

ASSEMBLY, No. 4463

STATE OF NEW JERSEY 216th LEGISLATURE

INTRODUCED JUNE 1, 2015

Sponsored by:

Assemblyman THOMAS P. GIBLIN

District 34 (Essex and Passaic)

Assemblyman PATRICK J. DIEGNAN, JR.

District 18 (Middlesex)

Assemblywoman ANGELICA M. JIMENEZ

District 32 (Bergen and Hudson)

Assemblyman RALPH R. CAPUTO

District 28 (Essex)

Assemblywoman VALERIE VAINIERI HUTTLE

District 37 (Bergen)

Co-Sponsored by:

Assemblyman Eustace

SYNOPSIS

Revises laws concerning real estate licensees.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 11/10/2015)

1 AN ACT concerning real estate licensees and revising various parts
2 of the statutory law.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. Section 8 of P.L.1953, c.229 (C.45:15-12.1) is amended to
8 read as follows:

9 8. No license shall be issued by the commission to any person
10 known by it to have been, within five years theretofore, convicted
11 of forgery, burglary, robbery, any theft offense other than
12 shoplifting, criminal conspiracy to defraud, or other like offense or
13 offenses, or to any copartnership of which such person is a member,
14 or to any association or corporation of which said person is an
15 officer, director, or employee, or in which as a stockholder such
16 person has or exercises a controlling interest either directly or
17 indirectly. Any person required to register under the provisions of
18 P.L.1994, c.133 (C.2C:7-1 et al.) who is classified as either a Tier 2
19 or Tier 3 offender by the Registrant Risk Assessment Scale
20 established within the Department of Law and Public Safety,
21 Division of Criminal Justice, shall be barred for life from holding a
22 real estate broker, broker-salesperson, salesperson or referral agent
23 license. Any person who is classified as a Tier 1 offender by the
24 Registrant Risk Assessment Scale will be required to go before the
25 commission, who will determine whether to issue a broker, broker-
26 salesperson, salesperson or referral agent license to a Tier 1
27 offender.

28 (cf: P.L.1993, c.51, s.14)

29

30 2. Section 23 of P.L.2009, c.238 (C.45:15-16.2a) is amended to
31 read as follows:

32 23. a. The New Jersey Real Estate Commission shall require
33 each natural person licensed as a real estate broker, broker-
34 salesperson or salesperson, as a condition of biennial license
35 renewal pursuant to R.S.45:15-10, to complete not more than 16
36 hours of continuing education requirements imposed by the
37 commission pursuant to this section and sections 24 through 28 of
38 this amendatory and supplementary act.

39 b. The commission shall:

40 (1) (a) Approve continuing education courses, course providers,
41 and instructors recommended to the commission by the Volunteer
42 Advisory Committee created pursuant to subparagraph (b) of this
43 paragraph, except for continuing education courses or instructors
44 offered by any real estate organization whose membership consists
45 of over 50 percent of real estate brokers, broker-salespersons or

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 salespersons required to complete continuing education
2 requirements pursuant to R.S.45:15-1 et seq., which shall not
3 require approval by the Volunteer Advisory Committee and will be
4 deemed automatically approved by the commission. Schools
5 licensed by the commission as real estate schools pursuant to
6 section 47 of P.L.1993, c.51 (C.45:15-10.4) shall be deemed
7 approved providers of continuing education courses. Persons
8 licensed by the commission as real estate instructors pursuant to
9 section 48 of P.L.1993, c.51 (C.45:15-10.5) shall be deemed
10 approved instructors of continuing education courses in core topics
11 as set forth in section 27 of P.L.2009, c.238 (C.45:15-16.2e). Real
12 estate trade associations that qualify under the standards to be
13 established by commission rule as approved providers may offer
14 approved continuing education courses. A real estate organization
15 whose membership consists of over 50 percent of real estate
16 brokers, broker-salespersons and salespersons required to complete
17 continuing education requirements pursuant to R.S. 45:15-1 et seq.
18 shall not be required to submit continuing education courses and
19 instructors to be offered by that organization for approval to the
20 Volunteer Advisory Committee and shall instead have their
21 continuing education courses and instructors be deemed
22 automatically approved by the commission.

