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SENATE BILL No. 875

Introduced by Senator Price

February 18, 2011

An act to amend Sections 10087, 10100, 10152, 10166.06, ~~10176,~~10460, 10461, and 10463 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, real estate salespersons, and mortgage loan originators 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 or license endorsement 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.

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, or of the officers, directors, or persons owning more than 10% of the stock of a corporate applicant, 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 Existing law authorizes a person whose license has been revoked or suspended to petition the agency for reinstatement of the license or reduction of a penalty, as specified.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 authorize the commissioner to require any proof concerning the honesty and truthfulness of the officers, directors, or persons owning 10% or more of the stock of a corporate applicant. The bill would also 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.

Existing law requires a person to obtain a real estate license endorsement from the commissioner in order to engage in the business of a mortgage loan originator, as defined. Existing law requires an applicant for that license endorsement to pass a specified written test and authorizes a person who fails the test to retake the test up to 3 consecutive times, but requires an applicant to wait at least 6 months before retesting if the applicant fails 3 consecutive retests.

This bill would eliminate the 3-test limit and would require an applicant to wait at least 6 months before retesting if the applicant fails 3 consecutive tests. The bill would exempt certain military licensees from being required to renew their license endorsement until the license period that commences after they engage in business or after one year following the termination of their military service, whichever occurs first.

~~Existing law authorizes the commissioner to suspend or revoke a real estate license if the licensee has been found guilty of specified acts, including acting for more than one party in a transaction without the knowledge or consent of all parties.~~

~~This bill would allow those sanctions to be imposed if a licensee described above acted without the knowledge or written consent of all parties.~~

This bill would also delete certain obsolete language and would make other related changes.

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:

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

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

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

(2) That the person has been convicted of or pleaded nolo contendere to any crime, or has been held liable in any civil action by final judgment, or any administrative judgment by any public agency, if that crime or civil or administrative judgment involved any 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 in accordance with the provisions of this division.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) The commissioner may bar any candidate who willfully cheats on, subverts, or attempts to subvert an examination from taking any license examination and from holding an active real estate license under any provision of this code for a period of up to three years.

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

SEC. 6. Section 10166.06 of the Business and Professions Code is amended to read:

10166.06. (a) In addition to the requirements of Section 10153, an applicant for a license endorsement as a mortgage loan originator shall complete at least 20 hours of education courses, which shall include at least the following:

(1) Three hours of federal law and regulations.

(2) Three hours of ethics, which shall include instruction on fraud, consumer protection, and fair lending issues.

(3) Two hours of training related to lending standards for the nontraditional mortgage product marketplace.

(b) For purposes of this section, education courses are only acceptable if they have been reviewed and approved, or otherwise deemed acceptable, by the Nationwide Mortgage Licensing System and Registry, in accordance with the SAFE Act. Education may be offered in a classroom, online, or by any other means approved by the Nationwide Mortgage Licensing System and Registry, in accordance with the SAFE Act.

(c) A person who successfully completes the education requirements approved by the Nationwide Mortgage Licensing System and Registry in any state other than California shall be granted credit by the commissioner toward completion of the education requirements of this section.

(d) Before being issued a license endorsement to act as a mortgage loan originator, an individual shall pass a qualified written test developed or otherwise deemed acceptable by the Nationwide Mortgage Licensing System and Registry and administered by a test provider approved or otherwise deemed acceptable by the Nationwide Mortgage Licensing System and Registry.

(e) A written test shall not be treated as a qualified written test for purposes of this section, unless the test adequately measures the applicant's knowledge and comprehension in the following subject areas: ethics, federal law and regulation pertaining to mortgage origination, state law and regulation pertaining to mortgage origination, and federal and state law and regulation relating to fraud, consumer protection, the nontraditional mortgage marketplace, and fair lending issues.

(f) Nothing in this section shall prohibit a test provider approved by the Nationwide Mortgage Licensing System and Registry from providing a test at the location of the employer of the applicant or any subsidiary or affiliate of the employer of the applicant, or any entity with which the applicant holds an exclusive arrangement to conduct the business of a mortgage loan originator.

(g) An individual shall not be considered to have passed a qualified written test administered pursuant to this section unless the individual achieves a test score of not less than 75 percent correct answers to questions.

(h) An individual who fails the qualified written test may retake the test, although at least 30 days must pass between each retesting, except as provided in subdivision (i).

(i) An applicant who fails three consecutive tests shall wait at least six months before retesting.

(j) A mortgage loan originator who fails to maintain a valid license endorsement for a period of five years or longer or who fails to register as a mortgage loan originator shall retake the qualified written test.

