

AMENDED IN SENATE JULY 23, 1998
AMENDED IN SENATE JULY 13, 1998
AMENDED IN SENATE JUNE 18, 1998
AMENDED IN ASSEMBLY APRIL 28, 1998

CALIFORNIA LEGISLATURE—1997–98 REGULAR SESSION

ASSEMBLY BILL

No. 2268

Introduced by Assembly Member Leach

February 19, 1998

An act to amend Sections 715, ~~719~~, 731, 734, and 737 of, and to add ~~Sections 729.5 and~~ *Section* 735.1 to, the Harbors and Navigation Code, to amend Section 650 of the Unemployment Insurance Code, and to amend Section 9863 of the Vehicle Code, relating to boats.

LEGISLATIVE COUNSEL'S DIGEST

AB 2268, as amended, Leach. Yacht and ship brokers: boat dealers.

(1) Under the Yacht and Ship Brokers Act, the Department of Boating and Waterways licenses the activities of brokers and salespersons engaged in the buying and selling of yachts and ships, as specified.

~~This bill would provide that every license issued to a limited liability company entitles one member thereof on behalf of the limited liability company to engage in the business of yacht broker without the payment of any further fee. The bill~~

~~would prescribe the powers and duties of a limited liability company in regard to a broker's license.~~

~~(2)~~ Under existing law, the department may not deny, suspend, or revoke a license granted under the act without a hearing, except that the department may suspend a license without a hearing for failure of a broker to maintain a bond, as specified.

This bill would additionally authorize the department to suspend a license without a hearing for failure of a broker to make available specified records to the department, as provided. The bill would allow the broker to appeal the suspension to an administrative law judge.

The bill would also authorize the department in any order issued in a disciplinary proceeding under the act to request the administrative law judge to direct a licensee found to have committed a violation of the act to pay the reasonable cost of the investigation, prosecution, and enforcement of the case, as provided in the bill. The bill would prescribe related conditions for issuance of an order.

~~(3)~~

(2) Existing law provides for the payment of unemployment insurance and disability compensation to certain employees who become unemployed or disabled. For that purpose, existing law defines employee, but excludes certain persons from that definition.

This bill would also exclude licensed yacht brokers and salesmen from the definition of "employee" if certain conditions are met.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

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

1 SECTION 1. Section 715 of the Harbors and
2 Navigation Code is amended to read:
3 715. Within one month after the closing of a
4 transaction in which title to a yacht is conveyed from a
5 seller to a purchaser through a licensed broker, the
6 licensee shall provide, or cause to be provided to the seller
7 and purchaser, a closing statement in writing of the



1 selling price thereof, including all charges and credits
2 which shall be itemized, and in the event an exchange of
3 yachts is involved, the information shall include a
4 description of the yachts and amount of added money
5 consideration, if any. The licensee shall affix his or her
6 signature to the closing statement to attest to the facts
7 provided in the closing statement. If the transaction is
8 closed through escrow and the escrowholder renders a
9 closing statement which reveals the information, that
10 shall be deemed compliance with this section on the part
11 of the licensed broker.

12 ~~SEC. 2. Section 719 of the Harbors and Navigation~~
13 ~~Code is amended to read:~~

14 ~~719. (a) A person shall be deemed qualified to submit~~
15 ~~an application for a broker's license if, as shown on the~~
16 ~~department's records, the person has been employed,~~
17 ~~within five years preceding his or her application, as a~~
18 ~~licensed salesperson for at least one year, has been~~
19 ~~licensed as a broker within five years preceding his or her~~
20 ~~application, has owned and operated a marine business~~
21 ~~selling new or used yachts for a minimum of three~~
22 ~~continuous years immediately preceding application for~~
23 ~~a broker's license, or has been employed as a broker or a~~
24 ~~yacht salesperson in another state when that employment~~
25 ~~was a primary occupation for a minimum of three~~
26 ~~continuous years immediately preceding application for~~
27 ~~a broker's license in California. Proof of employment as~~
28 ~~a broker in another state or as a marine business selling~~
29 ~~new or used yachts in California shall be in the form of all~~
30 ~~of the following:~~

31 ~~(1) State, if applicable, and federal income tax returns,~~
32 ~~or a proof-of-earning statement made by the applicant~~
33 ~~under penalty of perjury, for the three year period~~
34 ~~preceding application in California.~~