23 (b) There is hereby created a Volunteer Advisory Committee
24 which shall consist of 14 members to be comprised of real estate
25 licensees and other subject matter experts, whose members shall be
26 appointed by and serve at the pleasure of the Commissioner of
27 Banking and Insurance. One real estate licensee shall be selected
28 upon the recommendation of the President of the Senate and one
29 real estate licensee shall be selected upon the recommendation of
30 the Speaker of the General Assembly. Three members of the
31 advisory committee shall be members of the commission or their
32 designees, and not less than eight of the members, other than the
33 commission members, shall be real estate licensees. Members shall
34 be appointed to effect balanced geographic representation from the
35 central, northern and southern areas of the State, with not less than
36 three members serving from each of these areas at any time on the
37 advisory committee.

38 Members of the Volunteer Advisory Committee shall be
39 appointed by the Commissioner of Banking and Insurance no later
40 than 60 days following the enactment date of this act. Members of
41 a real estate organization committee created pursuant to paragraph
42 (c) of this subsection shall be appointed by a means set forth by that
43 organization no later than 60 days following the enactment date of
44 this act. The first meeting of the advisory committee shall be held
45 no later than 30 days from the date the commission adopts initial
46 regulations for the effectuation of this act.

47 (c) Any real estate organization whose membership consists of
48 over 50 percent of real estate brokers, broker-salespersons or

1 salespersons required to complete continuing education
2 requirements pursuant to R.S. 45:15-1 et seq. will be required to
3 create a committee which shall consist of seven members, to be
4 comprised of members of that organization who are real estate
5 licensees or other subject matter experts. No less than four of the
6 members shall be real estate brokers, broker-salespersons or
7 salespersons licensed by the commission who are members of that
8 organization. Members shall be appointed to effect balanced
9 geographic representation from the central, northern and southern
10 areas of the State, with not less than two members serving from
11 each of those areas at any time on the committee. Decisions made
12 by this committee for the approval of continuing education courses
13 or instructors will be considered final. Courses and instructors
14 approved by this committee will be deemed automatically approved
15 by the commission.

16 (2) Confer continuing education credits for courses completed in
17 other states on topics approved by the commission as appropriate
18 for elective courses, provided that such courses have been approved
19 as continuing education courses by the agency exercising regulatory
20 authority over the real estate licensees of another state and that
21 satisfactory evidence of licensees' attendance at and completion of
22 such courses is provided to the commission by the course provider.

23 (3) Confer continuing education credits for courses completed
24 and offered in this State on topics deemed of a timely nature which
25 have not been granted prior approval by the advisory committee,
26 provided that such courses are advertised prior to the time of
27 offering as not having been approved; that the course provider shall
28 submit such course offering for approval and the course is
29 subsequently approved as provided in subparagraph (a) of
30 paragraph (1) of this subsection; and that satisfactory evidence of
31 licensees' attendance at and completion of such courses is provided
32 to the commission by the course provider.

33 (4) Set parameters for the auditing and monitoring of course
34 providers.

35 (5) Establish, by regulation, the amounts of application fees
36 payable by persons seeking approval as continuing education course
37 providers, persons seeking approval of continuing education
38 courses, and persons other than instructors of pre-licensure real
39 estate education courses licensed by the commission pursuant to
40 section 48 of P.L.1993, c.51 (C.45:15-10.5), seeking approval as
41 instructors of continuing education courses. These fees shall be
42 non-refundable and shall be in amounts which do not exceed the
43 costs incurred by the commission to review these applications.

44 (6) Have the authority to waive continuing education
45 requirements, in whole or in part, on the grounds of illness,
46 emergency, hardship or active duty military service.

47 (7) Confer continuing education credits upon a person who is
48 licensed by the commission as a real estate instructor or as a broker,

1 broker-salesperson or salesperson for teaching an approved
2 continuing education course offered by an approved provider.
3 Regardless of the number of times during a biennial license term
4 that the same approved course is taught by that person, the person
5 shall receive credit toward the continuing education requirement for
6 the renewal of the person's broker, broker-salesperson or
7 salesperson license, as applicable, only in the number of credit
8 hours conferred upon licensees who attend and complete that course
9 one time during that biennial license term.

