

Senate Bill No. 269

Passed the Senate September 12, 2013

Secretary of the Senate

Passed the Assembly September 12, 2013

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2013, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 149, 10080.9, 10167.3, 10167.9, 10470, 10471, and 10475 of, and to add Section 10167.95 to, the Business and Professions Code, relating to real estate, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 269, Hill. Prepaid rental listing service.

Existing law authorizes specified state agencies to issue a citation including an order of correction, as specified, if, upon investigation, the agency has probable cause to believe that a person is advertising services in a telephone directory without being properly licensed or registered to offer or perform those services.

This bill would authorize the Bureau of Real Estate to issue those citations.

The Real Estate Law provides for the licensure and regulation of prepaid rental listing services by the Real Estate Commissioner. Existing law prohibits a person from engaging in the business of a prepaid rental listing service unless licensed in that capacity or licensed as a real estate broker. A willful violation of these provisions is a crime.

Existing law authorizes the commissioner, or his or her designated representative, to issue a citation to a person who does not possess a real estate license if the commissioner has cause to believe that the person is engaged or has engaged in activities for which a license is required.

This bill would additionally authorize a citation to be issued for a person who does not possess a prepaid rental listing service license or a real estate broker license if the commissioner has cause to believe that the person is engaged or has engaged in activities for which a license is required.

Existing law imposes a \$100 fee for an application for a license as a prepaid rental listing service for the first location, and a \$25 fee for each additional location. Existing law imposes additional fees for obtaining or renewing a broker license or salesperson license when, on June 30 of any year, the balance remaining in the Consumer Recovery Account, a continuously appropriated account

in the Real Estate Fund, is less than \$200,000, and for 4 years thereafter.

This bill would increase those application fees to \$125 and \$50, respectively. The bill would require \$25 of each application fee to be credited to the Consumer Recovery Account. The bill would also impose an additional fee of \$1 on every person obtaining or renewing a prepaid rental listing service license for 2 years after the balance in that account is less than \$200,000. By increasing the amount of moneys that may be deposited into the Consumer Recovery Account, this bill would make an appropriation.

Existing law requires a prepaid rental listing service licensee to offer the prospective tenant a written contract prior to the acceptance of a fee. The contract must include, among other things, the licensee's name.

This bill would also require the contract to include the licensee's license number.

The bill would also require a specified written notice about refunds to be provided to the prospective tenant prior to the acceptance of a fee. Because a willful violation of these provisions would be a crime, this bill would impose a state-mandated local program. The bill also would make related changes.

Existing law authorizes an aggrieved person, who obtains a final judgment, including a criminal restitution order, or an arbitration award based on a defendant's acts for which a real estate license was required, to apply to the bureau for payment from the Consumer Recovery Act, as specified. Existing law requires the license of a broker or salesperson to be automatically suspended when the commissioner pays from the Consumer Recovery Account any amount in the settlement of a claim or toward the satisfaction of a judgment against that broker or salesperson.

This bill would additionally apply those provisions to the license of a prepaid rental listing service licensee.

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.

Appropriation: yes.

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

SECTION 1. Section 149 of the Business and Professions Code is amended to read:

149. (a) If, upon investigation, an agency designated in subdivision (e) has probable cause to believe that a person is advertising in a telephone directory with respect to the offering or performance of services, without being properly licensed by or registered with the agency to offer or perform those services, the agency may issue a citation under Section 148 containing an order of correction that requires the violator to do both of the following:

(1) Cease the unlawful advertising.

(2) Notify the telephone company furnishing services to the violator to disconnect the telephone service furnished to any telephone number contained in the unlawful advertising.

(b) This action is stayed if the person to whom a citation is issued under subdivision (a) notifies the agency in writing that he or she intends to contest the citation. The agency shall afford an opportunity for a hearing, as specified in Section 125.9.

(c) If the person to whom a citation and order of correction is issued under subdivision (a) fails to comply with the order of correction after that order is final, the agency shall inform the Public Utilities Commission of the violation and the Public Utilities Commission shall require the telephone corporation furnishing services to that person to disconnect the telephone service furnished to any telephone number contained in the unlawful advertising.

(d) The good faith compliance by a telephone corporation with an order of the Public Utilities Commission to terminate service issued pursuant to this section shall constitute a complete defense to any civil or criminal action brought against the telephone corporation arising from the termination of service.

