



Ohio Legislative Service Commission *123rd House Bill Analysis*

Am. Sub. H.B. 524

123rd General Assembly
(As Passed by the House)

Reps. Corbin, D. Miller, Metelsky, Cates, Harris, Austria, Tiberi, Terwilleger, Carey, Kilbane, Distel, Allen, Logan, Patton, Evans, Goodman, Krupinski, Verich, Britton, Damschroder, Perry, Sykes, Krebs, Olman, Mettler, Stevens, Salerno, DePiero, Barrett

BILL SUMMARY

- Adds "limited liability companies" and "limited liability partnerships" to the list of business entities affected by the licensing laws governing real estate brokers and salespersons.
- Establishes a citation method of discipline for licensees who violate laws or rules regarding advertising.
- Allows investigators and auditors of the Superintendent of Real Estate to review and audit the business records of continuing education course providers.
- Modifies application requirements for licensure as a real estate salesperson or broker.
- Expands the number of days during which the Superintendent of Real Estate has jurisdiction to consider whether a licensee has violated the licensing laws upon receipt of a complaint.
- Requires all fines imposed on real estate brokers and salespersons as a form of disciplinary sanction to be deposited into the Real Estate Recovery Fund.
- Prohibits recovery from the Real Estate Recovery Fund for attorney's fees and losses incurred by investors in real estate if the applicant for recovery of funds and the licensee are principals in the investment.
- Requires the Superintendent to impose a special assessment not to exceed \$10 each on licensees if the amount of money available in the Real Estate Recovery Fund is less than \$1 million.
- Allows the Superintendent to verify the actual and direct losses of an applicant for recovery of funds from the Real Estate Recovery Fund.
- Allows a discharge in bankruptcy to relieve a former licensee from suspension and license reactivation requirements if the underlying judgment is included in the discharge and has not been reaffirmed by the debtor.
- Eliminates the Superintendent's discretion to waive the real estate broker examination requirements for an applicant previously licensed by the Superintendent in the preceding two years.
- Requires a broker who intends to deposit the broker's license with the Superintendent to notify all salespersons associated with the broker upon applying to deposit the broker's license.
- Eliminates the fee associated with placing a broker's or salesperson's license on deposit

with the Real Estate Commission when a person enters the armed services and modifies renewal requirements for these persons.

- Eliminates the provision that allows the Superintendent to reactivate a license revoked for failure to comply with continuing education requirements if the license was issued prior to January 1, 1980, if the person completes 30 hours of continuing education requirements.
- Exempts 70-year-old licensees whose licenses are in an inactive status from having to meet continuing education requirements.

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CONTENT AND OPERATION

The definition of a real estate broker

Under current law, a real estate broker includes any person, partnership, association, or corporation, foreign or domestic, who for a fee, commission, or other valuable consideration, or with the intention, or in the expectation, or upon the promise of receiving or collecting a fee, commission, or other valuable consideration, performs certain services involving real estate.

The bill adds limited liability companies and limited liability partnerships to the definition of a real estate broker and throughout the bill, the terms "limited liability company" and "limited liability partnership" are inserted into existing law in any place where other business forms, such as partnerships and associations, are listed. This has the effect of including these types of business entities under coverage of the Real Estate Brokers Law (R.C. Chapter 4735.) or excluding them from certain requirements in the same fashion as other types of business entities presently are covered or exempt from coverage.

The bill eliminates from the definition of a real estate broker: a person who is employed by or on behalf of the owner of lots, or other parcels of real estate, at a stated salary, or upon a commission, or upon a salary and commission basis or otherwise, to sell such real estate, or any parts of it, in lots or other parcels, and who sells, exchanges, or offers, attempts, or agrees to negotiate the sale or exchange of that type of lot or parcel of real estate. (Sec. 4735.01(A)(8).)

The bill also adds the following specific exclusions to the definitions of "real estate broker," "real estate salesperson," "foreign real estate dealer," and "foreign real estate salesperson":

(1) Persons who engage in the brokering of the sale of business assets, not including the negotiation of the sale, lease, exchange or assignment of any interest in real estate;

(2) Persons who engage in the sale of manufactured homes (sec. 4735.01(I)(5) and (6).)

