ASSEMBLY, No. 881

STATE OF NEW JERSEY

219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:
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SYNOPSIS

Revises laws concerning real estate licensees.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.

AN ACT concerning real estate licensees, supplementing chapter 15 of Title 45 of the Revised Statutes, and revising various parts of the statutory law.

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

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

8. No license shall be issued by the commission to any person known by it to have been, within five years theretofore, convicted of forgery, burglary, robbery, any theft offense other than shoplifting, criminal conspiracy to defraud, or other like offense or offenses, or to any copartnership of which such person is a member, or to any association or corporation of which said person is an officer, director, or employee, or in which as a stockholder such person has or exercises a controlling interest either directly or indirectly. Except as otherwise provided in section 7 of P.L. , c. (C.) (pending before the Legislature as this bill), no license shall be issued or renewed by the commission to any person known by it to have been convicted of any sex offense that would qualify the person for registration pursuant to section 2 of P.L.1994, c.133 (C.2C:7-2) or under an equivalent statute of another state or jurisdiction.

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

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

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

b. The commission shall:

(1) (a) Approve continuing education courses, course providers, and instructors recommended to the commission by the Volunteer Advisory Committee created pursuant to subparagraph (b) of this paragraph, except for continuing education courses or instructors offered by any real estate organization whose membership consists of over 50 percent of real estate brokers, broker-salespersons or salespersons required to complete continuing education requirements pursuant to R.S.45:15-1 et seq., which shall not require approval by the Volunteer Advisory Committee and will be

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.

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

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

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

(c) Any real estate organization whose membership consists of over 50 percent of real estate brokers, broker-salespersons or salespersons required to complete continuing education requirements pursuant to R.S.45:15-1 et seq. will be required to create a committee which shall consist of seven members, to be

comprised of members of that organization who are real estate licensees or other subject matter experts. No less than four of the members shall be real estate brokers, broker-salespersons or salespersons licensed by the commission who are members of that organization. Members shall be appointed to effect balanced geographic representation from the central, northern and southern areas of the State, with not less than two members serving from each of those areas at any time on the committee. Decisions made by this committee for the approval of continuing education courses or instructors will be considered final. Courses and instructors approved by this committee will be deemed automatically approved by the commission.

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

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

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

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

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

(7) Confer continuing education credits upon a person who is licensed by the commission as a real estate instructor or as a broker, broker-salesperson or salesperson for teaching an approved continuing education course offered by an approved provider. Regardless of the number of times during a biennial license term

that the same approved course is taught by that person, the person shall receive credit toward the continuing education requirement for the renewal of the person's broker, broker-salesperson or salesperson license, as applicable, only in the number of credit hours conferred upon licensees who attend and complete that course one time during that biennial license term.

(8) Have the authority to audit the records and approval process of any committee of a real estate organization whose membership consists of over 50 percent of real estate brokers, broker-salespersons or salespersons licensed pursuant to R.S.45:15-1 et seq.

(cf: P.L.2009, c.238, s.23)

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

24. Continuing education courses may be delivered in a classroom setting or via the Internet, distance learning, ⟦correspondence⟧ or video modalities, subject to the approval by the New Jersey Real Estate Commission of the providers and the content of such courses and of the measures utilized to ensure the security and integrity of the course delivery process. The commission may approve continuing education courses which include periodic progress assessments and the achievement of a satisfactory level of performance by the licensee on such progress assessments as a condition to continuing to a succeeding segment of the course. The commission shall not require, as a condition of the receipt of credit for attendance at any continuing education course that a licensee pass a comprehensive examination testing the licensee's knowledge of the entire course content.