(e) Subdivision (a) shall apply to the following boards, bureaus, committees, commissions, or programs:

- (1) The Bureau of Barbering and Cosmetology.
- (2) The Cemetery and Funeral Bureau.
- (3) The Veterinary Medical Board.
- (4) The Landscape Architects Technical Committee.
- (5) The California Board of Podiatric Medicine.
- (6) The Respiratory Care Board of California.

- (7) The Bureau of Electronic and Appliance Repair, Home Furnishings, and Thermal Insulation.
- (8) The Bureau of Security and Investigative Services.
- (9) The Bureau of Automotive Repair.
- (10) The California Architects Board.
- (11) The Speech-Language Pathology and Audiology Board.
- (12) The Board for Professional Engineers and Land Surveyors.
- (13) The Board of Behavioral Sciences.
- (14) The Structural Pest Control Board.
- (15) The Acupuncture Board.
- (16) The Board of Psychology.
- (17) The California Board of Accountancy.
- (18) The Naturopathic Medicine Committee.
- (19) The Physical Therapy Board of California.
- (20) The Bureau for Private Postsecondary Education.
- (21) The Bureau of Real Estate.

SEC. 2. Section 10080.9 of the Business and Professions Code is amended to read:

10080.9. (a) If, upon inspection, examination, or investigation, the commissioner has cause to believe that a person who does not possess a real estate license is engaged or has engaged in activities for which a real estate license is required, or that a person who does not possess a prepaid rental listing service license or a real estate broker license is engaged or has engaged in activities for which a license is required pursuant to Section 10167.2, or that a licensee is violating or has violated any provision of this division or any rule or order thereunder, the commissioner or his or her designated representative may issue a citation to that person in writing, describing with particularity the basis of the citation. Each citation may contain an order to correct the violation or violations identified and a reasonable time period or periods by which the violation or violations must be corrected. In addition, each citation may assess an administrative fine not to exceed two thousand five hundred dollars (\$2,500), which shall be deposited into the Recovery Account of the Real Estate Fund and shall, upon appropriation by the Legislature, be available for expenditure for the purposes specified in Chapter 6.5 (commencing with Section 10470). In assessing a fine, the commissioner shall give due consideration to the appropriateness of the amount of the fine with respect to factors such as the gravity of the violation, the good

faith of the person cited, and the history of previous violations. A citation issued and a fine assessed pursuant to this section, while constituting discipline for a violation of the law, shall be in lieu of other administrative discipline by the commissioner for the offense or offenses cited, and the citation against and payment of any fine by a licensee shall not be reported as disciplinary action taken by the commissioner.

(b) Notwithstanding subdivision (a), nothing in this section shall prevent the commissioner from issuing an order to desist and refrain from engaging in a specific business activity or activities or an order to suspend all business operations to a person who is engaged in or has engaged in continued or repeated violations of this part. In any of these circumstances, the sanctions authorized under this section shall be separate from, and in addition to, all other administrative, civil, or criminal penalties.

(c) If, within 30 days from the receipt of the citation or the citation and fine, the person cited fails to notify the commissioner that he or she intends to request a hearing as described in subdivision (d), the citation or the citation and fine shall be deemed final.

(d) Any hearing under this section shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(e) After the exhaustion of the review procedures provided for in this section, the commissioner may apply to the appropriate superior court for a judgment in the amount of any administrative penalty imposed pursuant to subdivision (a) and an order compelling the cited person to comply with the order of the commissioner. The application, which shall include a certified copy of the final order of the commissioner, shall constitute a sufficient showing to warrant the issuance of the judgment and order.

(f) Failure of any person to comply with the terms of a citation or pay a fine assessed pursuant to this section, within a reasonable period specified by the commissioner, shall subject that person to disciplinary action by the commissioner. In no event may a license be renewed if an unpaid fine remains outstanding or the terms of a citation have not been complied with.

SEC. 3. Section 10167.3 of the Business and Professions Code is amended to read:

10167.3. (a) A separate application for a license as a prepaid rental listing service shall be made in writing for each location to be operated by a licensee other than a real estate broker. Each application shall be on forms provided by the bureau, shall be signed by the applicant, and shall be accompanied by a one-hundred-twenty-five-dollar (\$125) application fee for the first location, and a fifty-dollar (\$50) application fee for each additional location of the applicant.