Other definitions

The bill creates definitions for the following terms:

(1) "Inactive license" means the license status in which a salesperson's license is in the possession of the Division of Real Estate and Professional Licensing (hereafter "Division"), annually renewed as required by the Real Estate Brokers Law, and not associated with a real estate broker.

(2) "Broker's license on deposit" means the license status in which a broker's license is in the possession of the Division and annually renewed as required by the Real Estate Brokers Law.

(3) "Suspended license" means the license status that prohibits a licensee from providing services that require a license for a specified interval of time.

(4) "Reactivate" means the process prescribed by the Superintendent of Real Estate and Professional Licensing to remove a license from an inactive, suspended, or broker's license on deposit status to allow a licensee to provide services that require a license.

(5) "Revoked" means the license status in which the license is void and not eligible for reactivation. (Sec. 4735.01(M) to (Q).)

The Ohio Real Estate Commission

Under current law, the Ohio Real Estate Commission (hereafter "Commission") appoints annually, from its members, a president. Under the bill, the Commission also must appoint annually, a vice president. (Sec. 4735.03.)

Current law requires the Commission, upon appeal by any party affected or on its own motion, to review any order of the Superintendent of Real Estate (hereafter "Superintendent"). Under the bill, the Commission also must review any application determination of the Superintendent regarding license applications that come to the Commission on appeal by any party affected. (Sec. 4735.03.)

Rulemaking

Under current law, the Commission has general rule-making authority. The bill adds that this rule-making authority specifically extends to authorization for the Commission to adopt rules on placing a salesperson's license on an inactive status instead of escrow and the process of reactivating a suspended or revoked license or one that has not been renewed.

The bill also adds a provision allowing the Commission to adopt rules in accordance with the Administrative Procedure Act and guidelines with which the Superintendent must comply in the exercise of the Superintendent's power to reject names proposed to be used by limited liability corporations and limited liability partnerships.

The bill changes from mandatory to discretionary the authority to adopt a rule at any time there is no rule in effect establishing a guideline or standard required by the rulemaking provision of the Real Estate Brokers Law. The bill also changes from mandatory to discretionary the Commission's authority to adopt rules establishing standards and guidelines with which the Superintendent must comply. Furthermore, the bill requires the Commission to adopt rules regarding annual notice of renewal forms and filing deadlines and removes reference to staggered annual renewal in current law. (Sec. 4735.10.)

Prohibitions

Under current law, no person, partnership, association, or corporation is allowed to operate as a real estate broker or salesperson without a license. The same are also prohibited from employing as an officer, director, manager, or principal employee any person previously holding a license whose license has been terminated by failure to file a certificate of continuation, by revocation, or by suspension.

The bill also prohibits any person or business entity from providing real estate broker or salesperson services if the person's or business entity's license is: (1) inactive, (2) suspended, (3) a broker's license on deposit, or (4) revoked. The bill replaces the prohibition against employing persons in the positions listed above due to a license termination with a prohibition against employing people for those positions whose license has been placed in inactive status, suspended or revoked and who has not thereafter reactivated the license or received a new license. The bill requires the Commission to adopt rules in accordance with the Administrative Procedure Act to provide licensees notice of suspension or revocation or both. (Sec. 4735.02 and 4735.14(C).)

Under current law, the Superintendent may discipline a real estate broker or salesperson for acting in a manner enumerated in an existing list of prohibitions mainly concerning unethical behavior. To this list, the bill adds that the Superintendent may discipline a real estate broker or salesperson for the following:

- (1) Having knowingly inserted or participated in inserting any materially inaccurate term in a document, including naming a false consideration;
- (2) Having failed to inform the licensee's client of the existence of an offer or counter offer or having failed to present an offer or counter offer in a timely manner, unless otherwise instructed by the client, provided the instruction of the client does not conflict with any state or federal law. (Sec. 4735.18(A).)

The Superintendent of Real Estate and Professional Licensing

Current law requires the Superintendent to maintain an investigation and audit section to investigate complaints and to conduct inspections, audits, and other inquiries that the Superintendent considers appropriate to enforce under the real estate licensing laws. Current law gives the investigators and auditors the right to review and audit the business records of licensees.