(cf: P.L.2009, c.238, s.24)

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

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

(1) Agency;

(2) Disclosure;

(3) Legal issues;

(4) Ethics;

(5) Fair housing;

(6) Rules and regulations; ⟦and⟧

(7) Real estate licensee safety; and

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

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

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

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

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

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

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

The commission may place on probation, suspend for a period less than the unexpired portion of the license period, or may revoke any license issued under the provisions of R.S.45:15-1 et seq., or the right of licensure when such person is no longer the holder of a license at the time of hearing, or may impose, in addition or as an

alternative to such probation, revocation or suspension, a penalty of not more than $5,000 for the first violation, and a penalty of not more than $10,000 for any subsequent violation, which penalty shall be sued for and recovered by and in the name of the commission and shall be collected and enforced by summary proceedings pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.), where the licensee or any person, in performing or attempting to perform any of the acts mentioned herein, is deemed to be guilty of:

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

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

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

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

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

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

g. Using any plan, scheme or method for the sale or promotion of the sale of real estate which involves a lottery, a contest, a game, a prize, a drawing, or the offering of a lot or parcel or lots or parcels for advertising purposes, provided, however, that a promotion or offer of free, discounted or other services or products which does not require that the recipient of any free, discounted or other services or products enter into a sale, listing or other real estate contract as a condition of the promotion or offer shall not constitute a violation of this subsection if that promotion or offering does not involve a lottery, a contest, a game, a drawing or the offering of a lot or parcel or lots or parcels for advertising purposes. A broker shall disclose in writing any compensation received for such promotion or offer in the form and substance as required by the federal "Real Estate Settlement Procedures Act of 1974," 12 U.S.C. ss.2601 et seq., except that, notwithstanding the provisions of that

federal act, written disclosure shall be provided no later than when the promotion or offer is extended by the broker to the consumer; or

h. Being convicted of a crime, knowledge of which the commission did not have at the time of last issuing a real estate license to the licensee; or

i. Collecting a commission as a real estate broker in a transaction, when at the same time representing either party in a transaction in a different capacity for a consideration; or

j. Using any trade name or insignia of membership in any real estate organization of which the licensee is not a member; or

k. Paying any rebate, profit, compensation or commission to anyone not possessed of a real estate license, except that: (1) free, discounted or other services or products provided for in subsection g. of this section shall not constitute a violation of this subsection; and (2) a real estate broker may provide a purchaser of residential real property, but no other third party a rebate of a portion of the commission paid to the broker in a transaction, so long as: the broker and the purchaser contract for such a rebate at the onset of the broker relationship in a written document, electronic document or a buyer agency agreement; the broker complies with any State or federal requirements with respect to the disclosure of the payment of the rebate; and the broker recommends to the purchaser that the purchaser contact a tax professional concerning the tax implications of receiving that rebate. The rebate paid to the purchaser shall be in the form of a credit, reducing the amount of the commission payable to the broker, or a check paid by the closing agent and shall be made at the time of closing; or

l. Any other conduct, whether of the same or a different character than specified in this section, which constitutes fraud or dishonest dealing; or

m. Accepting a commission or valuable consideration as a real estate broker-salesperson, salesperson or referral agent for the performance of any of the acts specified in this act, from any person, except his employing broker, who must be a licensed broker; or

n. Procuring a real estate license, for himself or anyone else, by fraud, misrepresentation or deceit; or

o. Commingling the money or other property of his principals with his own or failure to maintain and deposit in a special account, separate and apart from personal or other business accounts, all moneys received by a real estate broker, acting in said capacity, or as escrow agent, or the temporary custodian of the funds of others, in a real estate transaction; or

p. Selling property in the ownership of which he is interested in any manner whatsoever, unless he first discloses to the purchaser in the contract of sale his interest therein and his status as a real estate broker, broker-salesperson, salesperson or referral agent; or

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

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

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

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

u. Failing to notify the commission of having been convicted of any sex offense that would qualify the person for registration pursuant to section 2 of P.L.1994, c.133 (C.2C:7-2) or under an equivalent statute of another state or jurisdiction, regardless of the date of the conviction.

