

AMENDED IN ASSEMBLY JUNE 20, 2016

AMENDED IN SENATE APRIL 12, 2016

**SENATE BILL**

**No. 1196**

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**Introduced by Senator Hill**

*(Principal coauthors: Assembly Members Brough and Salas)*

February 18, 2016

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An act to amend Sections 10050, 10177, 11301, 11320, 11328, and 11340 of the Business and Professions Code, relating to real estate.

LEGISLATIVE COUNSEL'S DIGEST

SB 1196, as amended, Hill. Bureau of Real Estate: Bureau of Real Estate Appraisers.

Existing law, the Real Estate Law, provides for the licensure and regulation of real estate brokers and real estate salespersons by the Real Estate Commissioner, the chief officer of the Bureau of Real Estate within the Department of Consumer Affairs. That law authorizes the commissioner to suspend or revoke the license of a real estate licensee if the licensee has entered a plea of guilty or nolo contendere to, or been found guilty of, or been convicted of, a felony, or a crime substantially related to the qualifications, functions, or duties of a real estate licensee, and the time for appeal has elapsed or the judgment of conviction has been affirmed on appeal, or other conditions are met.

Existing law, the Real Estate Appraisers' Licensing and Certification Law, provides for the licensure, certification, and regulation of real estate appraisers and appraisal management companies by the Bureau of Real Estate Appraisers within the Department of Consumer Affairs, which is headed by the Chief of the Bureau of Real Estate Appraisers. That law requires the chief to adopt regulations governing the process and the procedure of applying for a real estate appraiser's license and

requires these regulations to include, among others, necessary experience ~~or education~~. *education and the submittal of an applicant’s social security number. To substantiate appraisal experience or to facilitate investigations, existing law requires that licensees, applicants, and persons acting in a capacity that requires a license to submit copies of appraisals or any other work product, as specified, and all supporting documentation.*

*A willful violation of these laws is a crime.*

This bill would subject the Bureau of Real Estate and the Bureau of Real Estate Appraisers to review by the appropriate policy committees of the Legislature, as specified. The bill would further authorize the Real Estate Commissioner to suspend the license of a real estate licensee upon the entry of a guilty plea by the licensee to any of the crimes described above and would require the commissioner to rescind the suspension if the plea is withdrawn. The bill would further require the Chief of the Bureau of Real Estate Appraisers to require, as part of the educational requirements for applicants for licensure, the completion of a course on state and federal laws regulating the appraisal profession, ~~as specified~~. *specified, and would additionally authorize the submittal of an applicant’s individual taxpayer identification number. The bill would additionally require those licensees, applicants, and persons acting in a capacity that requires a license to submit copies of engagement letters. Because the willful failure to submit those engagement letters 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 10050 of the Business and Professions
- 2 Code is amended to read:

1 10050. (a) (1) There is in the Department of Consumer Affairs  
2 a Bureau of Real Estate, the chief officer of which bureau is named  
3 the Real Estate Commissioner.

4 (2) Notwithstanding any other law, the powers and duties of the  
5 bureau, as set forth in this part and Chapter 1 (commencing with  
6 Section 11000) of Part 2, shall be subject to review by the  
7 appropriate policy committees of the Legislature. The review shall  
8 be performed as if this part and that chapter were scheduled to be  
9 repealed as of January 1, 2021.

10 (b) It shall be the principal responsibility of the commissioner  
11 to enforce all laws in this part and Chapter 1 (commencing with  
12 Section 11000) of Part 2 in a manner that achieves the maximum  
13 protection for the purchasers of real property and those persons  
14 dealing with real estate licensees.

15 (c) Wherever the term “commissioner” is used in this division,  
16 it means the Real Estate Commissioner.

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

19 10177. The commissioner may suspend or revoke the license  
20 of a real estate licensee, delay the renewal of a license of a real  
21 estate licensee, or deny the issuance of a license to an applicant,  
22 who has done any of the following, or may suspend or revoke the  
23 license of a corporation, delay the renewal of a license of a  
24 corporation, or deny the issuance of a license to a corporation, if  
25 an officer, director, or person owning or controlling 10 percent or  
26 more of the corporation’s stock has done any of the following:

27 (a) Procured, or attempted to procure, a real estate license or  
28 license renewal, for himself or herself or a salesperson, by fraud,  
29 misrepresentation, or deceit, or by making a material misstatement  
30 of fact in an application for a real estate license, license renewal,  
31 or reinstatement.

32 (b) (1) Entered a plea of guilty or nolo contendere to, or been  
33 found guilty of, or been convicted of, a felony, or a crime  
34 substantially related to the qualifications, functions, or duties of a  
35 real estate licensee, and the time for appeal has elapsed or the  
36 judgment of conviction has been affirmed on appeal, irrespective  
37 of an order granting probation following that conviction,  
38 suspending the imposition of sentence, or of a subsequent order  
39 under Section 1203.4 of the Penal Code allowing that licensee to

1 withdraw his or her plea of guilty and to enter a plea of not guilty,  
2 or dismissing the accusation or information.

