

ASSEMBLY BILL

No. 685

Introduced by Assembly Member Irwin

February 25, 2015

An act to amend Sections 10080.9, 10177, and 10186.2 of the Business and Professions Code, relating to real estate licensees.

LEGISLATIVE COUNSEL'S DIGEST

AB 685, as introduced, Irwin. Real estate: licensees.

Under existing law, if the Real Estate Commissioner has cause to believe that a person who does not have a real estate license is engaged in activities for which a license is required, he or she may issue a citation to that person which may include an administrative fine. Existing law prohibits the commissioner from renewing the license of a person who has failed to comply with the terms of a citation or to pay an outstanding fine.

This bill would also prohibit the commissioner from issuing a license to a person who has failed to comply with the terms of a citation or to pay an outstanding fine.

Existing law authorizes the commissioner to suspend or revoke the license of a real estate licensee if he or she has engaged in specified activities or has had a license issued by another agency, another state, or the federal government revoked or suspended for engaging in those activities, if specified conditions are met.

This bill would also authorize the commissioner to suspend or revoke the license of a real estate licensee who surrendered a licensed issued by another agency, another state, or the federal government. The bill would also authorize the commissioner to suspend or revoke the license

of a licensee for failure to surrender a license that was issued in error or by mistake.

Existing law requires real estate licensees to report the bringing of an indictment or information charging a felony against the licensee. A willful or knowing violation of this requirement is punishable by a fine and imprisonment.

This bill would also require a licensee to report the filing of an criminal complaint charging a felony against the licensee to the Bureau of Real Estate. Because the bill would change the definition of a crime, it would impose a state-mandated local program.

The bill would also make other nonsubstantive 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:

1 SECTION 1. Section 10080.9 of the Business and Professions
2 Code is amended to read:
3 10080.9. (a) If, upon inspection, examination, or investigation,
4 the commissioner has cause to believe that a person who does not
5 possess a real estate license is engaged or has engaged in activities
6 for which a real estate license is required, or that a person who
7 does not possess a prepaid rental listing service license or a real
8 estate broker license is engaged or has engaged in activities for
9 which a license is required pursuant to Section 10167.2, or that a
10 licensee is violating or has violated any provision of this division
11 or any rule or order thereunder, the commissioner or his or her
12 designated representative may issue a citation to that person in
13 writing, describing with particularity the basis of the citation. Each
14 citation may contain an order to correct the violation or violations
15 identified and a reasonable time period or periods by which the
16 violation or violations must be corrected. In addition, each citation
17 may assess an administrative fine not to exceed two thousand five
18 hundred dollars (\$2,500), ~~which~~ *that* shall be deposited into the
19 Recovery Account of the Real Estate Fund and shall, upon

1 appropriation by the Legislature, be available for expenditure for
2 the purposes specified in Chapter 6.5 (commencing with Section
3 10470). In assessing a fine, the commissioner shall give due
4 consideration to the appropriateness of the amount of the fine with
5 respect to factors such as the gravity of the violation, the good
6 faith of the person cited, and the history of previous violations. A
7 citation issued and a fine assessed pursuant to this section, while
8 constituting discipline for a violation of the law, shall be in lieu
9 of other administrative discipline by the commissioner for the
10 offense or offenses cited, and the citation against and payment of
11 any fine by a licensee shall not be reported as disciplinary action
12 taken by the commissioner.

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

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

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

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

38 (f) Failure of any person to comply with the terms of a citation
39 or pay a fine assessed pursuant to this section, within a reasonable
40 period specified by the commissioner, shall subject that person to

1 disciplinary action by the commissioner. In no event may a license
2 be *issued or* renewed if an unpaid fine remains outstanding or the
3 terms of a citation have not been complied with.

