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Senate Bills 1437 and 1438 (as enrolled)

PUBLIC ACTS 623 & 611 of 2002

Sponsor: Senator Walter H. North

Senate Committee: Economic Development, International Trade and Regulatory Affairs

House Committee: Commerce

Date Completed: 1-29-03

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 suggested that license fees 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 were suggested.

CONTENT

Senate Bill 1437 amended the State License Fee Act to double real estate broker and salesperson license fees; create the "Real Estate Enforcement Fund"; and dedicate a portion of the license fees to the Fund.

Senate Bill 1438 amended the Occupational Code to require the three-year licensure of real estate brokers and salespersons; require licensees to

complete 18 hours of continuing education over the three-year license cycle; require a licensee to complete a minimum number of the 18 hours per calendar year; and provide for continuing education courses of one hour in length.

Senate Bill 1437 took effect on December 23, 2002, and Senate Bill 1438 took effect on December 20, 2002.

Senate Bill 1437

The bill increased 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. Previously, \$5 of each license fee had to be deposited into the Real Estate Education Fund. The bill provides, instead, that \$15 of each fee received during the three-year license cycle must be deposited into the Education Fund.

The bill created the Real Estate Enforcement Fund in the State Treasury and requires it to be 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 received by the Department during that three-year license cycle must be deposited into the Fund.

The DCIS must use the Enforcement Fund to enforce Article 25 of the Occupational Code regarding unlicensed activity, and to reimburse the Attorney General for expenses of prosecuting this unlicensed practice. Any unspent balance in the Fund at the end of a fiscal year must carry forward to the next fiscal year.

Senate Bill 1438

The bill requires the DCIS, beginning November 1, 2003, to issue a license for a real estate broker or salesperson for a three-year term. The fee for a triennial license renewal must be three times the per-year amount.

Under the Occupational Code, 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. The bill refers, in this provision, to approved continuing education involving topics relevant to the management, operation, and practice of real estate.

Under the bill, beginning November 1, 2003, a licensee must complete at least 18 hours of continuing education per three-year license cycle. A licensee must complete at least six of the required 18 hours between November 1, 2003, and December 31, 2004; at least six during calendar year 2005; and at least four during 2006. During 2007 and each subsequent year, a licensee must complete at least two of the required 18 hours per calendar year. Any DCIS-approved education that a licensee receives for further professional designation must be counted toward the total continuing education credits required for the three-year license cycle.

A broker, associate broker, or salesperson who receives a license issued in the second year of a three-year license cycle must complete 12 hours of continuing education to renew his or her license. A broker, associate broker, or salesperson who receives a license issued in the third-year of a three-year licensing cycle must complete six hours of continuing education.

As previously allowed, in completing the appropriate number of clock hours, a licensee has the option of selecting the education courses in his or her area of expertise, as long as they are approved by the Department. Under the bill, at least two clock hours of a selected course per calendar year must involve law, rules, and court cases regarding real estate.

The bill permits the DCIS, notwithstanding the requirements described above, to relicense a licensee who has completed at least 18 hours of continuing education in the required subject matter areas during the three-year license cycle but has not otherwise met the requirements, if the licensee provides evidence satisfactory to the Department that he or she has good cause for not complying.

Under the Code, 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 must 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 is approved for less than two clock hours only if the Department determines that the course objectives can be met effectively in the proposed time period, based upon the subject matter, course outline, instructional materials, methodology, and other considerations consistent with rules of the DCIS.

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

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. 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 has not had the resources to conduct investigations and take enforcement measures against unlicensed practitioners. Senate Bill 1437 addresses this by creating the Enforcement Fund, and dedicating a portion of license fee revenue to the Fund.

Response: It is questionable whether the bill will provide sufficient revenue to support investigation and enforcement by the DCIS, as only \$15 per license over three years will be deposited into the Fund.

Supporting Argument

The three-year licensing cycle will 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 will enable the DCIS to make better use of its resources, rather than devoting time to annual license renewals.

In addition, the fees that the bill increased had been in place since 1988. The higher fees will give the DCIS more revenue to fulfill its responsibilities.

Supporting Argument

Senate Bill 1438 increases continuing education options by allowing classes to be one clock hour in length. Although the statute did not previously address this, administrative rules have required classes to be at least two clock hours long. This change will complement new rules that allow on-line continuing education. One-hour courses also will allow continuing education to be offered more readily in conjunction with statewide conferences, which will give licensees an incentive to attend the conferences.

In addition, by requiring licensees to complete a minimum number of continuing education

hours per calendar year, the bill will help ensure that licensees are informed of changes in real estate law and practices.

Opposing Argument

Senate Bill 1437 sets an unwelcome precedent by creating separate enforcement funding for a single occupation. Evidently, a number of other fields, such as engineering, architecture, and cosmetology, have raised this issue in the past, and are likely to seek enforcement funding now that it is 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, it would be more efficient to 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

The bill will generate \$2.7 million in additional licensing revenue over a three-year period (\$900,000 per year). This revenue will be split evenly between the newly created Enforcement fund, the Education Fund, and the administrative line item.

Senate Bill 1438

The bill will 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.