3 (2) Notwithstanding paragraph (1), and with the recognition  
4 that sentencing may not occur for months or years following the  
5 entry of a guilty plea, the commissioner may suspend the license  
6 of a real estate licensee upon the entry by the licensee of a guilty  
7 plea to any of the crimes described in paragraph (1). If the guilty  
8 plea is withdrawn, the suspension shall be rescinded and the license  
9 reinstated to its status prior to the suspension. The bureau shall  
10 notify a person whose license is subject to suspension pursuant to  
11 this paragraph of his or her right to elect to have the issue of the  
12 suspension heard in accordance with Section 10100.

13 (c) Knowingly authorized, directed, connived at, or aided in the  
14 publication, advertisement, distribution, or circulation of a material  
15 false statement or representation concerning his or her designation  
16 or certification of special education, credential, trade organization  
17 membership, or business, or concerning a business opportunity or  
18 a land or subdivision, as defined in Chapter 1 (commencing with  
19 Section 11000) of Part 2, offered for sale.

20 (d) Willfully disregarded or violated the Real Estate Law (Part  
21 1 (commencing with Section 10000)) or Chapter 1 (commencing  
22 with Section 11000) of Part 2 or the rules and regulations of the  
23 commissioner for the administration and enforcement of the Real  
24 Estate Law and Chapter 1 (commencing with Section 11000) of  
25 Part 2.

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

29 (f) Acted or conducted himself or herself in a manner that would  
30 have warranted the denial of his or her application for a real estate  
31 license, or either had a license denied or had a license issued by  
32 another agency of this state, another state, or the federal  
33 government revoked or suspended for acts that, if done by a real  
34 estate licensee, would be grounds for the suspension or revocation  
35 of a California real estate license, if the action of denial, revocation,  
36 or suspension by the other agency or entity was taken only after  
37 giving the licensee or applicant fair notice of the charges, an  
38 opportunity for a hearing, and other due process protections  
39 comparable to the Administrative Procedure Act (Chapter 3.5  
40 (commencing with Section 11340), Chapter 4 (commencing with

1 Section 11370), and Chapter 5 (commencing with Section 11500)  
2 of Part 1 of Division 3 of Title 2 of the Government Code), and  
3 only upon an express finding of a violation of law by the agency  
4 or entity.

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

7 (h) As a broker licensee, failed to exercise reasonable  
8 supervision over the activities of his or her salespersons, or, as the  
9 officer designated by a corporate broker licensee, failed to exercise  
10 reasonable supervision and control of the activities of the  
11 corporation for which a real estate license is required.

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

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

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

20 (l) (1) Solicited or induced the sale, lease, or listing for sale or  
21 lease of residential property on the ground, wholly or in part, of  
22 loss of value, increase in crime, or decline of the quality of the  
23 schools due to the present or prospective entry into the  
24 neighborhood of a person or persons having a characteristic listed  
25 in subdivision (a) or (d) of Section 12955 of the Government Code,  
26 as those characteristics are defined in Sections 12926 and 12926.1,  
27 subdivision (m) and paragraph (1) of subdivision (p) of Section  
28 12955, and Section 12955.2 of the Government Code.

29 (2) Notwithstanding paragraph (1), with respect to familial  
30 status, paragraph (1) shall not be construed to apply to housing for  
31 older persons, as defined in Section 12955.9 of the Government  
32 Code. With respect to familial status, nothing in paragraph (1)  
33 shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11,  
34 and 799.5 of the Civil Code, relating to housing for senior citizens.  
35 Subdivision (d) of Section 51 and Section 4760 of the Civil Code  
36 and subdivisions (n), (o), and (p) of Section 12955 of the  
37 Government Code shall apply to paragraph (1).

38 (m) Violated the Franchise Investment Law (Division 5  
39 (commencing with Section 31000) of Title 4 of the Corporations

1 Code) or regulations of the Commissioner of Corporations  
2 pertaining thereto.

3 (n) Violated the Corporate Securities Law of 1968 (Division 1  
4 (commencing with Section 25000) of Title 4 of the Corporations  
5 Code) or the regulations of the Commissioner of Corporations  
6 pertaining thereto.

7 (o) Failed to disclose to the buyer of real property, in a  
8 transaction in which the licensee is an agent for the buyer, the  
9 nature and extent of a licensee's direct or indirect ownership  
10 interest in that real property. The direct or indirect ownership  
11 interest in the property by a person related to the licensee by blood  
12 or marriage, by an entity in which the licensee has an ownership  
13 interest, or by any other person with whom the licensee has a  
14 special relationship shall be disclosed to the buyer.

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

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

19 If a real estate broker that is a corporation has not done any of  
20 the foregoing acts, either directly or through its employees, agents,  
21 officers, directors, or persons owning or controlling 10 percent or  
22 more of the corporation's stock, the commissioner may not deny  
23 the issuance or delay the renewal of a real estate license to, or  
24 suspend or revoke the real estate license of, the corporation,  
25 provided that any offending officer, director, or stockholder, who  
26 has done any of the foregoing acts individually and not on behalf  
27 of the corporation, has been completely disassociated from any  
28 affiliation or ownership in the corporation. A decision by the  
29 commissioner to delay the renewal of a real estate license shall  
30 toll the expiration of that license until the results of any pending  
31 disciplinary actions against that licensee are final, or until the  
32 licensee voluntarily surrenders his, her, or its license, whichever  
33 is earlier.

