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BILL ANALYSIS

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Senate Bill 26 (as introduced 1-22-15)

Sponsor: Senator Mike Kowall

Committee: Regulatory Reform

Date Completed: 10-19-16

### **CONTENT**

The bill would amend Article 25 (Real Estate Brokers and Salespersons) of the Occupational Code to do the following:

- Require a person that was the owner of real estate to obtain a license as a real estate broker to engage in the sale of that real estate as a principal vocation.
- Require a license applicant to complete classroom instruction within a certain period of time.
- Allow credit toward instruction for possession of a law degree or a master's degree in business administration.
- Modify continuing education requirements.
- Establish qualifications a continuing education instructor would have to meet before he or she could conduct a continuing education course.
- Revise provisions concerning a written reexamination.
- Require the Department of Licensing and Regulatory Affairs (LARA) to procure satisfactory proof of certain information pertaining to an applicant for a license.
- Require LARA to grant an individual credit toward the experience required for a license, for experience in certain professions.
- Require the return of a license to LARA if the license were suspended or revoked.
- Expand the actions for which a licensee is subject to penalties.
- Regulate advertising associated with buying, selling, exchanging, renting, leasing, or mortgaging real property or a business opportunity.
- Expand the services real estate brokers and real estate salespersons must provide to clients under a service provision agreement.
- Require a real estate broker or associate real estate broker to supervise the work of a real estate salesperson.
- Require the disclosure of licensure under certain circumstances.
- Allow LARA to issue a real estate salesperson's license or an associate real estate broker's license only to an individual.
- Prohibit LARA from issuing a license to an individual younger than 18 years of age.
- Require a licensee, if requested by the Department, to provide documents to LARA for inspection.

The bill also would amend Article 1 of the Code to revise and add definitions.

#### Requirement for License

Under the bill, unless a person who owned real estate engaged the services of a real estate broker in connection with the sales, the person would have to obtain a license as a real estate

broker to engage in the sale of that real estate as a principal vocation. Each of the following would be considered engaging in the sale of real estate as a principal vocation:

- Engaging in more than five real estate sales in any 12-month period.
- Representing to the public that the person was principally engaged in the sale of real estate.
- Devoting over 50% of an individual's working time, or more than 15 hours per week in any six-month period, to the sale of real estate.
- If the person were a real estate salesperson, selling real estate other than his or her principal residence.

A sale of real estate that was owned by, or under option to, a real estate broker or associate real estate broker would be subject to the provisions of Article 25.

If a licensee were selling property that was owned by the licensee or in which the licensee had an interest, the licensee would have to reveal the facts of the licensee's ownership or interest and the licensee's licensure to the purchaser, in writing, before an offer to purchase was signed. A licensee would have to provide written proof of the disclosure that was satisfactory to LARA on its request.

#### Issuance of Licenses

Article 25 requires LARA to issue a license for a real estate broker, associate real estate broker, and real estate salesperson for a term of three years. The bill would prohibit LARA from issuing a license to an individual who was under the age of 18 years. The Department could require an applicant who was an individual to submit a report from an independent source pertaining to his or her previous occupation, criminal record, or any other information LARA considered material to the applicant's qualifications for licensure.

Under the bill, a person whose license had been revoked could not apply for a new license for at least three years after the service of the final order of the revocation. To be considered for a license following a revocation, an applicant would have to meet all educational and examination requirements in effect at the time of application, and the applicant could not receive credit for education or experience acquired, or examinations passed, before the revocation.

#### Applicant Instruction

Article 25 requires a person to submit an application before he or she receives a real estate broker's license. Before receiving a real estate broker's license, the applicant, if an individual, or the individual designated as the principal of the applicant if the applicant is not an individual, must successfully complete at least 90 clock hours of approved prelicensure classroom courses in real estate. Both of the following apply to the 90 hours of instruction:

- At least nine clock hours must be instruction on civil rights law and fair housing law.
- The 90 hours are in addition to the hours required to obtain a real estate salesperson's license.

In addition, the bill would apply all of the following to the 90 hours of instruction:

- The applicant would have to complete the 90 hours within the 36-month period preceding the date of the application unless the applicant had held a license as a real estate salesperson for that period.
- Possession of a law degree, obtained any time before the date of application, would be considered equal to, and the applicant would have to receive credit for, 60 of the 90 clock

hours of instruction, and six of the nine clock hours of instruction in civil rights law and fair housing law.

