

Senate Fiscal Agency
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SFA**BILL ANALYSIS**

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Senate Bill 1437 (Substitute S-1 as reported)
Senate Bill 1438 (Substitute S-1 as reported)
Sponsor: Senator Walter H. North
Committee: Economic Development, International Trade and Regulatory Affairs

Date Completed: 11-4-02

RATIONALE

Article 25 of the Occupational Code governs the licensing and regulation of real estate brokers and salespersons in Michigan. Subject to oversight by the Department of Consumer and Industry Services (DCIS), licensees must meet specific educational requirements, pass an examination, take continuing education courses, and comply with administrative rules. In addition, the State License Fee Act sets fees for real estate brokers and salespersons, and allocates a portion of the license fees to the Real Estate Education Fund, which the DCIS may use only to operate departmental programs related to the education of real estate licensees and applicants for licensure.

Reportedly, some unlicensed individuals with little or no experience, education, or training have been engaging in real estate practices throughout the State. Although this activity is a misdemeanor, it appears that offenders are rarely, if ever, prosecuted. Some people believe that license fees should be increased in order to fund enhanced enforcement action by the DCIS. Changing the licensing cycle from one to three years and revising continuing education requirements also have been suggested.

CONTENT

Senate Bills 1437 (S-1) and 1438 (S-1) would amend the State License Fee Act and the Occupational Code, respectively, to double real estate broker and salesperson license fees; increase the amount that is deposited into the Real Estate Education Fund; create the "Real Estate Enforcement Fund"; require the three-year licensure of real estate brokers and salespersons; and provide

for continuing education courses of one hour in length.

Senate Bill 1437 (S-1)

The bill would increase the annual license fees for a real estate broker or associate broker from \$18 to \$36 and for a real estate salesperson from \$13 to \$26. The bill also would increase from \$5 to \$15 the amount of each fee that must be credited to the Real Estate Education Fund.

The Real Estate Enforcement Fund would be created in the State Treasury and administered by the DCIS. Beginning the license cycle after the bill's effective date, \$15 of each real estate broker's and salesperson's license fee would have to be deposited into the Fund. The DCIS would have to use the Fund to enforce Article 25 of the Occupational Code, including prosecution of unlicensed activity. Any unspent balance in the Fund at the end of a fiscal year would have to carry forward to the next fiscal year.

Senate Bill 1438 (S-1)

The bill would require the DCIS to issue a license for a real estate broker or salesperson for a three-year term. The fee for a triennial license renewal would have to be three times the per-year amount.

Currently, before being permitted to renew an active real estate broker's or salesperson's license, the licensee must have successfully completed, within the preceding 12 months, at least six clock hours of continuing education approved by the DCIS covering changes in economic conditions, law, rules, court cases,

and interpretations relating to real property that are pertinent to the activities of a real estate broker or salesperson. Under the bill, a licensee would have to have successfully completed, within the preceding three-year license cycle, at least 18 clock hours of approved continuing education covering the same subjects, as well as any topics relevant to the management, operation, and practice of real estate.

In addition, a person who offers or conducts a course or courses of study represented to meet the educational requirements first must obtain approval from the Department and must abide by the rules concerning curriculum, instructor qualification, grading system, and other related matters. The bill specifies that, in addition to other requirements imposed under rule, in order to receive approval, a course would have to be designed to be taught for at least one clock hour, not including time spent on breaks, meals, or other unrelated activities, provided the course was only approved for less than two clock hours if, based upon the subject matter, course outline, instructional materials, methodology, and other considerations consistent with rules of the DCIS, the Department determined that the course objectives could be effectively met in the proposed time period.