35 ~~(2) If bonded, a statement issued by the applicant's~~
36 ~~bonding company that no action has been taken against~~
37 ~~the bond for fraud or gross misrepresentation for the~~
38 ~~period for which the bond has been issued.~~

39 ~~(3) A copy of all business permits, issued by any state,~~
40 ~~county, or city agency, which, if applicable, includes the~~



~~1 fictitious business name (“dba” or “doing business as”)
2 under which the applicant conducted a yacht or ship
3 brokerage business or a marine business selling new or
4 used yachts in California for the three-year period
5 preceding application for a California broker’s license.~~

~~6 (4) If the applicant conducts a yacht or ship brokerage
7 business in another state that requires broker or
8 salesperson licensing, evidence of a current license in that
9 state.~~

~~10 (b) If the applicant is a partnership, then one of the
11 partners of the applicant shall have the foregoing
12 qualifications.~~

~~13 (c) If the applicant is a corporation, then the officer or
14 officers of the corporation to be designated for a license
15 as provided in this article shall have the foregoing
16 qualifications.~~

~~17 (d) If the applicant is an individual, the applicant shall
18 be at least 18 years of age.~~

~~19 (e) If the applicant is a limited liability company, the
20 member or members of the limited liability company
21 designated for a license as provided in this article shall
22 have the qualifications required by this section.~~

~~23 SEC. 3. Section 729.5 is added to the Harbors and
24 Navigation Code, to read:~~

~~25 729.5. (a) Every license issued to a limited liability
26 company entitles one member thereof on behalf of the
27 limited liability company to engage in the business of
28 yacht broker without the payment of any further fee.
29 That member shall be designated in the application of the
30 limited liability company for a license.~~

~~31 (b) When a broker’s license is issued to a limited
32 liability company, if the limited liability company desires
33 any member or members other than the member
34 designated by it, as provided in subdivision (a), to act
35 under its license as a broker, the limited liability company
36 shall procure an additional broker’s license for each
37 additional member. The appropriate original or renewal
38 fee shall be paid for each member, other than the
39 member designated pursuant to subdivision (a), in
40 addition to the fee paid by the limited liability company.~~



1 ~~Each such member shall qualify as provided for in this~~
2 ~~article for a broker's license.~~

3 ~~(c) A member of a limited liability company licensed~~
4 ~~to act as a broker on behalf of the limited liability~~
5 ~~company who desires also to act as a broker or salesperson~~
6 ~~under this article on his or her own behalf shall procure~~
7 ~~a separate license in accordance with this article.~~

8 ~~(d) The department may deny, suspend, or revoke the~~
9 ~~broker's license of a limited liability company as to any~~
10 ~~member acting under its license without revoking the~~
11 ~~license of the limited liability company. Every limited~~
12 ~~liability company making application for a license under~~
13 ~~this article shall furnish the department with a resolution~~
14 ~~of its members indicating the name of the member or~~
15 ~~members who shall act for and on behalf of the limited~~
16 ~~liability company.~~

17 ~~(e) Every limited liability company licensed under~~
18 ~~this article may, by resolution of its members, substitute~~
19 ~~another member for the member named in the limited~~
20 ~~liability license if the person to be substituted qualifies as~~
21 ~~provided in this article for a broker's license and the~~
22 ~~limited liability company pays the appropriate original,~~
23 ~~renewal, or transfer fee as set forth in this article.~~

24 ~~SEC. 4.—~~

25 ~~SEC. 2. Section 731 of the Harbors and Navigation~~
26 ~~Code is amended to read:~~

27 ~~731. (a) A cash deposit given instead of the bond~~
28 ~~required by Section 730 shall be held by the department~~
29 ~~during the life of the license and for a period of four years~~
30 ~~after the expiration of the license.~~

31 ~~(b) If an action is commenced on the cash deposit of~~
32 ~~a licensed broker pursuant to subdivision (a), the~~
33 ~~department may require the filing of an additional cash~~
34 ~~deposit, and immediately, upon the recovery in any~~
35 ~~action on the deposit, the broker described therein shall~~
36 ~~file a new cash deposit, equal to the amount specified in~~
37 ~~the action or recovery, but no greater than the amount~~
38 ~~specified in subdivision (a) of Section 730, whichever is~~
39 ~~less. Failure to file an additional cash deposit within 30~~
40 ~~days after notification that an additional cash deposit is~~



1 required by reason of an action filed against the cash
2 deposit, or after the recovery on a cash deposit, shall
3 constitute a failure to comply with this article, in which
4 case the department may suspend the license of the
5 licensed broker whose cash deposit has been acted on, or
6 where a cash deposit recovery has been made.

