

ASSEMBLY, No. 884

STATE OF NEW JERSEY

219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:

Assemblyman THOMAS P. GIBLIN

District 34 (Essex and Passaic)

SYNOPSIS

Concerns real estate licensees.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



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

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

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

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

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

26

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

29 23. a. The New Jersey Real Estate Commission shall require
30 each natural person licensed as a real estate broker, broker-
31 salesperson or salesperson, as a condition of biennial license
32 renewal pursuant to R.S.45:15-10, to complete not more than 16
33 hours of continuing education requirements imposed by the
34 commission pursuant to this section and sections 24 through 28 of
35 **【this amendatory and supplementary act】** P.L.2009, c.238 (C.45:15-
36 16b through C.45:15-16f).

37 b. The commission shall:

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

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 require approval by the Volunteer Advisory Committee and will be
2 deemed automatically approved by the commission if the
3 continuing education courses or instructors meet the requirements
4 imposed on continuing education courses and instructors pursuant
5 to R.S.45:15-1 et seq. Schools licensed by the commission as real
6 estate schools pursuant to section 47 of P.L.1993, c.51 (C.45:15-
7 10.4) shall be deemed approved providers of continuing education
8 courses. Persons licensed by the commission as real estate
9 instructors pursuant to section 48 of P.L.1993, c.51 (C.45:15-10.5)
10 shall be deemed approved instructors of continuing education
11 courses in core topics as set forth in section 27 of P.L.2009, c.238
12 (C.45:15-16.2e). Real estate trade associations that qualify under
13 the standards to be established by commission rule as approved
14 providers may offer approved continuing education courses. A real
15 estate organization whose membership consists of over 50 percent
16 of real estate brokers, broker-salespersons and salespersons required
17 to complete continuing education requirements pursuant to R.S.
18 45:15-1 et seq. shall not be required to submit continuing education
19 courses and instructors to be offered by that organization for
20 approval to the Volunteer Advisory Committee and shall instead
21 have their continuing education courses and instructors be deemed
22 automatically approved by the commission if the continuing
23 education courses or instructors meet the requirements imposed on
24 continuing education courses and instructors pursuant to R.S.45:15-
25 1 et seq.

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

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

1 60 days following the enactment date of P.L. , c. (C.) (pending
2 before the Legislature as this bill).

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

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

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

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

41 (5) Establish, by regulation, the amounts of application fees
42 payable by persons seeking approval as continuing education course
43 providers, persons seeking approval of continuing education
44 courses, and persons other than instructors of pre-licensure real
45 estate education courses licensed by the commission pursuant to
46 section 48 of P.L.1993, c.51 (C.45:15-10.5), seeking approval as
47 instructors of continuing education courses. These fees shall be

1 non-refundable and shall be in amounts which do not exceed the
2 costs incurred by the commission to review these applications.

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

6 (7) Confer continuing education credits upon a person who is
7 licensed by the commission as a real estate instructor or as a broker,
8 broker-salesperson or salesperson for teaching an approved
9 continuing education course offered by an approved provider.
10 Regardless of the number of times during a biennial license term
11 that the same approved course is taught by that person, the person
12 shall receive credit toward the continuing education requirement for
13 the renewal of the person's broker, broker-salesperson or
14 salesperson license, as applicable, only in the number of credit
15 hours conferred upon licensees who attend and complete that course
16 one time during that biennial license term.

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

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

23

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

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

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

41

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

44 27. a. Not less than 50 percent of the continuing education
45 courses of study that a broker, broker-salesperson or salesperson are
46 required to complete as a condition for license renewal shall be
47 comprised of one or more of the following core topics:

48 (1) Agency;

- 1 (2) Disclosure;
- 2 (3) Legal issues;
- 3 (4) Ethics, which shall not be less than two hours;
- 4 (5) Fair housing;
- 5 (6) Rules and regulations; **[and]**
- 6 (7) Real estate licensee safety; and
- 7 (8) Any other core topics that the New Jersey Real Estate
- 8 Commission may prescribe by rule.

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

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

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

15

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

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

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

1 affected persons, the commission may commence an administrative
2 action as provided below or apply to the Superior Court for an order
3 compelling compliance.