The bill gives the investigators and auditors the right to review and audit the business records of continuing education course providers as well. (Sec. 4735.05(B)(4).)

Complaints and investigations

Current law sets forth a procedure for processing written complaints filed against licensees with the Division. Under that procedure, within ten business days after receiving a written report from an investigator from the Division's investigation and audit section, the Superintendent of the Division must review the report and determine whether reasonable and substantial evidence of a violation exists. If the Superintendent finds that this evidence exists, current law directs the Superintendent to notify the parties (changed to "complainant" and "licensee" in the bill) of the Superintendent's decision within five business days. The bill expands to 14 business days the time in which the Superintendent must make a determination of whether reasonable and substantial evidence of a violation exists and changes to seven business days the time in which the Superintendent must notify the complainant and licensee of that decision. (Sec. 4735.051.)

Under current law, at the conclusion of formal hearings, the hearing examiner must file a report of the findings of fact and conclusions of law with the Superintendent, the Commission, and the parties. Current law requires the commissioners to review the hearing examiner's report and the parties' evidence and to hear the testimony of any party upon request. The Commission then must decide whether to impose disciplinary sanctions on the licensee. Under the bill, the Commission is not required to review the parties' evidence before it makes the decision whether to impose disciplinary sanctions. (Sec. 4735.051(F).)

Under current law, all fines imposed on licensees as a form of a disciplinary sanction are to be deposited in the Real Estate Operating Fund. The bill requires the fines instead be deposited in the Real Estate Recovery Fund. (Sec. 4735.051(I).)

Application for a real estate broker license

Under current law, an application for a real estate broker license must be made in writing to the Superintendent on forms provided by the Superintendent. The bill eliminates the requirement the application be in writing. (Sec. 4735.06.)

Existing law also requires that an application be accompanied by a recent photograph of the applicant and the names of three resident freeholders of the county in which the applicant resides or has the applicant's place of business. If the applicant has resided, or has engaged in the real estate business, for less than one year in the county from which the application is made, the application must be accompanied by a recent photograph of the applicant and the names of three resident freeholders of each of the counties where the applicant formerly resided or engaged in the real estate business during the period of one year prior to the filing of the application. No one of the freeholders may be related to the applicant, and one of them must be the applicant's most recent broker. If the applicant's most recent broker is a relative of the applicant or is not a freeholder, the name of a third freeholder must be provided. The freeholders must furnish information to the Superintendent, on forms prescribed by the Superintendent, concerning the character of the applicant. The bill eliminates all of these provisions. (Sec. 4735.06(A).)

Application requirements to become a real estate broker

Under current law, an applicant for a real estate broker's license is not allowed to take the broker's examination unless the applicant meets the application requirements to the satisfaction of the Superintendent. This includes the requirement that if a person is licensed as a real estate salesperson prior to January 1, 1990, in order to take the examination, the applicant must have successfully completed, at an institution of higher education, all of the following:

- (1) 30 hours of classroom instruction in real estate practice;
- (2) 30 hours of classroom instruction in real estate law subjects (unless the applicant is admitted to practice before the Ohio Supreme Court);
- (3) 30 hours of classroom instruction in real estate appraisal;
- (4) 30 hours of classroom instruction in real estate finance;
- (5) 3/4 hours, or its semester equivalent, in financial management;
- (6) 3/4 hours, or its semester equivalent, in human resource or personnel management;
- (7) 3/4 hours, or its semester equivalent, in business law.

Under the bill, a person licensed as a real estate salesperson prior to August 1, 2001, must meet the above requirements to take the examination. A person licensed as a real estate salesperson after August 1, 2001, in order to qualify to take the examination, must complete all the requirements listed above except that the person must complete an additional ten hours in the areas of real estate law subjects (unless admitted to practice before the Ohio Supreme Court) and real estate practice, and is only required to complete 20 hours of classroom instruction in each of the areas of real estate appraisal and finance. (Sec. 4735.07(B).)

Examinations for a real estate broker license

Under current law, an applicant who meets the requirements to take the examination for a real estate broker license at the time of application may be allowed to take the examination at the next regularly scheduled examination after the applicant is notified of admission to the examination. The bill requires an applicant to take the examination no later than 12 months after the applicant is notified of admission to the examination. The bill also eliminates the requirement that an examination must be given entirely in writing. (Sec. 4735.07(D).)