7 ~~SEC. 5.—~~

8 SEC. 3. Section 734 of the Harbors and Navigation
9 Code is amended to read:

10 734. (a) The department shall not deny, suspend, or
11 revoke a license granted under this article without a
12 hearing, except the department may suspend a license
13 without a hearing for failure of a broker to maintain a
14 bond as specified in subdivision (d) of Section 730, or for
15 failure of a broker to make available to the department
16 , for inspection, any records, as set forth in Section 735.1.

17 (b) The department may upon its own motion, and
18 shall upon the verified written complaint of any person
19 which sets forth facts which could be grounds for the
20 denial, suspension, or revocation of a license pursuant to
21 this article, investigate the actions of any broker or
22 salesman whether or not licensed.

23 (c) The suspension, expiration, or revocation by
24 operation of law of a license issued by the department, or
25 its surrender, whether voluntary or not, does not deprive
26 the department of its authority, during the period in
27 which the license may be renewed, reinstated, or
28 reissued, to institute or continue a disciplinary
29 proceeding against the licensee upon any ground
30 provided by law, to enter an order suspending or
31 revoking the license, or to take any action against the
32 licensee on any other ground provided by law.

33 (d) A broker whose license has been suspended
34 pursuant to subdivision (a) for failure to make records
35 available to the department for inspection, may request
36 that an expedited hearing be held within 30 days of the
37 suspension before an administrative law judge to appeal
38 the suspension. Upon a showing of good cause to reinstate
39 the license, the broker's license shall be reinstated. If no
40 good cause is found, the broker's license may be revoked.



1 (e) (1) Except as otherwise provided by law, in any
2 order issued in resolution of a disciplinary proceeding
3 under this article, the department may request the
4 administrative law judge to direct a licensee found to
5 have committed a violation or violations of this article to
6 pay a sum not to exceed the reasonable costs of the
7 investigation, prosecution, and enforcement of the case.

8 For purposes of this paragraph, “reasonable costs” shall
9 include, but not be limited to, all of the following:

10 (A) Attorney, paralegal, and investigator fees and
11 costs, including salary, travel, and other expenses
12 attributable to hours expended on the case by employees
13 of the office of the Attorney General and the department.

14 (B) Witness fees, travel, and other expenses paid to or
15 in connection with witnesses to facilitate their attendance
16 and testimony at the disciplinary proceeding or to
17 facilitate their appearance at a deposition, by video or by
18 other means.

19 (C) Fees and costs attributable to expert review,
20 including, but not limited to, laboratory analysis, physical
21 examination, and psychological examination, whether by
22 an independent expert or a staff member of the
23 department.

24 (D) Administrative expenses attributable to case
25 preparation and presentation, including, but not limited
26 to, exhibit preparation and document copying, postage,
27 telephone calls, word processing, whether by an
28 independent contractor or a staff member of the
29 department, and costs for obtaining certified public
30 documents.

31 (2) In the case of a disciplined licensee that is a
32 corporation or a partnership, the order may be made
33 against the licensed corporate entity or licensed
34 partnership.

35 (3) A declaration under penalty of perjury of the
36 actual costs, or a good faith estimate of costs if the actual
37 costs are not available, signed by the director, and
38 containing sufficient information by which the
39 administrative law judge can determine the costs
40 incurred in connection with the matter and the



1 reasonableness of the costs, shall be prima facie evidence
2 of reasonable costs of investigation, prosecution, and
3 enforcement of the case.

4 (4) The administrative law judge shall make a
5 proposed finding of the amount of reasonable costs of
6 investigation and prosecution of the case when requested
7 pursuant to paragraph (1). The department may reduce
8 or eliminate the award of any costs by the administrative
9 law judge, and may request the administrative law judge
10 to reconsider his or her decision if the proposed decision
11 does not make a finding on costs as requested pursuant to
12 paragraph (1).

13 (5) Where an order for recovery of costs is made and
14 timely payment is not made as directed, the department
15 may enforce the order for repayment in any appropriate
16 court. This right of enforcement shall be in addition to any
17 other rights the department may have as to any licensee
18 to pay costs.

