorizing the issuance of a real estate license. For this purpose
33 the commissioner may call a hearing in accordance with this part
34 relating to hearings. To assist in his or her determination the
35 commissioner shall require every original applicant to be
36 fingerprinted prior to issuing a license. The commissioner may
37 require the fingerprints to be submitted either with the application
38 to take the license examination or with the application for a real
39 estate license.

40 ~~(b) This section shall become operative on July 1, 2004.~~

1 (b) The commissioner shall require a person who submits a
2 petition for reinstatement of his or her license or reduction of a
3 penalty pursuant to Section 11522 of the Government Code, in
4 addition to meeting any other requirements imposed for purposes
5 of the reinstatement or penalty reduction, to submit his or her
6 fingerprints with the petition.

7 SEC. 4. Section 10153.01 is added to the Business and
8 Professions Code, to read:

9 10153.01. (a) No person shall cheat on, subvert, or attempt
10 to subvert a licensing examination given by the department.
11 Cheating on, subverting, or attempting to subvert a licensing
12 examination includes, but is not limited to, engaging in, soliciting,
13 or procuring any of the following:

14 (1) Any communication between one or more examinees and
15 any person, other than a proctor or examination official, while
16 the examination is in progress.

17 (2) Copying answers from another examinee or permitting one's
18 answers to be copied by another examinee.

19 (3) The taking of all or a part of the examination by a person
20 other than the applicant.

21 (4) Removing from the examination room any examination
22 materials without authorization.

23 (5) The unauthorized reproduction by any means of any portion
24 of the actual licensing examination.

25 (6) Aiding by any means the unauthorized reproduction of any
26 portion of the actual licensing examination.

27 (7) Possession or use at any time during the examination or
28 while the examinee is on the examination premises of any device,
29 material, or document that is not expressly authorized for use by
30 examinees during the examination, including, but not limited to,
31 notes, crib sheets, textbooks, and electronic devices.

32 (8) Failure to follow any examination instruction or rule related
33 to examination security.

34 (9) Providing false, fraudulent, or materially misleading
35 information concerning education, experience, or other
36 qualifications as part of, or in support of, any application for
37 admission to an examination.

38 (b) The commissioner may bar any candidate who willfully
39 cheats on, subverts, or attempts to subvert an examination from
40 taking any license examination and from holding an active real

1 *estate license under any provision of this code for a period of up*
2 *to three years.*

3 ~~SEC. 2.~~

4 *SEC. 5.* Section 10154 of the Business and Professions Code
5 is repealed.

6 *SEC. 6.* *No reimbursement is required by this act pursuant to*
7 *Section 6 of Article XIII B of the California Constitution because*
8 *the only costs that may be incurred by a local agency or school*
9 *district will be incurred because this act creates a new crime or*
10 *infraction, eliminates a crime or infraction, or changes the penalty*
11 *for a crime or infraction, within the meaning of Section 17556 of*
12 *the Government Code, or changes the definition of a crime within*
13 *the meaning of Section 6 of Article XIII B of the California*
14 *Constitution.*