The bill eliminates the existing provision that gives the Superintendent the discretion to waive the examination requirement for an applicant who has been licensed as a real estate broker by the Superintendent or the Commission at some time during the two-year period immediately preceding the date of the current application. (Sec. 4735.07(G).)

Reciprocity

Under current law, the Superintendent may waive the requirement of examination in the case of an application from a nonresident real estate broker or salesperson, if the nonresident real estate broker or salesperson is licensed in a state having similar requirements as Ohio and if it allows similar recognition to Ohio licensees.

The bill eliminates this provision and instead allows the Superintendent to waive one or more of the licensing requirements for a nonresident real estate broker or salesperson only pursuant to a reciprocity agreement with the licensing authority of the state from which the nonresident applicants holds a valid real estate broker or salesperson license. (Secs. 4735.07(E) and 4735.09(E).)

Real estate broker post-license instruction requirements

Under current law each person licensed as a real estate broker on or after January 1, 1990, but before January 1, 2001, must complete ten hours of classroom instruction in real estate brokerage, and must file a certificate with the Superintendent from a qualifying institution to verify the successful completion of the instruction, within 12 months of the date of issuance of the salesperson's license. *The term "salesperson's license" is used instead of "broker's license" in current law. It appears through the context of the paragraph that the intention was to refer to a "broker's license." This unintentional error was corrected in the bill.* Persons licensed on or after January 1, 2001, must complete the same requirements and submit proof to the Superintendent on or before the date that the licensee's first continuing education requirements must be completed after licensure as a salesperson. *Id.* Under current law, if the requirement is not met within the time allowed, the license of the real estate broker is suspended automatically without the taking of any action by the Commission. The broker then has one year after the date of suspension of the broker's license to meet the requirements and have the license reinstated.

The bill requires every licensee to submit proof of successful completion of ten hours of classroom instruction in real estate brokerage no later than 12 months after the date of issue of the real estate broker's license. If the licensee fails to meet the requirements within 12 months, then the licensee's license is suspended automatically, and the licensee has 12 months after the date of suspension to meet the requirements and reactivate the license. Also, under the bill, a licensee's license is automatically revoked if the licensee fails to complete the requirements within 12 months of the date the license is suspended. Here, and throughout the bill, reference to disciplinary action taking place automatically means that the bill authorizes such action to take place without any further action by the Real Estate Commission or the Superintendent. The bill also clarifies that the Superintendent is prohibited from reactivating a license until the Superintendent is satisfied that the licensee is in compliance with the law. (Sec. 4735.07(G)(1).)

Issuing real estate broker licenses to individuals

Under current law, the Superintendent must issue a real estate broker license to an individual who has received a grade of 75% or better on the real estate broker's examination administered under the supervision of the Superintendent or to an individual determined by the Superintendent to be qualified to be licensed without examination because the individual has been licensed as a real estate broker at some time during the two-year period immediately preceding the date of the current application.

Under the bill, the Superintendent is required to issue a real estate broker's license when the Superintendent is satisfied that the applicant has received a passing score on each portion of the real estate broker's examination. The bill does not require the examination to be administered under the Superintendent's supervision. The bill removes the provision that allows for licensure without examination as a result of having been previously licensed in the two-year period immediately preceding application. (Sec. 4735.08.)

Application for a real estate salesperson license

Current law requires an applicant for a real estate salesperson license to apply in writing and to provide a recent photograph of the applicant. The bill eliminates these requirements. (Sec. 4735.09(A).)

Under current law, the Superintendent must issue a real estate salesperson's license when satisfied that the applicant has received a grade of 75% or better on the salesperson's examination. The bill requires an applicant to receive a passing score on each portion of the salesperson's examination as determined by rule by the Commission. (Sec. 4735.09(E).)

Requirements that must be met to take the real estate salesperson examination

Under current law, an individual must have successfully completed all of the following at an institution of higher education to be allowed to take the real estate salesperson examination:

- (1) 30 hours of classroom instruction in real estate practice;
- (2) 30 hours of classroom instruction related to real estate law subjects (unless the applicant is admitted to practice before the Ohio Supreme Court);
- (3) 30 hours of classroom instruction in real estate appraisal;
- (4) 30 hours of classroom instruction in real estate finance.