- Possession of a master's degree in business administration from a degree-granting or certificate-granting public or independent nonprofit college or university, junior college, or community college, obtained any time before the date of application, would be considered equal to, and the applicant would have to receive credit for, 60 of the 90 clock hours of instruction.

Currently, before being permitted to take the real estate salesperson's examination, an applicant must show proof that he or she has successfully completed at least 40 clock hours of approved prelicensure classroom courses in principles of real estate, including at least four clock hours in instruction on civil rights law and equal opportunity in housing. The bill would require the applicant to complete the 40 hours of prelicensure education within the 36-month period preceding the date of the application.

Under Article 25, for the purposes of these requirements, an approved prelicensure course may be on real estate license law and related regulatory laws; real property law, including property interests and restrictions; Federal, State, and local tax laws affecting real property; conveyances, including contracts, deeds, and leases; financing, including mortgages, land contracts, foreclosure, and limits on lending procedures and interest rates; appraisal of real property; design and construction; marketing, exchanging, and counseling; the law of agency; sales and office management, including listing and selling techniques; real estate securities and syndications; and investments, including property management.

The bill specifies that an approved prelicensure course would be a classroom course that met all of the following:

- Met criteria established by LARA.
- Was approved by LARA, or was reviewed by a statewide real estate trade association, with which LARA had contracted for that purpose, for subject matter relevant to the practice of real estate.
- Covered one or more of the topics listed above.

#### Continuing Education Requirements

Under Article 25, within each three-year license cycle, a licensee must successfully complete at least 18 clock hours of continuing education courses that involve any subjects that are relevant to the management, operation, and practice of real estate or any other subject that contributes to the professional competence of a licensee or applicant.

The bill also would require the continuing education courses to be approved by a statewide real estate trade association, with which LARA had contracted under for that purpose; and be conducted by a continuing education instructor who met certain criteria.

Article 25 requires an applicant for license renewal to certify compliance with the continuing education requirements to LARA. A licensee must retain evidence acceptable to LARA that demonstrates that he or she has met the continuing education requirements, for at least four years after the date of that certification, and must produce the record that contains that evidence at the request of LARA. The Department must consider the following as acceptable evidence:

- The name and contact information of the continuing professional education program sponsor.
- The participant's name.
- The course title and course field of study.
- The date the course was offered or completed.

- If applicable, the location of the course.
- The type of instruction or delivery method used for presenting the course.
- Verification by the representative of the continuing professional education program sponsor of the participant's completion of the course.
- A time statement from the program sponsor that states that continuing professional education credits for the course were granted on a 50-minute hour.

The bill would delete the list of acceptable evidence.

#### Continuing Education Instructor

Under the bill, an individual could not conduct a continuing education courses as an instructor unless he or she met at least one of the following minimum qualifications:

- Was currently or previously engaged as an instructor of real estate course at a degree-granting or certificate-granting public or independent nonprofit college or university, junior college, or community college.
- Was properly certified by a statewide real estate trade association, with which LARA had contracted for that purpose, and was engaged in the real estate aspects of appraising, financing, marketing, brokerage management, real property management, real estate counseling, real property law, or other related subjects.
- Possessed alternative qualifications that were approved by a statewide real estate trade association, with which LARA had contracted for that purpose, and was qualified by experience, education, or both to supervise and instruct a course of study described above.

#### License Issuance; Written Exam

Under the bill, LARA could issue a real estate broker's license to an applicant that was a legal entity only if one or more of the control persons of the entity held an associate real estate broker's license. Also, LARA could issue an associate real estate broker's license and a real estate salesperson's license only to an individual.

Under Article 25, before issuing a license, LARA may require and procure satisfactory proof of the business experience, competence, and good moral character of an applicant for a real estate broker's or salesperson's license, or of an officer or member of an applicant. The Department must require an applicant for a broker's or salesperson's license to pass an examination developed by LARA or contracted for with a recognized outside testing agency that establishes, in a manner satisfactory to LARA, that he or she has fair knowledge of different skills and subjects outlined under the Article. Under the bill, before issuing a license, LARA would have to require and procure satisfactory proof of the business experience, competence, and good moral character of an applicant for a real estate broker's license if the applicant were an individual; of each control person of the applicant if the applicant were a legal entity; or of an applicant for a salesperson's license, and require that each of those individuals pass an examination, as currently required.