19 (6) In any action for recovery of costs, proof of the
20 department's decision shall be conclusive proof of the
21 validity of the order of payment and the terms for
22 payment.

23 (7) The department shall not renew or reinstate the
24 license of any licensee who does not pay all of the costs
25 ordered under this section.

26 (8) All costs recovered under this section shall be
27 considered a reimbursement for costs incurred and shall
28 be deposited in the Harbors and Watercraft Revolving
29 Fund.

30 (9) Nothing in this section shall preclude the
31 department from including the recovery of the costs of
32 investigation, prosecution, and enforcement of a case in
33 any stipulated settlement.

34 ~~SEC. 6.—~~

35 *SEC. 4.* Section 735.1 is added to the Harbors and
36 Navigation Code, to read:

37 735.1. A licensed broker shall retain, for four years,
38 copies of all listings, deposit receipts, canceled checks,
39 trust records, and other documents executed or obtained
40 by the broker in connection with a transaction for which



1 a broker's license is required. These records shall be made
2 available to the department for inspection upon request.
3 If the records have not been made available within 30
4 days of a request by the department, the department may
5 subpoena the requested records. If the records have not
6 been made available within 14 days from the requested
7 day of production on the subpoena, and the director
8 determines that the public may be at risk if the broker
9 continues to be licensed, the department may suspend
10 the broker's license pursuant to Section 734.

11 ~~SEC. 7.—~~

12 *SEC. 5.* Section 737 of the Harbors and Navigation
13 Code is amended to read:

14 737. (a) The proceedings and hearings under this
15 article shall be conducted in accordance with Chapter 5
16 (commencing with Section 11500) of Part 1 of Division 3
17 of Title 2 of the Government Code, including the right of
18 judicial review as provided for in Section 11523 of the
19 Government Code.

20 (b) In addition to any other disciplinary action and in
21 lieu of a separate action in civil court, the department, as
22 part of a disciplinary hearing conducted by an
23 administrative law judge, may impose a civil penalty as
24 provided in Section 739.

25 ~~SEC. 8.—~~

26 *SEC. 6.* Section 650 of the Unemployment Insurance
27 Code is amended to read:

28 650. "Employment" does not include services
29 performed as a real estate, mineral, oil and gas, or
30 cemetery broker or as a real estate, cemetery or direct
31 sales salesperson, or a yacht broker or salesman, by an
32 individual if all of the following conditions are met:

33 (a) The individual is licensed under the provisions of
34 Chapter 19 (commencing with Section 9600) of Division
35 3 of, or Part 1 (commencing with Section 10000) of
36 Division 4 of, the Business and Professions Code, Article
37 2 (commencing with Section 700) of Chapter 5 of
38 Division 3 of the Harbors and Navigation Code, or is
39 engaged in the trade or business of primarily inperson
40 demonstration and sales presentation of consumer



1 products, including services or other intangibles, in the
2 home or sales to any buyer on a buy-sell basis, a
3 deposit-commission basis, or any similar basis, for resale
4 by the buyer or any other person in the home or
5 otherwise than from a retail or wholesale establishment.

6 (b) Substantially all of the remuneration (whether or
7 not paid in cash) for the services performed by that
8 individual is directly related to sales or other output
9 (including the performance of services) rather than to
10 the number of hours worked by that individual.

11 (c) The services performed by the individual are
12 performed pursuant to a written contract between that
13 individual and the person for whom the services are
14 performed and the contract provides that the individual
15 will not be treated as an employee with respect to those
16 services for state tax purposes.

17 ~~SEC. 9.—~~

18 *SEC. 7.* Section 9863 of the Vehicle Code is amended
19 to read:

20 9863. All fees received, except moneys collected
21 under Section 9875, pursuant to this chapter shall be
22 deposited in the Harbors and Watercraft Revolving Fund
23 and, notwithstanding Section 13340 of the Government
24 Code, are continuously appropriated, without regard to
25 fiscal years, for the administration of this chapter by the
26 department. Any funds in the Harbors and Watercraft
27 Revolving Fund derived pursuant to this chapter in
28 excess of the amount determined by the Director of
29 Finance, from time to time, to be necessary for
30 expenditure for the administration of this chapter,
31 notwithstanding Section 13340 of the Government Code,
32 are continuously appropriated to the Department of
33 Boating and Waterways, without regard to fiscal years, for
34 expenditure in accordance with Section 663.7 of the
35 Harbors and Navigation Code.

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