Under the bill, a person beginning instruction, prior to August 1, 2001, must meet the above requirements. A person beginning instruction, on or after August 1, 2001, must complete an additional ten hours in the areas of the real estate law subjects (unless admitted to practice before the Ohio Supreme Court) and real estate practice and is only required to complete 20 hours of classroom instruction in the areas of real estate appraisal and finance. (Sec. 4735.09(F).)

Under current law, all persons whose applications are pending must be notified of the pending status by mail at least 60 days prior to the examination. Current law also permits an applicant, at the Superintendent's discretion, to complete classroom instruction requirements concurrently with the processing of the applicant's application for examination. The bill eliminates these provisions. (Sec. 4735.09(H).)

Real estate salesperson post-license education requirements

Under current law each person licensed as a real estate salesperson on or after January 1, 1990, but before January 1, 2001, must complete ten hours of classroom instruction in real estate courses that cover current issues regarding consumers, real estate practice, ethics, and real estate law at a qualifying institution, and must file a certificate with the Superintendent from a qualifying institution to verify the successful completion of the instruction, within 12 months of the date of issuance of the broker's license. *The term "broker" is used instead of "salesperson" in current law. It appears through the context of the paragraph that the intention was to refer to a "broker." This unintentional error was corrected in the bill.* Persons licensed on or after January 1, 2001, must complete the same requirements and submit proof to the Superintendent on or before the date that the licensee's first continuing education requirements must be completed after licensure as a broker. *Id.* Under current law, if the requirement is not met within the time allowed, the license of the real estate salesperson is suspended automatically without the taking of any action by the Commission. The salesperson then has one year after the date of suspension of the license to meet the requirements and have the license reinstated.

The bill requires every licensee to submit proof of successful completion of ten hours of classroom instruction in real estate brokerage no later than 12 months after the date of issue of the real estate salesperson's license. If the licensee fails to meet the requirements within 12 months, then the licensee's license is suspended automatically, and the licensee has 12 months after the date of suspension to meet the requirements and reactivate the license. Under the bill, a licensee's license is automatically revoked if the licensee fails to complete the requirements within 12 months of the date the license is suspended. (Sec. 4735.09(G).)

Information required to appear on a real estate license

Under current law, each license must show the name and address of the licensee, and in the case of a business entity, the name and address of each of the members or officers of the business entity and each license must be signed by the President of the Commission and the Superintendent. Under the bill, each license is not required to be signed by the Superintendent.

Under current law, each license issued is required to show the name and address of the licensee and in the case of a partnership, association or corporation, the name and address of each of the members or officers of the business entity. A real estate salesperson's or foreign real estate salesperson's license must show the name of the real estate broker or foreign real estate dealer with whom the salesperson is or is to be associated. Current law requires the President of the Commission and the Superintendent to sign each license.

The bill clarifies that only a broker's or foreign real estate dealer's license is required to show the additional information of names and addresses of each of the members or officers of the business entity. The bill also adds limited liability corporations and limited liability partnerships to the list of business entities covered by this provision. Under the bill, also only the President of the Commission is required to sign each license. (Sec. 4735.11.)

Branch offices

Under existing law a real estate broker must prominently display the broker's license in the broker's office or place of business. The bill requires a broker who maintains more than one place of business within Ohio to apply for and procure a duplicate license for each branch office maintained by the broker. A duplicate license must be prominently displayed at each branch office location. The bill requires each branch office to be in the responsible charge of a licensed broker or salesperson. (Sec. 4735.13.)

The Real Estate Recovery Fund

Maintenance of the Fund

Under current law, the amount of money in the Real Estate Recovery Fund (created in the state treasury) must be ascertained by the Superintendent each year as of October 1. If that amount is less than \$1 million, the Director of Budget and Management upon the request of the Superintendent, may transfer from the Real Estate Operating Fund to the Real Estate Recovery Fund, the amount of money necessary to bring the Recovery Fund up to a \$1 million balance. Current law allows the Superintendent to credit \$2 of each fee collected for a real estate broker's or salesperson's license, or for the renewal of a license to the Fund if the Fund does not exceed \$2 million.