Article 25 also permits LARA to require written examination or written reexamination of a broker or salesperson, and if it does, a passing score satisfactory to LARA is required as a condition precedent to relicensure of a broker or salesperson. The bill provides that LARA could require written examination or written reexamination of an individual, and if the Department did require a written examination or reexamination, LARA could not relicense the real estate broker or real estate salesperson unless the individual taking the examination or reexamination achieved a passing score satisfactory to LARA.

Under the bill, all of the following would apply to the written examination required for licensure or relicensure:

- An individual who qualified under the Americans with Disabilities Act of 1990 could request reasonable accommodations to take the exam.
- Under provisions related to relicensure without examination, LARA could relicense without examination of the applicant, or the applicant's principal if appropriate, an applicant who applied within three years of the expiration date of the applicant's last license.
- The Department could relicense without examination an individual who was applying for a real estate broker's or associate real estate broker's license; had previously surrendered a real estate broker's or associate broker's license; and had been continuously licensed as a real estate salesperson since the surrender.
- A passing score on an examination, or on a portion of an examination if the examination were given in separate parts, would be valid for one year from the date of the examination.

### Experience Requirement

Under Article 25, LARA must require proof that each applicant for a real estate broker's license has the equivalent of three years of full-time experience in the business of real estate or in a field that is determined by LARA to be relevant and related to the business of real estate. The bill states that LARA would have to require proof that each applicant for a real estate broker's license, if the applicant were an individual, or each principal if the applicant were a legal entity, had the equivalent of three years of full-time experience in the business of real estate.

In regard to determining whether an individual met the experience requirement, if State law required that a person hold a license to be licensed to perform an activity that was considered the business of real estate, an individual could not receive credit for experience performing that activity without proper licensure. Additionally, for purposes of calculating whether an individual had the equivalent of three years of experience, LARA would have to grant the following credit or credits toward the three-year requirement:

- If the individual were a real estate salesperson, a real estate broker, or the principal of a real estate broker, one year of credit for each 12-month period of licensure in which he or she closed six or more real estate transactions.
- If the individual were a builder, one year of credit for each 12-month period in which he or she built and personally sold or leased at least six residential units, commercial units, or industrial units or a combination of those types of units.
- If the individual were a real estate investor, six months of credit for each six real property transactions personally negotiated for a purchase or sale by the individual for his or her own account, with a maximum of one year of credit allowed.
- If the individual were a land or condominium developer, one year of credit for each two developments or subdivisions that contained at least 10 units or parcels that he or she bought, subdivided, and improved for sale as lots or dwellings.
- If the individual were an attorney, one year of experience for each year in which he or she acted as the attorney for at least six real estate transactions.

Regarding the credit for a real estate investor, an individual could not receive credit if he or she engaged in more than six sales in any 12-month period in violation of the bill's licensure requirements for a real estate owner selling the real estate as a principal residence.

The bill also would require LARA to grant an individual one year of credit for each period equivalent to at least 40 hours per week, and at least 48 weeks per year in which the individual worked in a capacity directly related to the acquisition, financing, or conveyance of real estate, or in a position in which the individual was directly involved in a real estate business, including serving as the decision-making authority as a loan or trust officer of a Federal or State-regulated depository institution; a loan or trust officer of a mortgage officer; a real estate officer of a corporation, who was not a licensed real estate broker; a title insurance company officer engaged in the closing of escrow accounts and real estate closings; or a staff or real property appraiser.

### Possession of License; Suspension

Under the bill, an individual could not act as a real estate broker, associate real estate broker, or a real estate salesperson if he or she had not received from LARA his or her license and pocket card or received a temporary license. An individual licensed under Article 25 could not act as a real estate broker, associate real estate broker, or real estate salesperson if he or she did not have, on his or her person, his or her pocket card or temporary license.

If a licensee received notice that his or her license was suspended or revoked, a real estate salesperson, or an associate real estate broker that was not the sole associate real estate broker for a real estate broker that was not an individual, immediately would have to forward his or her pocket card to LARA, and the real estate broker to which the individual was licensed immediately would have to forward the salesperson's or associate real estate broker's license to LARA. If he or she received notice that his or her license was suspended or revoked, a real estate broker who was an individual, or an associate real estate broker who was the sole associate real estate broker for a real estate broker that was not an individual, immediately would have to forward to LARA his or her license and pocket card, the licenses and pocket cards of all real estate salespersons and nonprincipal associate real estate brokers issued under the real estate broker, and all of the real estate broker's branch office licenses.