Applications to add or eliminate locations during the term of a license shall be on forms prescribed by the bureau. A fifty-dollar (\$50) application fee for the remainder of a license term for each location to be added shall accompany the application. Twenty-five dollars (\$25) of each application fee shall be credited to the Consumer Recovery Account.

(b) A real estate broker may provide a prepaid rental listing service at a licensed office for the conduct of his or her real estate brokerage business if the business at the office is conducted under the immediate supervision of the broker or of a real estate salesperson licensed to, and acting on behalf of, the broker.

SEC. 4. Section 10167.9 of the Business and Professions Code is amended to read:

10167.9. (a) Prior to the acceptance of a fee, a licensee shall offer the prospective tenant a written contract, either on paper or in electronic form, which shall include at least the following:

(1) The name and license number of the licensee and the addresses and telephone numbers of the principal office or location of the licensee and of the location, or branch office of a real estate broker, providing the listing to the prospective tenant.

(2) Acknowledgment of receipt of the fee, including the amount.

(3) A description of the service to be performed by the licensee, including significant conditions, restrictions, and limitations where applicable.

(4) The prospective tenant's specifications for the rental property, including, but not limited to:

(A) Type of structure, including, but not limited to, detached single-family home, apartment, or duplex.

(B) Location by commonly accepted residential area name, by designation of boundary streets, or by any other manner affording a reasonable means of identifying locations acceptable to the prospective tenant.

(C) Furnished or unfurnished.

(D) Number of bedrooms required.

(E) Maximum acceptable monthly rental.

(5) The contract expiration date, which shall not be later than 90 days from the date of execution of the contract.

(6) A clause setting forth the right to a full or partial refund of the fee paid as provided in Section 10167.10.

(7) The signature and printed full name of the licensee or of the designated agent, real estate salesperson, or employee acting on behalf of the licensee. The signature of any person, including any signature required by the terms of the contract to be provided by the prospective tenant, may be provided in any electronic form that provides a reasonable method of indicating that the individual whose signature is required authorized the contract to be signed in that electronic form.

(8) A clause in bold type letters outlining the small claims court remedy available to the prospective tenant.

(9) A clause in boldface type letters clearly stating that the purchase of any goods and services other than the provision of listings of residential real properties for tenancy is optional.

(b) (1) The original of each contract, any separate contracts for required goods or services, refund claims, receipts and any other relevant documents shall be retained by the licensee for a period of not less than three years from the date of termination of the contract during which time the contract shall be subject to examination by a duly authorized representative of the commissioner. Any records retained pursuant to this subdivision that are stored in the ordinary course of business in digital media shall, upon request of a duly authorized representative of the commissioner, be provided on diskette, CD-ROM or similar portable digital storage medium. For purposes of this subdivision, the “original” of a contract executed in electronic form shall be either the copy of the contract stored in digital media or a paper printout of that contract.

(2) Any licensee, or employee thereof, shall dispose of the documents required to be kept pursuant to paragraph (1) by shredding or other appropriate means so that the identity of the prospective tenant may not be determined from the disposed information alone or in combination with other publicly available information.

(c) The form of contract proposed to be used by a licensee to effect compliance with this section shall be filed with the bureau prior to use. Any modification of a form previously filed with the bureau, including a change in the name or business address of the licensee, shall also be filed prior to use. The bureau shall withhold the issuance or renewal of a license until the bureau has approved the contract. If a proposed modification to a contract has not been approved or disapproved within 15 working days of being filed with the bureau, the proposed modification shall be deemed approved. If a proposed modification or contract provision is disapproved, the bureau shall communicate that disapproval in writing to the licensee within 15 working days of being filed with the bureau, accompanied by a written justification of why the modification or contract provision is contrary to the requirements of this article.

(d) Notwithstanding any other provision of law, a contract for prepaid rental listing services executed in electronic form, and signed in any electronic form that provides a reasonable method of indicating that the individual whose signature is required authorized the contract to be signed in electronic form, shall be valid to the same extent as an executed written contract. Upon request by the customer, the licensee shall deliver an executed paper copy to the customer within five working days of receiving the request.