10 (8) Have the authority to audit the records and approval process
11 of any committee of a real estate organization whose membership
12 consists of over 50 percent of real estate brokers, broker-
13 salespersons or salespersons licensed pursuant to R.S. 45:15-1 et
14 seq.
15 (cf: P.L.2009, c.238, s.23)

16
17 3. Section 24 of P.L.2009, c.238 (C.45:15-16.2b) is amended to
18 read as follows:

19 24. Continuing education courses may be delivered in a
20 classroom setting or via the Internet, distance learning,
21 **【correspondence】** or video modalities, subject to the approval by
22 the New Jersey Real Estate Commission of the providers and the
23 content of such courses and of the measures utilized to ensure the
24 security and integrity of the course delivery process. The
25 commission may approve continuing education courses which
26 include periodic progress assessments and the achievement of a
27 satisfactory level of performance by the licensee on such progress
28 assessments as a condition to continuing to a succeeding segment of
29 the course. The commission shall not require, as a condition of the
30 receipt of credit for attendance at any continuing education course
31 that a licensee pass a comprehensive examination testing the
32 licensee's knowledge of the entire course content.
33 (cf: P.L.2009, c.238, s.24)

34
35 4. Section 27 of P.L.2009, c.238 (C.45:15-16.2e) is amended to
36 read as follows:

37 27. a. Not less than 50 percent of the continuing education
38 courses of study that a broker, broker-salesperson or salesperson are
39 required to complete as a condition for license renewal shall be
40 comprised of one or more of the following core topics, including
41 two hours on the topic of ethics:

- 42 (1) Agency;
- 43 (2) Disclosure;
- 44 (3) Legal issues;
- 45 (4) Ethics;
- 46 (5) Fair housing;
- 47 (6) Rules and regulations; **【and】**
- 48 (7) Real estate licensee safety; and

1 (8) Any other core topics that the New Jersey Real Estate
2 Commission may prescribe by rule.

3 In no event shall the commission require that courses in these
4 core topics comprise more than 60 percent of the total continuing
5 education hours required for the renewal of any license.

6 b. In the case of continuing education courses and programs,
7 each hour of instruction shall be equivalent to one credit.

8 (cf: P.L.2009, c.238, s.27)

9

10 5. R.S.45:15-17 is amended to read as follows:

11 45:15-17. The commission may, upon its own motion, and shall,
12 upon the verified complaint in writing of any person, investigate the
13 actions of any real estate broker, broker-salesperson, salesperson,
14 referral agent, or any person who assumes, advertises or represents
15 himself as being authorized to act as a real estate broker, broker-
16 salesperson, salesperson or referral agent or engages in any of the
17 activities described in R.S.45:15-3 without being licensed so to do.
18 The lapse or suspension of a license by operation of law or the
19 voluntary surrender of a license by a licensee shall not deprive the
20 commission of jurisdiction to proceed with any investigation as
21 herein provided or prevent the commission from taking any
22 regulatory action against such licensee, provided, however, that the
23 alleged charges arose while said licensee was duly licensed. Each
24 transaction shall be construed as a separate offense.

25 In conducting investigations, the commission may take testimony
26 by deposition as provided in R.S.45:15-18, require or permit any
27 person to file a statement in writing, under oath or otherwise as the
28 commission determines, as to all the facts and circumstances
29 concerning the matter under investigation, and, upon its own motion
30 or upon the request of any party, subpoena witnesses, compel their
31 attendance, take evidence, and require the production of any
32 material which is relevant to the investigation, including any and all
33 records of a licensee pertaining to his activities as a real estate
34 broker, broker-salesperson, salesperson or referral agent. The
35 commission may also require the provision of any information
36 concerning the existence, description, nature, custody, condition
37 and location of any books, documents, or other tangible material
38 and the identity and location of persons having knowledge of
39 relevant facts of any other matter reasonably calculated to lead to
40 the discovery of material evidence. Upon failure to obey a
41 subpoena or to answer questions posed by an investigator or legal
42 representative of the commission and upon reasonable notice to all
43 affected persons, the commission may commence an administrative
44 action as provided below or apply to the Superior Court for an order
45 compelling compliance.