Under the bill, the amount of money in the Real Estate Recovery Fund must be ascertained by the Superintendent each

year as of July 1. The Commission, in accordance with rules adopted by it, must impose a special assessment not to exceed \$10 annually on each licensee filing a continuation of business certificate, if the amount available in the Fund is less than \$1 million on the first day of the July preceding that filing. The Commission may impose a special assessment not to exceed \$5 annually if the amount available in the Fund is greater than \$1 million, but less than \$2 million on the first day of July preceding that filing. The bill prohibits the Commission from imposing a special assessment if the amount available in the Fund exceeds \$2 million on the first day of July preceding that filing. The bill eliminates the provision permitting the Superintendent to credit \$2 from fees into the Fund. (Sec. 4735.12(A) and (F).)

Payments made from the Fund

Under current law, any person who obtains a final judgment in any court of competent jurisdiction against any broker or salesperson licensed under the laws governing real estate brokers or salespersons in Ohio, on the grounds of conduct that is in violation of those laws or the rules adopted under them, and that is associated with an act or transaction of a broker or salesperson specified or comprehended in the definition of a broker or salesperson, may file a verified application in any court of common pleas for an order directing payment out of the Real Estate Recovery Fund of the portion of the judgment that remains unpaid and that represents the actual and direct loss sustained by the applicant. Current law allows the Superintendent to allow the person to recover attorney's fees in addition to court costs.

The bill prohibits the recovery of attorney's fees from the Fund and only allows a person to recover money from the Fund if the conduct that is in violation of the Real Estate Brokers Law is associated with an act or transaction that only a licensed real estate broker or licensed real estate salesperson is authorized to perform as specified in the definition of each in the Real Estate Brokers Law. (Sec. 4735.12(B)(1).)

Specific restrictions barring recovery from the Fund

Current law does not allow a person to recover money from the Real Estate Recovery Fund for acts that occurred on or before March 4, 1975. The bill eliminates this provision. The bill also prohibits recovery from the Real Estate Recovery Fund for losses incurred by investors in real estate if the applicant for recovery of funds and the licensee are principals in the investment. (Sec. 4735.12(B)(5)(d).)

Defense of the Fund

Current law allows the Superintendent to defend an action in which a person applies to a court of common pleas for an order directing payment out of the Real Estate Recovery Fund. In defending an action, the bill allows the Superintendent to verify a claimant's actual and direct losses and to challenge the underlying court judgment to determine whether the underlying judgment is based on activity that only a licensed broker or salesperson is allowed to perform. (Sec. 4735.12(C).)

Suspension related to payments made from the Fund

Current law requires that, if the Superintendent pays from the Real Estate Recovery Fund any amount in settlement of a claim or toward the satisfaction of a judgment against a licensed broker or salesperson, the license of the broker or salesperson is automatically suspended on the date of payment from the Fund. Current law does not allow a person to be relieved from suspension or reinstatement requirements if the person has received a discharge in bankruptcy.

Under the bill, a discharge in bankruptcy does relieve a person from the suspension and requirements for reactivation of a license if the underlying judgment has been included in the discharge and has not been reaffirmed by the debtor. (Sec. 4735.12(E).)

Custody of a real estate salesperson's license

Under current law, the license of a real estate salesperson must be mailed to and remain in the possession of the licensed broker with whom the salesperson is or is to be associated until canceled or until the salesperson leaves the broker. Current law also requires the broker to return the salesperson's license to the Superintendent for cancellation upon the termination of the association between the salesperson and the broker.

The bill requires the broker to retain the salesperson's license until the licensee places the license on inactive status or until the salesperson leaves the brokerage or is terminated. The bill, however, does not require the Superintendent to cancel the salesperson's license. Under the bill, the failure of a broker to return the license of a real estate salesperson who leaves or who is terminated within three business days of the receipt of a written request from the salesperson for the return of the license, when a copy of the request is also forwarded to the Superintendent, is prima facie evidence of misconduct. (Sec. 4735.13(B).)

Notifying the Superintendent of a change in association or business location

Under current law, a broker who changes a business location without giving notice and without the issuance of new licenses is guilty of misconduct. Under the bill, the same action is only considered prima facie evidence of misconduct (which presumably would remain to be proved). (Sec. 4735.13(D).)

