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Indicates New Matter

COMMITTEE REPORT

May 23, 2013

**S. 75**

Introduced by Senator Cromer

S. Printed 5/23/13--H.

Read the first time March 19, 2013.

**THE COMMITTEE ON**

**LABOR, COMMERCE AND INDUSTRY**

To whom was referred a Bill (S. 75) to amend Section 40‑57‑130, Code of Laws of South Carolina, 1976, relating to license renewals for real estate brokers and salesmen, so as to require, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass with amendment:

Amend the bill, as and if amended, by deleting all after the enacting words and inserting:

/ SECTION 1. Section 40‑57‑40 of the 1976 Code, as last amended by Act 279 of 2012, is further amended to read:

“Section 40‑57‑40. (A) The South Carolina Real Estate Commission consists of ten members elected or appointed as follows:

(1) seven members who are professionally engaged in the active practice of real estate, one elected from each of the seven congressional districts by a majority of house members and senators, representing the house and senate districts located within each of the congressional districts;

(2) two members representing the public who are not professionally engaged in the practice of real estate, each appointed by the Governor with the advice and consent of the Senate;

(3) the nine elected and appointed members shall elect from the State at large one additional member who must be in the active practice of real estate.

(B)(1) Members elected to the commission pursuant to subsection (A)(1) of this section must be elected as provided in this subsection. Legislators residing in the congressional district shall meet upon written call of a majority of the members of the delegation of each district at a time and place to be designated in the call for the purpose of electing a commissioner to represent the district. A majority present, either in person or by written proxy, of the delegation from a given congressional district constitutes a quorum for the purpose of electing a district commissioner. No person may be elected commissioner who fails to receive a majority vote of the members of the delegation.

(2) The delegation must be organized by the election of a chairman and a secretary, and the delegations of each congressional district shall adopt such rules as they consider proper to govern the election. Any absentee may vote by written proxy. When the election is completed, the chairman and the secretary of the delegation immediately shall transmit the names of the persons elected to the Secretary of State.

(~~B~~C) Commission members serve a term of four years and until their successors are elected or appointed and qualify. A vacancy on the commission must be filled in the manner of the original election or appointment for the remainder of the unexpired term.

(~~C~~D) Before entering upon the discharge of the duties of the office, a member’s election or appointment must be certified by and the member shall take and file with the Secretary of State, in writing, an oath to perform the duties of the office as a member of the commission and to uphold the Constitutions of this State and the United States.

(~~D~~E) A member’s term commences on the date election or appointment is certified by the Secretary of State.

(~~E~~F) A member may be removed from office in accordance with Section 1‑3‑240.

(G)(1) The director, with the advice and consent of the commission, shall designate for the exclusive use of the commission one full‑time administrator who is a real estate broker licensed pursuant to the provisions of this chapter with at least five years experience as a real estate broker or salesman licensed pursuant to the provisions of this chapter. The experience requirements in this subitem apply only to an administrator hired after the effective date of this act.

(2) The director shall designate five full‑time inspector‑investigators for the exclusive use of the commission. Before conducting inspections or investigations on behalf of the commission, these inspector‑investigators must complete one hundred hours of training in programs that are approved by the commission and provide instruction on real estate principles, state statutory and regulatory law, and investigative techniques.

(3) The department may not assign work that is not exclusively related to carrying out the purposes of this chapter to a person assigned for the exclusive use of the commission under items (1) or (2) of this subsection without approval of the commission.

(4) A person employed by the commission under this subsection only may be terminated by the director.”

SECTION 2. Chapter 57, Title 40 of the 1976 Code is amended by adding:

“Section 40‑57‑115. In addition to other requirements established by law and for the purpose of determining an applicant’s eligibility for licensure as a salesman, broker, broker‑in‑charge, property manager, and property manager‑in‑charge, the commission shall require initial applicants to submit to a state criminal history background check, supported by fingerprints by the South Carolina Law Enforcement Division, and a national criminal history background check, supported by fingerprints by the Federal Bureau of Investigation. The results of these criminal history background checks must be reported to the department. The South Carolina Law Enforcement Division is authorized to retain the fingerprints for certification purposes and for notification of the department regarding criminal charges. The cost of the state criminal history background check must be paid by the applicant upon application for the state check. The cost of the national criminal history background check is established by the Federal Bureau of Investigation and must be paid by the applicant upon application for the national check. The commission shall keep information received pursuant to this section confidential, except that information relied upon in denying licensure may be disclosed as necessary to support the administrative action.”

SECTION 3. Section 40‑57‑150 of the 1976 Code is amended to read:

“Section 40‑57‑150. (A) Investigations must be conducted in accordance with Section 40‑1‑80.

(B) A restraining order must be obtained in accordance with Section 40‑1‑100.

(C)(1) Whenever the department has reason to believe that a violation of this chapter has occurred, an investigation must be initiated within thirty days.

(2) The department shall conclude its investigation within one hundred fifty days from receipt of the complaint or seek a waiver of this period from the commission upon a showing of due diligence and extenuating circumstances.

(~~2~~3) A hearing on the charges must be at the time and place designated by the commission and must be conducted in accordance with the Administrative Procedures Act.

(~~3~~4) The commission shall render a decision and shall serve, within ninety days, notice, in writing, of the commission’s decision to the licensee charged. The commission also shall state in the notice the date upon which the ruling or decision becomes effective.

(~~4~~5) The department shall maintain a public docket or other permanent record in which must be recorded all orders, consent orders, or stipulated settlements.

(D) A licensee may voluntarily surrender his license in accordance with Section 40‑1‑150.

(E)(1) The commission may impose disciplinary action in accordance with Section 40‑1‑120.