46 The commission may place on probation, suspend for a period
47 less than the unexpired portion of the license period, or may revoke
48 any license issued under the provisions of R.S.45:15-1 et seq., or

1 the right of licensure when such person is no longer the holder of a
2 license at the time of hearing, or may impose, in addition or as an
3 alternative to such probation, revocation or suspension, a penalty of
4 not more than \$5,000 for the first violation, and a penalty of not
5 more than \$10,000 for any subsequent violation, which penalty
6 shall be sued for and recovered by and in the name of the
7 commission and shall be collected and enforced by summary
8 proceedings pursuant to the "Penalty Enforcement Law of 1999,"
9 P.L.1999, c.274 (C.2A:58-10 et seq.), where the licensee or any
10 person, in performing or attempting to perform any of the acts
11 mentioned herein, is deemed to be guilty of:

12 a. Making any false promises or any substantial
13 misrepresentation; or

14 b. Acting for more than one party in a transaction without the
15 knowledge of all parties thereto; or

16 c. Pursuing a flagrant and continued course of
17 misrepresentation or making of false promises through agents,
18 broker-salespersons, salespersons or referral agents, advertisements
19 or otherwise; or

20 d. Failure to account for or to pay over any moneys belonging
21 to others, coming into the possession of the licensee; or

22 e. Any conduct which demonstrates unworthiness,
23 incompetency, bad faith or dishonesty. The failure of any person to
24 cooperate with the commission in the performance of its duties or to
25 comply with a subpoena issued by the commission compelling the
26 production of materials in the course of an investigation, or the
27 failure to give a verbal or written statement concerning a matter
28 under investigation may be construed as conduct demonstrating
29 unworthiness; or

30 f. Failure to provide his client with a fully executed copy of
31 any sale or exclusive sales or rental listing contract at the time of
32 execution thereof, or failure to specify therein a definite terminal
33 date which terminal date shall not be subject to any qualifying
34 terms or conditions; or

35 g. Using any plan, scheme or method for the sale or promotion
36 of the sale of real estate which involves a lottery, a contest, a game,
37 a prize, a drawing, or the offering of a lot or parcel or lots or parcels
38 for advertising purposes, provided, however, that a promotion or
39 offer of free, discounted or other services or products which does
40 not require that the recipient of any free, discounted or other
41 services or products enter into a sale, listing or other real estate
42 contract as a condition of the promotion or offer shall not constitute
43 a violation of this subsection if that promotion or offering does not
44 involve a lottery, a contest, a game, a drawing or the offering of a
45 lot or parcel or lots or parcels for advertising purposes. A broker
46 shall disclose in writing any compensation received for such
47 promotion or offer in the form and substance as required by the
48 federal "Real Estate Settlement Procedures Act of 1974," 12 U.S.C.