MCL 338.2237 (S.B. 1437)
339.409 et al. (S.B. 1438)

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

Presently, the DCIS oversees the practice of nearly 39,500 real estate salespersons, 12,000 brokers, and 9,300 associate brokers. When it takes action against a licensee, the Department has significant clout because of its authority to revoke or suspend the license. In the case of an unlicensed person, however, the DCIS has little or no leverage because there is no license to take away. An unlicensed person may be prosecuted for a misdemeanor, but prosecution is the responsibility of law enforcement agencies and prosecutors. Presently, if the DCIS receives a complaint that someone is engaging in

unlicensed activity, and confirms that the person is unlicensed, the Department will ask the individual making the complaint to work with his or her local law enforcement agency, and the DCIS will cooperate and share information with the prosecutor. Prosecuting attorneys, however, are unlikely to pursue a misdemeanor subject to a maximum penalty of \$500 and 90 days.

The Occupational Code does provide for certain administrative remedies for unlicensed activity, including the issuance of a cease and desist order. Such an order cannot be issued without a full investigation, however, and the Department simply does not have the resources to conduct investigations and take enforcement measures against unlicensed practitioners. Senate Bill 1437 (S-1) would address this by creating the Enforcement Fund, and dedicating a portion of license fee revenue to the Fund.

Response: It is unlikely that the bill would provide sufficient revenue to support investigation and enforcement by the DCIS. It also is unclear how the bill would be implemented or construed. Although it would increase the fee for a salesperson's license to \$26, the bill also would require \$15 of the fee to be deposited into the Education Fund and \$15 to be deposited into the Enforcement Fund. Obviously, \$15 and \$15 do not add up to \$26. Even if the revenue were prorated between the Funds, there would be nothing left to support the Department's other regulatory responsibilities.

Supporting Argument

The proposed three-year licensing cycle would simplify the work of both the Department and licensees, as well as reduce paperwork for each party, without compromising the public welfare. In view of the budgetary constraints and personnel reductions that the State is experiencing, three-year licensing would enable the DCIS to make better use of its resources, rather than devoting time to annual license renewals.

Supporting Argument

The bills would enhance the professionalism of all real estate licensees by increasing the amount deposited into the Education Fund, and expanding the topics that continuing education courses must cover. This would help ensure that licensees have a thorough understanding of real estate practices. Senate

Bill 1438 (S-1) also would increase continuing education options by allowing classes to be one clock hour in length. Although the current statute does not address this, administrative rules require classes to be at least two clock hours long. These changes would complement new rules that allow on-line continuing education.

Opposing Argument

Senate Bill 1437 (S-1) would set an unwelcome precedent by creating separate enforcement funding for a single occupation. Evidently, a number of other fields, such as engineering, architecture, and cosmetology, previously have raised this issue, and also would seek enforcement funding if it were provided for the real estate industry. Setting up individual enforcement funds for numerous occupations would be an accounting nightmare for the DCIS. It also would require staff to spend significant time documenting the hours spent on specific activities, so that the funds could be properly allocated.

Since it is reasonable for any profession to want protection from unlicensed and unregulated practitioners, amendments to the Code should take an approach that would apply to all regulated occupations. In particular, it has been suggested that unlicensed activity should be made a felony. This already has been done under the Private Security Business and Security Alarm Act. Extending felony penalties to other occupations would lead to more prosecutions, which would be more effective than administrative remedies as a deterrent and a punishment.

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

Senate Bill 1437 (S-1)

The bill would change the fee structure for real estate salespersons, real estate brokers, and associate brokers. Currently, the license fees generate \$837,600, of which \$554,100 is used to administer the licensing program and \$283,500 is deposited into the Education Fund. The bill would double these fees and create a new Enforcement Fund. Estimated annual collections under this proposal would be \$1,675,200. The bill also would change the distribution of the revenue by splitting all of

the license revenue between the Education Fund and the new Enforcement Fund. This would result in a decrease in the operating budget of the division by \$554,100, which is currently used to support the administrative responsibilities of maintaining the licensure program. The deposit into the Education Fund would be increased by \$567,000 and the deposit into the Enforcement Fund would be \$850,000 annually. The amount designated for each of these funds is \$25,000 greater than the estimated revenue to be collected due to the number of salespersons versus brokers and the different license fees. Therefore, some sort of a proration would be needed to account for this variation.

Senate Bill 1438 (S-1)

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: Maria Tyszkiewicz

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.