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

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

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

6. When, during the term of any license issued by the commission, the licensee shall be convicted in a court of competent jurisdiction in the State of New Jersey or any state (including federal courts) of forgery, burglary, robbery, any theft or related offense with the exception of shoplifting, criminal conspiracy to defraud, or other like offense or offenses, or any crime involving, related to or arising out of the licensee's activities as a real estate

broker, broker-salesperson, salesperson or referral agent, and a duly certified or exemplified copy of the judgment of conviction shall be obtained by the commission, the commission shall revoke forthwith the license by it theretofore issued to the licensee so convicted. <u>The commission shall revoke the license of any licensee convicted of any sex offense that would qualify the licensee for registration pursuant to section 2 of P.L.1994, c.133 (C.2C:7-2) or under an equivalent statute of another state or jurisdiction.</u>
(cf: P.L.2009, c.238, s.14)

7. (New section) No person shall be disqualified from licensure on the basis of conviction for any sex offense that would qualify the licensee for registration pursuant to section 2 of P.L.1994, c.133 (C.2C:7-2) or under an equivalent statute of another state or jurisdiction if the person has affirmatively demonstrated to the commission clear and convincing evidence of the person's rehabilitation. In determining whether the person has affirmatively demonstrated rehabilitation, the commission shall consider the follow factors:

a. the nature and responsibility of the position which the convicted person would hold;

b. the nature and seriousness of the offense;

c. the circumstances under which the offense occurred;

d. the date of the offense

e. the age of the person when the offense was committed;

f. whether the offense was an isolated or repeated incident;

g. any social conditions which may have contributed to the offense; and

h. any evidence of rehabilitation, including good conduct in prison or in the community, counseling or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional work-release programs, or the recommendation of persons who have had the person under their supervision.

If the commission determines that the person has affirmatively demonstrated rehabilitation, the commission at its discretion may condition licensure or renewal upon compliance with any conditions the commission shall deem appropriate for the enhancement of public safety.

8. This act shall take effect immediately.

STATEMENT

This bill makes various revisions to the laws concerning real estate licensees.

This bill predicates the disqualification of real estate licenses issued to certain individuals based upon the conviction of any sex offense that would qualify the person for registration under "Megan's Law," or an equivalent statute of another state or jurisdiction. The bill permits the New Jersey Real Estate Commission to place licensees on probation, suspend or revoke any real estate license, or impose penalties on a real estate licensee, for failure to notify the commission of the licensee having been convicted of any sex offense that would qualify the person for registration under "Megan's Law," or an equivalent statute of another state or jurisdiction, regardless of the date of the conviction. Furthermore, the bill stipulates that the commission will not disqualify a person from licensure on the basis of a conviction for any sex offense that would qualify the person for registration under "Megan's Law," or an equivalent statute of another state or jurisdiction, if the person has affirmatively demonstrated to the commission clear and convincing evidence of the person's rehabilitation. If the commission determines that the person has affirmatively demonstrated rehabilitation, the commission at its discretion may condition licensure or renewal upon compliance with any conditions the commission deems appropriate for the enhancement of public safety.

Under current law, the New Jersey Real Estate Commission is required to approve continuing education courses, course providers, and instructors recommended to the commission by a Volunteer Advisory Committee. This bill provides that a real estate organization whose membership consists of over 50 percent of real estate brokers, broker-salespersons and salespersons required to complete continuing education requirements shall not be required to submit continuing education courses and instructors to be offered by that organization for approval to the Volunteer Advisory Committee and will instead have their continuing education courses and instructors be deemed automatically approved by the commission.

Any real estate organization whose membership consists of over 50 percent of real estate brokers, broker-salespersons or salespersons required to complete continuing education requirements pursuant to R.S.45:15-1 et seq. that makes continuing education instructor and course recommendations to the commission will be required to create a committee which shall consist of seven members, to be comprised of members of that organization who are real estate licensees or other subject matter experts. No less than four of the members shall be real estate brokers, broker-salespersons or salespersons licensed by the commission who are members of that organization. Members shall be appointed to effect balanced geographic representation from the central, northern and southern areas of the State, with not less than two members serving from each of those areas at any time on the

committee. Decisions made by this committee for the approval of continuing education courses or instructors will be considered final. Courses and instructors approved by this committee will be deemed automatically approved by the commission.

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