4 SEC. 2. Section 10177 of the Business and Professions Code
5 is amended to read:

6 10177. The commissioner may suspend or revoke the license
7 of a real estate licensee, delay the renewal of a license of a real
8 estate licensee, or deny the issuance of a license to an applicant,
9 who has done any of the following, or may suspend or revoke the
10 license of a corporation, delay the renewal of a license of a
11 corporation, or deny the issuance of a license to a corporation, if
12 an officer, director, or person owning or controlling 10 percent or
13 more of the corporation's stock has done any of the following:

14 (a) Procured, or attempted to procure, a real estate license or
15 license renewal, for himself or herself or a salesperson, by fraud,
16 misrepresentation, or deceit, or by making a material misstatement
17 of fact in an application for a real estate license, license renewal,
18 or reinstatement.

19 (b) Entered a plea of guilty or ~~nolo contendere~~ *nolo contendere* *no contest* to, or
20 been found guilty of, or been convicted of, a felony, or a crime
21 substantially related to the qualifications, functions, or duties of a
22 real estate licensee, and the time for appeal has elapsed or the
23 judgment of conviction has been affirmed on appeal, irrespective
24 of an order granting probation following that conviction,
25 suspending the imposition of sentence, or of a subsequent order
26 under Section 1203.4 of the Penal Code allowing that licensee to
27 withdraw his or her plea of guilty and to enter a plea of not guilty,
28 or dismissing the accusation or information.

29 (c) Knowingly authorized, directed, connived at, or aided in the
30 publication, advertisement, distribution, or circulation of a material
31 false statement or representation concerning his or her designation
32 or certification of special education, credential, trade organization
33 membership, or business, or concerning a business opportunity or
34 a land or subdivision, as defined in Chapter 1 (commencing with
35 Section 11000) of Part 2, offered for sale.

36 (d) Willfully disregarded or violated the Real Estate Law (Part
37 1 (commencing with Section 10000)) or Chapter 1 (commencing
38 with Section 11000) of Part 2 or the rules and regulations of the
39 commissioner for the administration and enforcement of the Real

1 Estate Law and Chapter 1 (commencing with Section 11000) of
2 Part 2.

3 (e) Willfully used the term “realtor” or a trade name or insignia
4 of membership in a real estate organization of which the licensee
5 is not a member.

6 (f) Acted or conducted himself or herself in a manner that would
7 have warranted the denial of his or her application for a real estate
8 license, or either had a license denied or had a license issued by
9 another agency of this state, another state, or the federal
10 government ~~revoked~~ *revoked, surrendered*, or suspended for acts
11 that, if done by a real estate licensee, would be grounds for the
12 suspension or revocation of a California real estate license, if the
13 action of denial, revocation, *surrender*, or suspension by the other
14 agency or entity was taken only after giving the licensee or
15 applicant fair notice of the charges, an opportunity for a hearing,
16 and other due process protections comparable to the Administrative
17 Procedure Act (Chapter 3.5 (commencing with Section 11340),
18 Chapter 4 (commencing with Section 11370), and Chapter 5
19 (commencing with Section 11500) of Part 1 of Division 3 of Title
20 2 of the Government Code), and only upon an express finding of
21 a violation of law by the agency or entity.

22 (g) Demonstrated negligence or incompetence in performing
23 an act for which he or she is required to hold a license.

24 (h) As a broker licensee, failed to exercise reasonable
25 supervision over the activities of his or her salespersons, or, as the
26 officer designated by a corporate broker licensee, failed to exercise
27 reasonable supervision and control of the activities of the
28 corporation for which a real estate license is required.

29 (i) Used his or her employment by a governmental agency in a
30 capacity giving access to records, other than public records, in a
31 manner that violates the confidential nature of the records.

32 (j) Engaged in any other conduct, whether of the same or a
33 different character than specified in this section, that constitutes
34 fraud or dishonest dealing.

35 (k) Violated any of the terms, conditions, restrictions, and
36 limitations contained in an order granting a restricted license.

37 (l) (1) Solicited or induced the sale, lease, or listing for sale or
38 lease of residential property on the ground, wholly or in part, of
39 loss of value, increase in crime, or decline of the quality of the
40 schools due to the present or prospective entry into the

1 neighborhood of a person or persons having a characteristic listed
2 in subdivision (a) or (d) of Section 12955 of the Government Code,
3 as those characteristics are defined in Sections 12926 and 12926.1,
4 subdivision (m) and paragraph (1) of subdivision (p) of Section
5 12955, and Section 12955.2 of the Government Code.

