

Legislative Analysis



REAL ESTATE BROKERS & SALESPERSONS: ELIMINATE LICENSE DISPLAY

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House Bill 4113 as enrolled
Public Act 33 of 2011
Sponsor: Rep. Nancy Jenkins
House Committee: Regulatory Reform
Senate Committee: Regulatory Reform

Second Analysis (9-1-11)

BRIEF SUMMARY: Under the bill, a broker's license and licenses of each real estate salesperson employed by the broker would no longer have to be displayed on a wall in the broker's place of business.

FISCAL IMPACT: The bill has no budgetary impact for the Department of Licensing and Regulatory Affairs.

THE APPARENT PROBLEM:

Unlike other professional and occupational licenses, a real estate salesperson license is issued to the employing broker, not to the salesperson. Currently, provisions of the Occupational Code require real estate brokers to conspicuously display their broker's license and the license of each real estate salesperson they employ. The licenses must be displayed in the real estate broker's place of business. This requirement made sense when clients initiated their business relationship with a broker and real estate agent at the broker's office, but today an agent's first contact with a client is usually by telephone or Internet, with the first meeting typically taking place in the field, such as the client's home or office. Rather than verifying the salesperson's license by looking at licenses hanging on an office wall, clients verify the status of a license by going online to the website of the Department of Licensing and Regulatory Affairs (LARA), formerly the Department of Energy, Labor, and Economic Growth (DELEG). Consequently, the trade association representing real estate salespersons has requested this requirement to display the licenses be eliminated.

In another matter, when a salesperson's employment with the broker is terminated, whether voluntarily or involuntarily, the broker is required to mail the salesperson's license back to LARA and the salesperson must mail back the pocket card. (The pocket card is delivered along with the wall license to the broker but is carried by the salesperson.) The department then mails the new employing broker a new license for that salesperson, with the new pocket card attached. The process can take several weeks. Until the new license is in the possession of the broker, the salesperson is to refrain from engaging in the practice of the profession.

However, if the salesperson wishes to begin working for a new broker immediately, departmental rules allow – for a period of 45 days – the old pocket card to act as evidence of being licensed as long as the salesperson records on the back of the pocket card the date employment with the original broker ended, the new broker signs it, and the salesperson and new broker have completed an application for transfer to the new broker. When the new license and pocket card are received by the new broker, the salesperson must return the old pocket card to the department. Some feel this provision in the rules should be codified by placing it in statute.

THE CONTENT OF THE BILL:

Currently, provisions of the Occupational Code require the license of a real estate salesperson to be mailed by the Department of Licensing and Regulatory Affairs (LARA) to the real estate broker who employs the salesperson. The salesperson's license must be kept in the custody and control of the broker. The licenses of each salesperson employed by the broker, as well as the broker's license, must be conspicuously displayed in the broker's place of business.

House Bill 4113 would amend the Occupational Code (MCL 339.2506) to delete the requirement that a real estate broker display his or her own license and the license of each salesperson employed by the broker. LARA would still be required to mail the license and pocket card to the broker. The bill would specifically require the broker to retain custody and control of the salesperson's certificate of license and deliver the pocket card for that license to the salesperson. "Pocket card" would mean the pocket card that contains information about the license the department provides when it issues a real estate salesperson's license.

The bill would require a real estate salesperson to provide proof to the employing broker that he or she has been issued and currently holds a real estate salesperson license. [Apparently, this provision codifies Rule 211 (R 339.22211 of the Administrative Code), which allows a pocket card, under certain conditions, to be proof of licensing when a salesperson transfers to a new broker and a new license has not yet been received by the new broker.]

LARA is currently required, without payment of an additional fee, to issue a temporary license to a real estate salesperson who has met all requirements for licensure if the department is unable to issue a license within two weeks of the licensure requirements being met. This provision would be deleted. Further, a provision requiring written notice to be given to the department by a licensee of a change of either a principal or branch business location would remain unchanged.

BACKGROUND INFORMATION:

The bill is a reintroduction of House Bill 4123 of the 2009–2010 legislative session and House Bill 5270 of the 2007–2008 legislative session. Both bills were passed by the House but failed to see Senate action.

Executive Order No. 2011-4, among other things, renamed the Department of Energy, Labor, and Economic Growth the Department of Licensing and Regulatory Affairs (LARA). Executive Reorganization Order 2011-5 created the Office of Regulatory Reinvention within LARA, which, among other duties, will regulate various occupations. The executive orders were filed on Feb. 23, 2011 and took effect 60 days later.

ARGUMENTS:

For:

The bill simply recognizes the change in current business practices and relieves brokers from the burdensome requirement of framing and hanging the licenses of all the salespersons in their employ. For instance, licenses could be kept in a binder or in a file cabinet in the broker's office. According to industry representatives, people rarely verify licensure through wall licenses hanging in a real estate broker's office. Instead, they use the Internet to search the appropriate licensing entity's database to verify a person's licensure status. Most importantly, brokers would still retain possession and custody of their salespersons' licenses, and presumably could produce them for inspection if a person did want to see the paper license.

Response:

The bill as enacted is a bit confusing. As worded, it is unclear that when the bill refers to "proof" that the salesperson has been issued and currently holds a real estate salesperson license its intent is to codify a departmental rule that allows the pocket card from the previous employing broker to act as a license while a transfer license to a new broker is in process. Some people may instead think the provision is referring to the photo ID that is given to a person by a third party vendor at the testing site when a person passes the real estate salesperson licensing exam. The ID, which contains the license number that will be on the person's license and pocket card when issued by LARA, is only given at the testing site to a person who has an existing relationship with a broker (for instance, a promise of employment if the person successfully passes the licensing exam). A person who passes the exam but does not yet have an employing broker does not receive the photo ID from the vendor administering the examination.

Further, the bill would also delete the requirement for a broker to display his or her own license in the broker's place of business. But there may be good reason to continue to require a broker to publicly display a license. After all, it is common practice among all licensed professions to require a license be displayed for public perusal at the licensed person's office or place of business.

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