~~SEC. 7. Section 10176 of the Business and Professions Code is amended to read:~~

~~10176. The commissioner may, upon his or her own motion, and shall, upon the verified complaint in writing of any person, investigate the actions of any person engaged in the business or acting in the capacity of a real estate licensee within this state, and he or she may temporarily suspend or permanently revoke a real estate license at any time where the licensee, while a real estate licensee, in performing or attempting to perform any of the acts within the scope of this chapter has been guilty of any of the following:~~

~~(a) Making a substantial misrepresentation.~~

~~(b) Making a false promise of a character likely to influence, persuade, or induce.~~

~~(c) A continued and flagrant course of misrepresentation or making of false promises through real estate agents or salespersons.~~

~~(d) Acting for more than one party in a transaction without the knowledge or written consent of all parties thereto.~~

~~(e) Commingling with his or her own money or property the money or other property of others which is received and held by him or her.~~

~~(f) Claiming, demanding, or receiving a fee, compensation, or commission under an exclusive agreement authorizing or employing a licensee to perform any acts set forth in Section 10131 for compensation or commission where the agreement does not contain a definite, specified date of final and complete termination.~~

~~(g) The claiming or taking by a licensee of a secret or undisclosed amount of compensation, commission, or profit or the failure of a licensee to reveal to the employer of the licensee the~~

~~full amount of the licensee's compensation, commission, or profit under an agreement authorizing or employing the licensee to do any acts for which a license is required under this chapter for compensation or commission prior to or coincident with the signing of an agreement evidencing the meeting of the minds of the contracting parties, regardless of the form of the agreement, whether evidenced by documents in an escrow or by any other or different procedure.~~

~~(h) The use by a licensee of any provision allowing the licensee an option to purchase in an agreement authorizing or employing the licensee to sell, buy, or exchange real estate or a business opportunity for compensation or commission, except when the licensee prior to or coincident with election to exercise the option to purchase reveals in writing to the employer the full amount of the licensee's profit and obtains the written consent of the employer approving the amount of the profit.~~

~~(i) Any other conduct, whether of the same or a different character than specified in this section, which constitutes fraud or dishonest dealing.~~

~~(j) Obtaining the signature of a prospective purchaser to an agreement which provides that the prospective purchaser shall either transact the purchasing, leasing, renting, or exchanging of a business opportunity property through the broker obtaining the signature, or pay a compensation to the broker if the property is purchased, leased, rented, or exchanged without the broker first having obtained the written authorization of the owner of the property concerned to offer the property for sale, lease, exchange, or rent.~~

~~(k) Failing to disburse funds in accordance with a commitment to make a mortgage loan that is accepted by the applicant when the real estate broker represents to the applicant that the broker is either of the following:~~

~~(1) The lender.~~

~~(2) Authorized to issue the commitment on behalf of the lender or lenders in the mortgage loan transaction.~~

~~(*l*) Intentionally delaying the closing of a mortgage loan for the sole purpose of increasing interest, costs, fees, or charges payable by the borrower.~~

~~(m) Violating any section, division, or article of law which provides that a violation of that section, division, or article of law~~

~~by a licensed person is a violation of that person's licensing law, if it occurs within the scope of that person's duties as a licensee.~~

~~SEC. 8.~~

SEC. 7. Section 10460 of the Business and Professions Code is amended to read:

10460. As used in this article:

(a) "Military licensee" refers to a person who, while holding a license or license endorsement under the Real Estate Law, or any of the statutes codified therein, entered the military service of the United States and notifies the commissioner of that fact within six months of such entry.

(b) "Persons in the military service of the United States" includes the following persons and no others: all members of the United States Army, the United States Navy, the United States Air Force, the Marine Corps, the Merchant Marine in time of war, the Coast Guard, the National Guard, and all officers of the Public Health Service detailed by proper authority for duty either with the Army or the Navy.

(c) "Military service" signifies federal service after October 1, 1940, on active duty with any branch of service heretofore referred to or mentioned as well as training or education under the supervision of the United States preliminary to induction into the military service. The terms "active service" or "active duty" include the period during which a person in military service is absent from duty on account of sickness, wounds, leave, or other lawful cause.

~~SEC. 9.~~

SEC. 8. Section 10461 of the Business and Professions Code is amended to read:

10461. A military licensee shall not be required to renew his or her license or license endorsement under this part, or his or her license under Chapter 19 of Division 3, until the beginning of the license or license endorsement period which first commences (a) after his or her again engaging in business, or (b) after one year following termination of military service, whichever is the earlier.

~~SEC. 10.~~

SEC. 9. Section 10463 of the Business and Professions Code is amended to read:

10463. A person who would qualify as a military licensee except for the failure to notify the commissioner of his or her entry into the military service of the United States may apply to the commissioner for reinstatement of his or her license or license endorsement upon resuming business or within one year following termination of military service, whichever is earlier. The commissioner shall reinstate the applicant if he or she finds that the applicant would be entitled to the privileges of this article except for his or her failure to give the commissioner notice of his or her entry into the military service of the United States and that the applicant has complied with Article 2.5 (commencing with Section 10170). In the event the applicant failed to notify the commissioner of his or her entry into the military service as provided, he or she shall be required to submit proof of his or her previous licensure or license endorsement within seven years of the date of entry into the military service to permit reinstatement of his or her license or license endorsement.

~~SEC. 11.~~

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

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