4 The commission may place on probation, suspend for a period
5 less than the unexpired portion of the license period, or may revoke
6 any license issued under the provisions of R.S.45:15-1 et seq., or
7 the right of licensure when such person is no longer the holder of a
8 license at the time of hearing, or may impose, in addition or as an
9 alternative to such probation, revocation or suspension, a penalty of
10 not more than \$5,000 for the first violation, and a penalty of not
11 more than \$10,000 for any subsequent violation, which penalty
12 shall be sued for and recovered by and in the name of the
13 commission and shall be collected and enforced by summary
14 proceedings pursuant to the "Penalty Enforcement Law of 1999,"
15 P.L.1999, c.274 (C.2A:58-10 et seq.), where the licensee or any
16 person, in performing or attempting to perform any of the acts
17 mentioned herein, is deemed to be guilty of:

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

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

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

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

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

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

41 g. Using any plan, scheme or method for the sale or promotion
42 of the sale of real estate which involves a lottery, a contest, a game,
43 a prize, a drawing, or the offering of a lot or parcel or lots or parcels
44 for advertising purposes, provided, however, that a promotion or
45 offer of free, discounted or other services or products which does
46 not require that the recipient of any free, discounted or other
47 services or products enter into a sale, listing or other real estate
48 contract as a condition of the promotion or offer shall not constitute

- 1 a violation of this subsection if that promotion or offering does not
2 involve a lottery, a contest, a game, a drawing or the offering of a
3 lot or parcel or lots or parcels for advertising purposes. A broker
4 shall disclose in writing any compensation received for such
5 promotion or offer in the form and substance as required by the
6 federal "Real Estate Settlement Procedures Act of 1974," 12 U.S.C.
7 ss.2601 et seq., except that, notwithstanding the provisions of that
8 federal act, written disclosure shall be provided no later than when
9 the promotion or offer is extended by the broker to the consumer; or
- 10 h. Being convicted of a crime, knowledge of which the
11 commission did not have at the time of last issuing a real estate
12 license to the licensee; or
- 13 i. Collecting a commission as a real estate broker in a
14 transaction, when at the same time representing either party in a
15 transaction in a different capacity for a consideration; or
- 16 j. Using any trade name or insignia of membership in any real
17 estate organization of which the licensee is not a member; or
- 18 k. Paying any rebate, profit, compensation or commission to
19 anyone not possessed of a real estate license, except that: (1) free,
20 discounted or other services or products provided for in subsection
21 g. of this section shall not constitute a violation of this subsection;
22 and (2) a real estate broker may provide a purchaser of residential
23 real property, but no other third party a rebate of a portion of the
24 commission paid to the broker in a transaction, so long as: the
25 broker and the purchaser contract for such a rebate at the onset of
26 the broker relationship in a written document, electronic document
27 or a buyer agency agreement; the broker complies with any State or
28 federal requirements with respect to the disclosure of the payment
29 of the rebate; and the broker recommends to the purchaser that the
30 purchaser contact a tax professional concerning the tax implications
31 of receiving that rebate. The rebate paid to the purchaser shall be in
32 the form of a credit, reducing the amount of the commission
33 payable to the broker, or a check paid by the closing agent and shall
34 be made at the time of closing; or
- 35 l. Any other conduct, whether of the same or a different
36 character than specified in this section, which constitutes fraud or
37 dishonest dealing; or
- 38 m. Accepting a commission or valuable consideration as a real
39 estate broker-salesperson, salesperson or referral agent for the
40 performance of any of the acts specified in this act, from any
41 person, except his employing broker, who must be a licensed
42 broker; or
- 43 n. Procuring a real estate license, for himself or anyone else, by
44 fraud, misrepresentation or deceit; or
- 45 o. Commingling the money or other property of his principals
46 with his own or failure to maintain and deposit in a special account,
47 separate and apart from personal or other business accounts, all
48 moneys received by a real estate broker, acting in said capacity, or