SEC. 5. Section 10167.95 is added to the Business and Professions Code, to read:

10167.95. Prior to the acceptance of a fee, and in addition to the contract required pursuant to Section 10167.9, a licensee shall provide the prospective tenant with the following written notice, in a type size of at least 12-point type:

YOU MAY BE ENTITLED TO A REFUND IF YOU DO NOT RECEIVE THE SERVICES YOU HAVE BEEN PROMISED. COMPLETE TERMS AND CONDITIONS GOVERNING THE REFUND TO WHICH YOU MAY BE ENTITLED ARE CONTAINED IN YOUR CONTRACT. THE FOLLOWING IS A SIMPLIFIED SUMMARY OF SOME OF THE RIGHTS DESCRIBED IN YOUR CONTRACT:

If (name of licensee) does not provide you with at least three available rental properties meeting the specifications of your

contract within five days after you pay the fee charged by (name of licensee), you are entitled to a full refund. To obtain this refund, you must request it from (name of licensee) in writing within 15 days of paying your fee.

If you do not obtain a rental through the services of (name of licensee) during the term of your contract, you are entitled to a refund of your fee, minus a service charge, which may not exceed ____ dollars (\$ ____). To obtain this refund, you must provide (name of licensee) with written documentation or a signed statement that you obtained a rental without the assistance of (name of licensee) or that you did not move. This documentation or signed statement must be provided to (name of licensee) with a written request for refund, within 10 days following the expiration of your contract.

If (name of licensee) fails to refund your money, as required by your contract, you may sue (name of licensee) in a small claims court. The court may award you the refund you failed to receive, plus additional damages, up to \$1,000.

If you wish to file a complaint about (name of licensee) or if you cannot collect on a court award, you should contact the Bureau of Real Estate at 1-877-373-4542 or www.bre.ca.gov.

SEC. 6. Section 10470 of the Business and Professions Code is amended to read:

10470. If, on June 30 of any year, the balance remaining in the Consumer Recovery Account in the Real Estate Fund is less than two hundred thousand dollars (\$200,000), every licensed broker, when obtaining or renewing any broker license within four years thereafter, shall pay, in addition to the license fee, a fee of seven dollars (\$7); every licensed salesperson, when obtaining or renewing such license within four years thereafter, shall pay, in addition to the license fee, a fee of four dollars (\$4); and every person holding a prepaid rental listing service license, when obtaining or renewing that license within two years thereafter, shall pay, in addition to the application fee, a fee of one dollar (\$1). The fees from the broker, salesperson, and prepaid rental listing service licensees shall be paid into the State Treasury and credited to the Consumer Recovery Account.

SEC. 7. Section 10471 of the Business and Professions Code is amended to read:

10471. (a) When an aggrieved person obtains (1) a final judgment in a court of competent jurisdiction, including, but not limited to, a criminal restitution order issued pursuant to subdivision (f) of Section 1202.4 of the Penal Code or Section 3663 of Title 18 of the United States Code, or (2) an arbitration award that includes findings of fact and conclusions of law rendered in accordance with the rules established by the American Arbitration Association or another recognized arbitration body, and in accordance with Sections 1281 to 1294.2, inclusive, of the Code of Civil Procedure where applicable, and where the arbitration award has been confirmed and reduced to judgment pursuant to Section 1287.4 of the Code of Civil Procedure, against a defendant based upon the defendant's fraud, misrepresentation, or deceit, made with intent to defraud, or conversion of trust funds, arising directly out of any transaction in which the defendant, while licensed under this part, performed acts for which a real estate license or a prepaid rental listing service license was required, the aggrieved person may, upon the judgment becoming final, file an application with the Bureau of Real Estate for payment from the Consumer Recovery Account, within the limitations specified in Section 10474, of the amount unpaid on the judgment that represents an actual and direct loss to the claimant in the transaction. As used in this chapter, "court of competent jurisdiction" includes the federal courts, but does not include the courts of another state.

(b) The application shall be delivered in person or by certified mail to an office of the bureau not later than one year after the judgment has become final.

(c) The application shall be made on a form prescribed by the bureau, verified by the claimant, and shall include the following:

- (1) The name and address of the claimant.
- (2) If the claimant is represented by an attorney, the name, business address, and telephone number of the attorney.
- (3) The identification of the judgment, the amount of the claim and an explanation of its computation.
- (4) A detailed narrative statement of the facts in explanation of the allegations of the complaint upon which the underlying judgment is based.