34 SEC. 3. Section 11301 of the Business and Professions Code  
35 is amended to read:

36 11301. (a) (1) There is hereby created within the Department  
37 of Consumer Affairs a Bureau of Real Estate Appraisers to  
38 administer and enforce this part.

39 (2) Notwithstanding any other law, the powers and duties of the  
40 bureau, as set forth in this part, shall be subject to review by the

1 appropriate policy committees of the Legislature. The review shall  
2 be performed as if this part were scheduled to be repealed as of  
3 January 1, 2021.

4 (b) Whenever the term “Office of Real Estate Appraisers”  
5 appears in any other law, it means the “Bureau of Real Estate  
6 Appraisers.”

7 *SEC. 4. Section 11320 of the Business and Professions Code*  
8 *is amended to read:*

9 11320. No person shall engage in federally related real estate  
10 appraisal activity governed by this part or assume or use the title  
11 of or any title designation or abbreviation as a licensed appraiser  
12 in this state without ~~first obtaining a~~ *an active* license as defined  
13 in Section 11302. Any person who willfully violates this provision  
14 is guilty of a public offense punishable by imprisonment pursuant  
15 to subdivision (h) of Section 1170 of the Penal Code, or in a county  
16 jail for not more than one year, or by a fine not exceeding ten  
17 thousand dollars (\$10,000), or by both the imprisonment and fine.  
18 The possession of a license issued pursuant to this part does not  
19 preempt the application of other statutes including the requirement  
20 for specialized training or licensure pursuant to Article 3  
21 (commencing with Section 750) of Chapter 2.5 of Division 1 of  
22 the Public Resources Code.

23 *SEC. 5. Section 11328 of the Business and Professions Code*  
24 *is amended to read:*

25 11328. To substantiate documentation of appraisal experience,  
26 or to facilitate the investigation of illegal or unethical activities by  
27 a licensee, applicant, or other person acting in a capacity that  
28 requires a license, that licensee, applicant, or person shall, upon  
29 the request of the director, submit copies of *the engagement letters*,  
30 appraisals, or any work product which is addressed by the Uniform  
31 Standards of Professional Appraisal Practice, and all supporting  
32 documentation and data to the office. This material shall be  
33 confidential in accordance with the confidentiality provisions of  
34 the Uniform Standards of Professional Appraisal Practice.

35 ~~SEC. 4.~~

36 *SEC. 6. Section 11340 of the Business and Professions Code*  
37 *is amended to read:*

38 11340. The director shall adopt regulations governing the  
39 process and the procedure of applying for a license which shall  
40 include, but not be limited to, necessary experience or education,

1 equivalency, and minimum requirements of the Appraisal  
2 Foundation, if any.

3 (a) For purposes of the educational background requirements  
4 established under this section, the director shall do both of the  
5 following:

6 (1) Grant credits for any courses taken on real estate appraisal  
7 ethics or practices pursuant to Section 10153.2, or which are  
8 deemed by the director to meet standards established pursuant to  
9 this part and federal law.

10 (2) Require the completion of a course on state and federal laws  
11 regulating the appraisal profession, as approved by the bureau  
12 every two years. The course shall include an examination that  
13 requires an applicant to demonstrate the applicant's knowledge of  
14 those laws.

15 (b) For the purpose of implementing and applying this section,  
16 the director shall prescribe by regulation "equivalent courses" and  
17 "equivalent experience." The experience of employees of an  
18 assessor's office or of the State Board of Equalization in setting  
19 forth opinions of value of real property for tax purposes shall be  
20 deemed equivalent to experience in federally related real estate  
21 appraisal activity. Notwithstanding any other law, a holder of a  
22 valid real estate broker license shall be deemed to have completed  
23 appraisal license application experience requirements upon proof  
24 that he or she has accumulated 1,000 hours of experience in the  
25 valuation of real property.

26 (c) The director shall adopt regulations for licensure which shall  
27 meet, at a minimum, the requirements and standards established  
28 by the Appraisal Foundation and the federal financial institutions  
29 regulatory agencies acting pursuant to Section 1112 of the Financial  
30 Institutions Reform Recovery and Enforcement Act of 1989, ~~Public~~  
31 ~~1989 (FIRREA) (Public Law 101-73 (FIRREA). 101-73)~~. The  
32 director shall, by regulation, require the application for a real estate  
33 appraiser license to include the applicant's social security ~~number.~~  
34 *number or individual taxpayer identification number.*

35 (d) In evaluating the experience of any applicant for a license,  
36 regardless of the number of hours required of that applicant, the  
37 director shall apply the same standards to the experience of all  
38 applicants.

39 (e) No license shall be issued to an applicant who is less than  
40 18 years of age.

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

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