Current law requires a broker who desires to associate with another broker in the capacity of a salesperson to file an application with the Superintendent that includes the payment of a \$13 fee to cover the Superintendent's expenses of holding the broker's license (which must be turned in to the Superintendent) and issuing a salesperson's license to that individual. Under current law, a broker who intends to deposit the broker's license with the Superintendent, must give written notice to all salespersons associated with the broker.

The bill eliminates the \$13 fee and requires the broker to give written notice in a format prescribed by the Superintendent to all salespersons associated with the broker when actually applying to place the broker's license on deposit with the Superintendent. (Sec. 4735.13(E).) Under existing law, \$4 of the \$13 fee is credited to the Real Estate Education and Research Fund. This \$4 credit is eliminated under the bill.

Procedure for placing a license on deposit when entering the armed forces

Under current law, if a real estate broker or salesperson enters the armed forces, the licensee may place the license on deposit with the Commission until six months after the licensee's discharge from the armed services for a \$7 administration fee.

Under the bill, a licensee may place the license on deposit with the Commission and is not required to renew the license annually until the renewal date that follows the date of discharge from the armed services. The fee and six-month time restriction are eliminated under the bill. (Sec. 4735.13(G).)

License renewal

Current law requires each licensed broker, brokerage, or salesperson to file a certificate of continuation in business on a form mailed from the Superintendent to the licensee at the licensee's personal residence and the place of business of the brokerage. If a licensee fails to renew a license within 15 days after December 31, the licensee's license is canceled. A person's license may be reactivated within one year of the cancellation.

Throughout the bill, the phrase "certificate of continuation in business" is replaced with "notice of renewal." Also, the bill requires the licensee to indicate on the form whether the licensee wishes to maintain the licensee's license in an active or inactive status. The licensee is required to notify the Commission of a change in personal residence address. Also, a licensee's failure to notify the Commission of a change in personal residence address does not exempt the licensee from the requirement to file a license renewal by the required deadline, established by the Commission in rules. Furthermore, the bill eliminates a provision that allows a broker to be disciplined for failure to notify a salesperson that the broker does not intend to list the salesperson on the renewal form. Under the bill, a license is suspended, rather than canceled, for failure to file a notice of renewal on or before the licensee's renewal date. A suspended license may be reactivated within 12 months of the date of suspension for an additional payment equal to 50% of the renewal fee, paid at the time of application for reactivation and submission of the renewal fee. The bill also prohibits the Superintendent from renewing a license if the licensee is not in compliance with the laws that apply to licensed real estate brokers or salespersons. (Sec. 4735.14.)

License fees

The bill establishes a reactivation fee of \$25 for a broker's license placed into or taken out of a business entity and establishes the reactivation fee of \$20 for a salesperson's license. The bill requires that any fee and penalty assessed to the person seeking reactivation must accompany the application for reactivation or notice of renewal. (Sec. 4735.15.)

Creating a renewal schedule based on a licensee's birthday

Under current law, license renewal dates are established by the Commission in rule.

The bill creates a renewal schedule based on the licensee's birthday. Under the bill, for the license renewal period beginning January 1, 2001, and ending December 31, 2001, licensees will pay prorated license renewal fees for licenses renewed on or before the licensee's birthday in the year 2001. Thereafter, the fees revert to the amounts specified under existing law. The prorated license renewal fees are as follows:

<u>Month of birth</u>	<u>Broker license renewal fee</u>	<u>Salesperson license renewal fee</u>
January	\$49	\$39
February	\$53	\$42
March	\$57	\$45

April	\$61	\$48
May	\$65	\$51
June	\$69	\$54
July	\$73	\$57
August	\$77	\$60
September	\$81	\$63
October	\$85	\$66
November	\$89	\$69
December	\$93	\$72
(Section 4.)		

Continuing education requirements

Reporting schedule

Under current law, a person licensed as either a real estate broker or salesperson must submit proof satisfactory to the Superintendent that the licensee has completed the requisite number of classroom hours of continuing education on or before the licensee's birthday occurring three years after the licensee's date of initial licensure, and on or before the licensee's birthday every three years thereafter (sec. 4735.141).