(5) (A) Except as provided in subparagraph (B), a statement by the claimant, signed under penalty of perjury, that the complaint

upon which the underlying judgment is based was prosecuted conscientiously and in good faith. As used in this section, “conscientiously and in good faith” means that no party potentially liable to the claimant in the underlying transaction was intentionally and without good cause omitted from the complaint, that no party named in the complaint who otherwise reasonably appeared capable of responding in damages was dismissed from the complaint intentionally and without good cause, and that the claimant employed no other procedural means contrary to the diligent prosecution of the complaint in order to seek to qualify for the Consumer Recovery Account.

(B) For the purpose of an application based on a criminal restitution order, all of the following statements by the claimant:

(i) The claimant has not intentionally and without good cause failed to pursue any person potentially liable to the claimant in the underlying transaction other than a defendant who is the subject of a criminal restitution order.

(ii) The claimant has not intentionally and without good cause failed to pursue in a civil action for damages all persons potentially liable to the claimant in the underlying transaction who otherwise reasonably appeared capable of responding in damages other than a defendant who is the subject of a criminal restitution order.

(iii) The claimant employed no other procedural means contrary to the diligent prosecution of the complaint in order to seek to qualify for the Consumer Recovery Account.

(6) The name and address of the judgment debtor or, if not known, the names and addresses of persons who may know the judgment debtor’s present whereabouts.

(7) The following representations and information from the claimant:

(A) That he or she is not a spouse of the judgment debtor nor a personal representative of the spouse.

(B) That he or she has complied with all of the requirements of this chapter.

(C) That the judgment underlying the claim meets the requirements of subdivision (a).

(D) A description of searches and inquiries conducted by or on behalf of the claimant with respect to the judgment debtor’s assets liable to be sold or applied to satisfaction of the judgment, an itemized valuation of the assets discovered, and the results of

actions by the claimant to have the assets applied to satisfaction of the judgment.

(E) That he or she has diligently pursued collection efforts against all judgment debtors and all other persons liable to the claimant in the transaction that is the basis for the underlying judgment.

(F) That the underlying judgment and debt have not been discharged in bankruptcy, or, in the case of a bankruptcy proceeding that is open at or after the time of the filing of the application, that the judgment and debt have been declared to be nondischargeable.

(G) That the application was mailed or delivered to the bureau no later than one year after the underlying judgment became final.

(d) If the claimant is basing his or her application upon a judgment against a salesperson, and the claimant has not obtained a judgment against that salesperson's employing broker, if any, or has not diligently pursued the assets of that broker, the application shall be denied for failure to diligently pursue the assets of all other persons liable to the claimant in the transaction unless the claimant can demonstrate, by clear and convincing evidence, either that the salesperson was not employed by a broker at the time of the transaction, or that the salesperson's employing broker would not have been liable to the claimant because the salesperson was acting outside the scope of his or her employment by the broker in the transaction.

(e) The application form shall include detailed instructions with respect to documentary evidence, pleadings, court rulings, the products of discovery in the underlying litigation, and a notice to the applicant of his or her obligation to protect the underlying judgment from discharge in bankruptcy, to be appended to the application.

(f) An application for payment from the Consumer Recovery Account that is based on a criminal restitution order shall comply with all of the requirements of this chapter. For the purpose of an application based on a criminal restitution order, the following terms have the following meanings:

- (1) "Judgment" means the criminal restitution order.
- (2) "Complaint" means the facts of the underlying transaction upon which the criminal restitution order is based.

(3) “Judgment debtor” means any defendant who is the subject of the criminal restitution order.

SEC. 8. Section 10475 of the Business and Professions Code is amended to read:

10475. Should the commissioner pay from the Consumer Recovery Account any amount in settlement of a claim or toward satisfaction of a judgment against a licensed broker or salesperson or a person holding a prepaid rental listing service license, the license of the broker or salesperson or prepaid rental listing service licensee shall be automatically suspended upon the date of payment from the Consumer Recovery Account. No broker or salesperson or prepaid rental listing service licensee shall be granted reinstatement until he or she has repaid in full, plus interest at the prevailing legal rate applicable to a judgment rendered in any court of this state, the amount paid from the Consumer Recovery Account on his or her account. A discharge in bankruptcy shall not relieve a person from the penalties and disabilities provided in this chapter.

SEC. 9. 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.

Approved _____, 2013

Governor