- 1 ss.2601 et seq., except that, notwithstanding the provisions of that
2 federal act, written disclosure shall be provided no later than when
3 the promotion or offer is extended by the broker to the consumer; or
- 4 h. Being convicted of a crime, knowledge of which the
5 commission did not have at the time of last issuing a real estate
6 license to the licensee; or
- 7 i. Collecting a commission as a real estate broker in a
8 transaction, when at the same time representing either party in a
9 transaction in a different capacity for a consideration; or
- 10 j. Using any trade name or insignia of membership in any real
11 estate organization of which the licensee is not a member; or
- 12 k. Paying any rebate, profit, compensation or commission to
13 anyone not possessed of a real estate license, except that: (1) free,
14 discounted or other services or products provided for in subsection
15 g. of this section shall not constitute a violation of this subsection;
16 and (2) a real estate broker may provide a purchaser of residential
17 real property, but no other third party a rebate of a portion of the
18 commission paid to the broker in a transaction, so long as: the
19 broker and the purchaser contract for such a rebate at the onset of
20 the broker relationship in a written document, electronic document
21 or a buyer agency agreement; the broker complies with any State or
22 federal requirements with respect to the disclosure of the payment
23 of the rebate; and the broker recommends to the purchaser that the
24 purchaser contact a tax professional concerning the tax implications
25 of receiving that rebate. The rebate paid to the purchaser shall be in
26 the form of a credit, reducing the amount of the commission
27 payable to the broker, or a check paid by the closing agent and shall
28 be made at the time of closing; or
- 29 l. Any other conduct, whether of the same or a different
30 character than specified in this section, which constitutes fraud or
31 dishonest dealing; or
- 32 m. Accepting a commission or valuable consideration as a real
33 estate broker-salesperson, salesperson or referral agent for the
34 performance of any of the acts specified in this act, from any
35 person, except his employing broker, who must be a licensed
36 broker; or
- 37 n. Procuring a real estate license, for himself or anyone else, by
38 fraud, misrepresentation or deceit; or
- 39 o. Commingling the money or other property of his principals
40 with his own or failure to maintain and deposit in a special account,
41 separate and apart from personal or other business accounts, all
42 moneys received by a real estate broker, acting in said capacity, or
43 as escrow agent, or the temporary custodian of the funds of others,
44 in a real estate transaction; or
- 45 p. Selling property in the ownership of which he is interested in
46 any manner whatsoever, unless he first discloses to the purchaser in
47 the contract of sale his interest therein and his status as a real estate
48 broker, broker-salesperson, salesperson or referral agent; or

1 q. Purchasing any property unless he first discloses to the seller
2 in the contract of sale his status as a real estate broker, broker-
3 salesperson, salesperson or referral agent; or

4 r. Charging or accepting any fee, commission or compensation
5 in exchange for providing information on purportedly available
6 rental housing, including lists of such units supplied verbally or in
7 written form, before a lease has been executed or, where no lease is
8 drawn, before the tenant has taken possession of the premises
9 without complying with all applicable rules promulgated by the
10 commission regulating these practices; or

11 s. Failing to notify the commission within 30 days of having
12 been convicted of any crime, misdemeanor or disorderly persons
13 offense, or of having been indicted, or of the filing of any formal
14 criminal charges, or of the suspension or revocation of any real
15 estate license issued by another state, or of the initiation of formal
16 disciplinary proceedings in another state affecting any real estate
17 license held, or failing to supply any documentation available to the
18 licensee that the commission may request in connection with such
19 matter; or

20 t. The violation of any of the provisions of R.S.45:15-1 et seq.
21 or of the administrative rules adopted by the commission pursuant
22 to the provisions of R.S.45:15-1 et seq. The commission is
23 expressly vested with the power and authority to make, prescribe
24 and enforce any and all rules and regulations for the conduct of the
25 real estate brokerage business consistent with the provisions of
26 chapter 15 of Title 45 of the Revised Statutes.

27 If a licensee is deemed to be guilty of a third violation of any of
28 the provisions of this section, whether of the same provision or of
29 separate provisions, the commission may deem that person a repeat
30 offender, in which event the commission may direct that no license
31 as a real estate broker, broker-salesperson, salesperson or referral
32 agent shall henceforth be issued to that person.

33 The commission shall immediately issue a lifetime license
34 revocation for any license issued pursuant to the provisions of
35 R.S.45:15-1 et seq. where the licensee at any point has been
36 required to register under the provisions of P.L.1994, c.133
37 (C.2C:7-1 et al.) and is classified as either a Tier 2 or Tier 3
38 offender by the Registrant Risk Assessment Scale established
39 within the Department of Law and Public Safety, Division of
40 Criminal Justice.

41 The commission shall immediately hold a hearing to determine if
42 a person licensed pursuant to the provisions of R.S.45:15-1 et seq.
43 who is required to register pursuant to P.L.1994, c.133 (C.2C:7-1 et
44 al.) and is classified as a Tier 1 offender by the Registrant Risk
45 Assessment Scale will be permitted to retain a license and under
46 what conditions.