6 (2) Notwithstanding paragraph (1), with respect to familial
7 status, paragraph (1) shall not be construed to apply to housing for
8 older persons, as defined in Section 12955.9 of the Government
9 Code. With respect to familial status, nothing in paragraph (1)
10 shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11,
11 and 799.5 of the Civil Code, relating to housing for senior citizens.
12 Subdivision (d) of Section 51 and Section 4760 of the Civil Code
13 and subdivisions (n), (o), and (p) of Section 12955 of the
14 Government Code shall apply to paragraph (1).

15 (m) Violated the Franchise Investment Law (Division 5
16 commencing with Section 31000) of Title 4 of the Corporations
17 Code) or regulations of the Commissioner of Corporations
18 pertaining thereto.

19 (n) Violated the Corporate Securities Law of 1968 (Division 1
20 commencing with Section 25000) of Title 4 of the Corporations
21 Code) or the regulations of the Commissioner of Corporations
22 pertaining thereto.

23 (o) Failed to disclose to the buyer of real property, in a
24 transaction in which the licensee is an agent for the buyer, the
25 nature and extent of a licensee's direct or indirect ownership
26 interest in that real property. The direct or indirect ownership
27 interest in the property by a person related to the licensee by blood
28 or marriage, by an entity in which the licensee has an ownership
29 interest, or by any other person with whom the licensee has a
30 special relationship shall be disclosed to the buyer.

31 (p) Violated Article 6 (commencing with Section 10237).

32 (q) Violated or failed to comply with Chapter 2 (commencing
33 with Section 2920) of Title 14 of Part 4 of Division 3 of the Civil
34 Code, related to mortgages.

35 (r) *Failure to surrender a license that was issued in error or by*
36 *mistake.*

37 If a real estate broker that is a corporation has not done any of
38 the foregoing acts, either directly or through its employees, agents,
39 officers, directors, or persons owning or controlling 10 percent or
40 more of the corporation's stock, the commissioner may not deny

1 the issuance or delay the renewal of a real estate license to, or
2 suspend or revoke the real estate license of, the corporation,
3 provided that any offending officer, director, or stockholder, who
4 has done any of the foregoing acts individually and not on behalf
5 of the corporation, has been completely disassociated from any
6 affiliation or ownership in the corporation. A decision by the
7 commissioner to delay the renewal of a real estate license shall
8 toll the expiration of that license until the results of any pending
9 disciplinary actions against that licensee are final, or until the
10 licensee voluntarily surrenders his, her, or its license, whichever
11 is earlier.

12 ~~This section shall become operative on July 1, 2012.~~

13 SEC. 3. Section 10186.2 of the Business and Professions Code
14 is amended to read:

15 10186.2. (a) (1) A licensee shall report any of the following
16 to the ~~department~~: *bureau*:

17 (A) The bringing of an indictment or ~~information~~ *information*,
18 *or the filing of a criminal complaint*, charging a felony against the
19 licensee.

20 (B) The conviction of the licensee, including any verdict of
21 guilty, or plea of guilty or no contest, of any felony or
22 misdemeanor.

23 (C) Any disciplinary action taken by another licensing entity
24 or authority of this state or of another state or an agency of the
25 federal government.

26 (2) The report required by this subdivision shall be made in
27 writing within 30 days of the date of the bringing of the indictment
28 or the charging of a felony, the conviction, or the disciplinary
29 action.

30 (b) Failure to make a report required by this section shall
31 constitute a cause for discipline.

32 SEC. 4. No reimbursement is required by this act pursuant to
33 Section 6 of Article XIII B of the California Constitution because
34 the only costs that may be incurred by a local agency or school
35 district will be incurred because this act creates a new crime or
36 infraction, eliminates a crime or infraction, or changes the penalty
37 for a crime or infraction, within the meaning of Section 17556 of
38 the Government Code, or changes the definition of a crime within

- 1 the meaning of Section 6 of Article XIII B of the California
- 2 Constitution.

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