The bill cycles into the birthday reporting system all persons licensed prior to the effective date of the current law, June 30, 1999, who were not previously subject to a reporting system based on the licensee's birthday. Under the bill, all licensed salespersons or brokers licensed before January 1, 2001, must submit proof of completion of the requisite number of hours of continuing education to the Superintendent as follows:

- (1) For continuing education that would have been due in the year 2001, on or before the licensee's birthday in the year 2002, and on or before the licensee's birthday every three years thereafter;
- (2) For continuing education that would have been due in the year 2002, on or before the licensee's birthday in the year 2003, and on or before the licensee's birthday every three years thereafter;
- (3) For continuing education that would have been due in the year 2003, on or before the licensee's birthday in the year 2004, and on or before the licensee's birthday every three years thereafter. (Section 3.)

Suspension for failure to comply with continuing education requirements

The bill eliminates the current requirement that a person whose license has been revoked and whose revoked license was issued prior to January 1, 1980, may have the person's license reactivated by the Superintendent at any time after it had been revoked upon submitting proof satisfactory to the Superintendent that the person satisfactorily completed, during the period since the revocation of the person's license, 30 classroom hours of continuing education as prescribed by the Commission. (Sec. 4735.141(C).)

Requirements for licensees over a certain age

Under current law, a licensee who is 70 years of age or older on June 13, 1996, must complete nine hours of continuing education every three years on or before the licensee's birthday. The bill exempts a licensee from continuing education requirements if the licensee is 70 years or older and if the licensee's license is in an inactive status. (Sec. 4735.141(A).)

Advertising to provide real estate services

Identifying information

Current law requires a real estate broker and a real estate salesperson to include identifying information in any advertisement to buy, sell, exchange, or lease real estate. The bill expands the requirement to require the same identifying information to appear in any advertisement to engage in any act regulated by the laws governing real estate brokers and salespersons. (Sec. 4735.16(B)(1).)

Disciplinary action

Under current law, any real estate broker or salesperson who advertises in a manner other than what is provided for in law, is guilty of misrepresentation in advertising. Under the bill, a broker or salesperson is allowed only to advertise in accordance with the law or rules governing real estate brokers and salespersons. If a licensee violates this provision, the violation is considered prima facie evidence of misconduct under the real estate laws that prohibit misrepresentation in

advertising. If the Superintendent determines that a broker or salesperson is guilty of misrepresentation in advertising, the Superintendent may either initiate disciplinary sanctions in accordance with the Administrative Procedure Act, or personally, or by certified mail, serve the licensee with a citation.

Every citation must give notice to the licensee of the alleged violation and inform the licensee of the opportunity to request a hearing under the Administrative Procedure Act. The bill also requires the citation to contain a statement of a fine of \$200 per violation, not to exceed \$2,500 per citation. If a licensee fails to request a hearing within 30 days of the date of service of the citation, or the Superintendent and the licensee fail to reach an alternative agreement, the citation becomes final. Unless otherwise indicated, if the licensee fails to comply with any of the terms of the citation within 30 days of the date of service the Superintendent is required to automatically suspend the licensee's license. If a licensee is cited more than three times within 12 consecutive months, the Superintendent is required to initiate disciplinary sanctions for any subsequent violation that occurs within that 12-month period.

All fines collected under this provision of the bill must be credited to the Real Estate Recovery Fund. (Sec. 4735.16.)

Inspecting foreign real estate

Under current law, with specified exceptions, no person, other than an actual owner selling for the owner's own account in a single transaction may sell, lease, or otherwise deal in Ohio in any foreign real estate unless the person has qualified the foreign real estate. Others must file an application meeting specified requirements with the Superintendent. Current law allows the Superintendent, through the Division of Real Estate, to inspect and examine the foreign real estate or investigate the applicant or the person interested in, dealing in, or selling, the foreign real estate. The bill allows the Superintendent or the Superintendent's designee employed by the Department of Commerce to perform the same investigations. (Sec. 4735.25(E).)

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	12-23-99	p. 1469
Reported, H. Commerce & Labor	03-29-00	p. 1739
Passed House (96-0)	04-04-00	p. 1746

See Later Version

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