47 (cf: P.L.2009, c.273, s.1)

1 6. Section 6 of P.L.1953, c.229 (C.45:15-19.1) is amended to
2 read as follows:

3 6. When, during the term of any license issued by the
4 commission, the licensee shall be convicted in a court of competent
5 jurisdiction in the State of New Jersey or any state (including
6 federal courts) of forgery, burglary, robbery, any theft or related
7 offense with the exception of shoplifting, criminal conspiracy to
8 defraud, or other like offense or offenses, or any crime involving,
9 related to or arising out of the licensee's activities as a real estate
10 broker, broker-salesperson, salesperson or referral agent, and a duly
11 certified or exemplified copy of the judgment of conviction shall be
12 obtained by the commission, the commission shall revoke forthwith
13 the license by it theretofore issued to the licensee so convicted. The
14 commission shall immediately revoke the license of any licensee
15 required to register under the provisions of P.L.1994, c.133
16 (C.2C:7-1 et al.), who is classified as either a Tier 2 or Tier 3
17 offender by the Registrant Risk Assessment Scale established
18 within the Department of Law and Public Safety, Division of
19 Criminal Justice. The commission shall immediately hold a hearing
20 to determine if any licensee classified as a Tier 1 offender by the
21 Registrant Risk Assessment Scale will be allowed to retain a license
22 and under what conditions.
23 (cf: P.L.2009, c.238, s.14)

24

25 7. This act shall take effect immediately.

26

27

28

STATEMENT

29

30 This bill bars the issuance of real estate licenses and requires the
31 lifetime revocation of licenses issued to certain individuals
32 classified as "Megan's Law" offenders. Specifically, the bill bans
33 individuals who are classified as Tier 2 or Tier 3 offenders under
34 "Megan's Law" from holding a real estate broker, broker-
35 salesperson, salesperson or referral agent license. Any individual
36 who is classified as a Tier 1 offender under that law will be required
37 to go to the New Jersey Real Estate Commission, who will
38 determine whether to issue a broker, broker-salesperson,
39 salesperson or referral agent license to that Tier 1 offender.
40 Furthermore, the bill stipulates that the commission shall
41 immediately issue a lifetime license revocation for any such license
42 where the licensee at any point has been classified as a Tier 2 or
43 Tier 3 offender. In the case of an individual being classified as a
44 Tier 1 offender, the commission shall immediately hold a hearing to
45 determine if that individual will be permitted to retain a license and
46 under what conditions.

47 Under current law, the New Jersey Real Estate Commission is
48 required to approve continuing education courses, course providers,

1 and instructors recommended to the commission by a Volunteer
2 Advisory Committee. This bill provides that a real estate
3 organization whose membership consists of over 50 percent of real
4 estate brokers, broker-salespersons and salespersons required to
5 complete continuing education requirements shall not be required to
6 submit continuing education courses and instructors to be offered
7 by that organization for approval to the Volunteer Advisory
8 Committee and will instead have their continuing education courses
9 and instructors be deemed automatically approved by the
10 commission.

11 Any real estate organization whose membership consists of over
12 50 percent of real estate brokers, broker-salespersons or
13 salespersons required to complete continuing education
14 requirements pursuant to R.S. 45:15-1 et seq. that makes continuing
15 education instructor and course recommendations to the
16 commission will be required to create a committee which shall
17 consist of seven members, to be comprised of members of that
18 organization who are real estate licensees or other subject matter
19 experts. No less than four of the members shall be real estate
20 brokers, broker-salespersons or salespersons licensed by the
21 commission who are members of that organization. Members shall
22 be appointed to effect balanced geographic representation from the
23 central, northern and southern areas of the State, with not less than
24 two members serving from each of those areas at any time on the
25 committee. Decisions made by this committee for the approval of
26 continuing education courses or instructors will be considered final.
27 Courses and instructors approved by this committee will be deemed
28 automatically approved by the commission.

29 Furthermore, the bill revises current law so that continuing
30 education courses would be prohibited from being delivered
31 through a correspondence course. The bill also establishes a new
32 core continuing education category for real estate licensee safety
33 and codifies in the bill existing New Jersey Real Estate Commission
34 regulations mandating that two hours of continuing education
35 courses be taken in the topic of ethics.