- 1 as escrow agent, or the temporary custodian of the funds of others,
2 in a real estate transaction; or
- 3 p. Selling property in the ownership of which he is interested in
4 any manner whatsoever, unless he first discloses to the purchaser in
5 the contract of sale his interest therein and his status as a real estate
6 broker, broker-salesperson, salesperson or referral agent; or
- 7 q. Purchasing any property unless he first discloses to the seller
8 in the contract of sale his status as a real estate broker, broker-
9 salesperson, salesperson or referral agent; or
- 10 r. Charging or accepting any fee, commission or compensation
11 in exchange for providing information on purportedly available
12 rental housing, including lists of such units supplied verbally or in
13 written form, before a lease has been executed or, where no lease is
14 drawn, before the tenant has taken possession of the premises
15 without complying with all applicable rules promulgated by the
16 commission regulating these practices; or
- 17 s. Failing to notify the commission within 30 days of having
18 been convicted of any crime, misdemeanor or disorderly persons
19 offense, or of having been indicted, or of the filing of any formal
20 criminal charges, or of the suspension or revocation of any real
21 estate license issued by another state, or of the initiation of formal
22 disciplinary proceedings in another state affecting any real estate
23 license held, or failing to supply any documentation available to the
24 licensee that the commission may request in connection with such
25 matter; or
- 26 t. The violation of any of the provisions of R.S.45:15-1 et seq.
27 or of the administrative rules adopted by the commission pursuant
28 to the provisions of R.S.45:15-1 et seq. The commission is
29 expressly vested with the power and authority to make, prescribe
30 and enforce any and all rules and regulations for the conduct of the
31 real estate brokerage business consistent with the provisions of
32 chapter 15 of Title 45 of the Revised Statutes; or
- 33 u. Failing to notify the commission of having been convicted of
34 any sex offense that would qualify the person for registration
35 pursuant to section 2 of P.L.1994, c.133 (C.2C:7-2) or under an
36 equivalent statute of another state or jurisdiction, regardless of the
37 date of the conviction.
- 38 If a licensee is deemed to be guilty of a third violation of any of
39 the provisions of this section, whether of the same provision or of
40 separate provisions, the commission may deem that person a repeat
41 offender, in which event the commission may direct that no license
42 as a real estate broker, broker-salesperson, salesperson or referral
43 agent shall henceforth be issued to that person.
44 (cf: P.L.2009, c.273, s.1)
- 45
- 46 6. Section 6 of P.L.1953, c.229 (C.45:15-19.1) is amended to
47 read as follows:

1 6. When, during the term of any license issued by the
2 commission, the licensee shall be convicted in a court of competent
3 jurisdiction in the State of New Jersey or any state (including
4 federal courts) of forgery, burglary, robbery, any theft or related
5 offense with the exception of shoplifting, criminal conspiracy to
6 defraud, or other like offense or offenses, or any crime involving,
7 related to or arising out of the licensee's activities as a real estate
8 broker, broker-salesperson, salesperson or referral agent, and a duly
9 certified or exemplified copy of the judgment of conviction shall be
10 obtained by the commission, the commission shall revoke forthwith
11 the license by it theretofore issued to the licensee so convicted. The
12 commission shall revoke the license of any licensee convicted of
13 any sex offense that would qualify the licensee for registration
14 pursuant to section 2 of P.L.1994, c.133 (C.2C:7-2) or under an
15 equivalent statute of another state or jurisdiction.

16 (cf: P.L.2009, c.238, s.14)

17
18 7. (New section) No person shall be disqualified from licensure
19 on the basis of conviction for any sex offense that would qualify the
20 licensee for registration pursuant to section 2 of P.L.1994, c.133
21 (C.2C:7-2), or under an equivalent statute of another state or
22 jurisdiction, if the person has affirmatively demonstrated to the
23 commission clear and convincing evidence of the person's
24 rehabilitation. In determining whether the person has affirmatively
25 demonstrated rehabilitation, the commission shall consider the
26 follow factors:

- 27 a. the nature and responsibility of the position which the
28 convicted person would hold;
- 29 b. the nature and seriousness of the offense;
- 30 c. the circumstances under which the offense occurred;
- 31 d. the date of the offense;
- 32 e. the age of the person when the offense was committed;
- 33 f. whether the offense was an isolated or repeated incident;
- 34 g. any social conditions which may have contributed to the
35 offense; and
- 36 h. any evidence of rehabilitation, including good conduct in
37 prison or in the community, counseling or psychiatric treatment
38 received, acquisition of additional academic or vocational
39 schooling, successful participation in correctional work-release
40 programs, or the recommendation of persons who have had the
41 person under their supervision.

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

1 members of that organization who are real estate licensees or other
2 subject matter experts. No less than four of the members shall be real
3 estate brokers, broker-salespersons or salespersons licensed by the
4 commission who are members of that organization. Members shall be
5 appointed to effect balanced geographic representation from the
6 central, northern and southern areas of the State, with not less than two
7 members serving from each of those areas at any time on the
8 committee. Decisions made by this committee for the approval of
9 continuing education courses or instructors will be considered final.
10 Courses and instructors approved by this committee will be deemed
11 automatically approved by the commission if the courses and
12 instructors meet the requirements imposed on courses and instructors
13 pursuant to R.S.45:15-1 et seq. The bill also provides that the
14 commission has the authority to audit, investigate, and enforce laws or
15 regulations pertaining to the records and approval process of any
16 committee formed pursuant to the provisions of the bill.

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