(2) Upon determination by the commission that one or more of the grounds for discipline exists, as provided for in Section 40‑1‑110 or Section 40‑57‑140, the commission may impose a fine of not less than one hundred or more than one thousand dollars for each violation. The commission may recover the costs of the investigation and the prosecution as provided for in Section 40‑1‑170.

(3) Nothing in this section prevents a licensee from voluntarily entering into a consent order with the commission wherein violations are not contested and sanctions are accepted.

(F) The department shall annually post a report that provides the data for the number of complaints received, the number of investigations initiated, the average length of investigations, and the number of investigations that exceeded one hundred fifty days.”

SECTION 4. Section 40‑57‑145(A)(8) of the 1976 Code is amended to read:

“(8) is convicted of violating the federal and state fair housing laws, forgery, embezzlement, breach of trust, larceny, obtaining money or property under false pretense, extortion, fraud, conspiracy to defraud, or ~~any other offense classified as a felony or involving moral turpitude, or pleading guilty or nolo contendere to any such offense in a court of competent jurisdiction of this State, any other state, or any federal court~~ is required to register under the sex offender registry pursuant to Section 23‑3‑430, or has been convicted of a violent crime as defined in Section 16‑1‑60, has been convicted during the previous five years of a felony directly related to the practice of the profession, or has been convicted during the previous seven years of a felony, an essential element of which is dishonesty, reasonably related to the practice of the profession, or pleading guilty or nolo contendere to any such offense in a court of competent jurisdiction of this State, any other state, or any federal court;”

SECTION 5. This act takes effect upon approval by the Governor. /

Renumber sections to conform.

Amend title to conform.

WILLIAM E. SANDIFER III for Committee.

**A** **BILL**

TO AMEND SECTION 40‑57‑130, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO LICENSE RENEWALS FOR REAL ESTATE BROKERS AND SALESMEN, SO AS TO REQUIRE A CRIMINAL BACKGROUND CHECK FROM A SOURCE APPROVED BY THE DEPARTMENT OF LABOR, LICENSING AND REGULATION; AND BY ADDING SECTION 40‑57‑245 SO AS TO REQUIRE THAT THE DEPARTMENT ASSIGN ONE INVESTIGATOR FOR EVERY TWO THOUSAND FIVE HUNDRED LICENSEES TO ENSURE COMPLAINTS ARE PROCESSED AND CONSIDERED IN AN EXPEDITIOUS MANNER.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Chapter 57, Title 40 of the 1976 Code is amended by adding:

“Section 40‑57‑115. In addition to other requirements established by law and for the purpose of determining an applicant’s eligibility for licensure as a salesman, broker, broker‑in‑charge, property manager, and property manager‑in‑charge, the commission shall require initial applicants to submit to a state criminal records check, by a source approved by the commission, and a national criminal records check. Costs of conducting a criminal records check must be borne by the applicant. The commission shall keep information received pursuant to this section confidential, except that information relied upon in denying licensure may be disclosed as necessary to support the administrative action.”

SECTION 2. Section 40‑57‑150 of the 1976 Code is amended to read:

“Section 40‑57‑150. (A) Investigations must be conducted in accordance with Section 40‑1‑80 and must be performed by investigators who have completed one hundred hours of training in programs that are approved by the commission and provide instruction on real estate principles, state statutory and regulatory law, and investigative techniques.

(B) A restraining order must be obtained in accordance with Section 40‑1‑100.

(C)(1) Whenever the department has reason to believe that a violation of this chapter has occurred, an investigation must be initiated within thirty days.

(2) The department shall conclude its investigation within one hundred fifty days from receipt of the complaint or seek a waiver of this period from the commission upon a showing of due diligence and extenuating circumstances.

(~~2~~3) A hearing on the charges must be at the time and place designated by the commission and must be conducted in accordance with the Administrative Procedures Act.

(~~3~~4) The commission shall render a decision and shall serve, within ninety days, notice, in writing, of the commission’s decision to the licensee charged. The commission also shall state in the notice the date upon which the ruling or decision becomes effective.

(~~4~~5) The department shall maintain a public docket or other permanent record in which must be recorded all orders, consent orders, or stipulated settlements.

(D) A licensee may voluntarily surrender his license in accordance with Section 40‑1‑150.

(E)(1) The commission may impose disciplinary action in accordance with Section 40‑1‑120.

(2) Upon determination by the commission that one or more of the grounds for discipline exists, as provided for in Section 40‑1‑110 or Section 40‑57‑140, the commission may impose a fine of not less than one hundred or more than one thousand dollars for each violation. The commission may recover the costs of the investigation and the prosecution as provided for in Section 40‑1‑170.

(3) Nothing in this section prevents a licensee from voluntarily entering into a consent order with the commission wherein violations are not contested and sanctions are accepted.

(F) The department shall annually post a report that provides the data for the number of complaints received, the number of investigations initiated, the average length of investigations, and the number of investigations that exceeded one hundred fifty days.”

SECTION 3. Section 40-57-145(A)(8) of the 1976 Code is amended to read:

“(8) is convicted of violating the federal and state fair housing laws, forgery, embezzlement, breach of trust, larceny, obtaining money or property under false pretense, extortion, fraud, conspiracy to defraud, or ~~any other offense classified as a felony or involving moral turpitude, or pleading guilty or nolo contendere to any such offense in a court of competent jurisdiction of this State, any other state, or any federal court~~ has been convicted of a violent crime as defined in Section 16-1-60, has been convicted during the previous five years of a felony directly related to the practice of the profession, or has been convicted during the previous seven years of a felony, an essential element of which is dishonesty, reasonably related to the practice of the profession, or pleading guilty or nolo contendere to any such offense in a court of competent jurisdiction of this State, any other state, or any federal court;”

SECTION 4. This act takes effect upon approval by the Governor.

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