### Prohibited Actions

Under Article 25, a licensee that commits one or more actions from a list of prohibited actions is subject to penalties.

Currently, a licensee is subject to penalties if he or she represents or attempts to represent a real estate broker other than his or her employer without the express knowledge and consent of the employer. The bill states that a licensee would be subject to penalties if he or she were an associate real estate broker or real estate salesperson and represented or attempted to represent a real estate broker other than his or her employer without the express knowledge and consent of the employer.

Additionally, under the bill, a licensee would be subject to penalties if he or she committed one or more of the following:

- Became a party to a net service provision agreement for an owner, seller, or buyer as a means of securing a commission.
- If the licensee were entitled to receive, directly or indirectly, a real estate commission as a result of the sale of property, also received a referral fee or other valuable consideration from a lender abstract, home warranty, or other settlement service provider in connection with the transaction unless the licensee obtained the prior written consent of the party or parties with which the licensee had an agency relationship and the fee was not otherwise prohibited by the Real Estate Settlement Procedures Act, or other applicable law.

### Required Services

A real estate broker or real estate salesperson that is acting under the terms of a service provision agreement must provide services listed in Article 25 to that broker's or salesperson's client.

The services include acceptance of delivery and presentation of offers and counteroffers to buy, sell, or lease the client's property or the property the client seeks to purchase or lease. The bill also would require a licensee, at the time of execution of an offer to purchase, to recommend to the purchaser that the purchaser require the to seller provide a fee title policy in the amount of the purchase price to the purchaser, issued or certified to the approximate date of closing of the real estate transaction.

Currently, a real estate broker or real estate salesperson, after execution of a purchase agreement by all parties, must provide assistance as necessary to complete the transaction under the terms specified in the purchase agreement. The bill also provides that, without written approval of the buyer and seller, a licensee could not close a transaction on any terms or conditions that were contrary to the terms or conditions of an executed purchase agreement.

Under Article 25, a broker or associate broker that is involved at the closing of a real estate or business opportunity transaction must furnish, or cause to be furnished, to the buyer and seller, a complete and detailed closing statement signed by the broker or associate broker showing each party all receipts and disbursements affecting that party. The bill also provides that, if the closing were conducted at a depository financial institution as defined under the Mortgage Brokers, Lenders, and Services Licensing Act, a title company, or other closing entity, the real estate broker or associate broker would remain responsible for the content of the closing statement and would have to sign the final closing document. A real estate salesperson could not close a real estate or business opportunity transaction except under the supervision of the real estate broker that employed the salesperson. In a cooperative transaction, either a real estate broker or associate broker could close the sale and furnish closing statements, but it would remain the final responsibility of the listing real estate broker to close the sale and furnish signed closing statements to both the buyer and seller.

### Advertising

Under the bill, except provided below, any advertisement to buy, sell, exchange, rent, lease, or mortgage real property or a business opportunity by a real estate broker would have to include the broker's name as it appeared on the broker's license, his or her telephone number or street address, and a statement that the person doing the advertising was a real estate broker.

An individual who was licensed as a real estate broker or associate real estate broker could advertise real property that he or she personally owned for sale or for lease in his or her own name, and would not be required to include the name of the broker, or the name of the broker that employed the associate broker, as the sales or leasing agent for the property in the advertisement. However, the advertising would have to indicate affirmatively that the individual who was selling or leasing the real property was a licensed real estate broker or associate real estate broker.

Except as otherwise provided, a real estate salesperson or an associate real estate broker could advertise to buy, sell, exchange, rent, lease, or mortgage real property or a business opportunity only under the supervision of, and in the licensed name of, the real estate broker that employed him or her.

A real estate salesperson could advertise to sell real property under his or her name only if the property were the principal residence of the salesperson. A real estate salesperson could advertise real property for rent or lease under his or her own name only if the salesperson were the owner of the property.

A real estate broker could not conduct business or advertise under a name other than that in which the broker's license was issued. A broker that intended to operate under an assumed name would have to send to LARA, with the application for a broker license, a copy of a certificate of assumed name that was filed with the State or a clerk of the county.

### Supervision

Under the bill, a real estate broker or associate real estate broker would have to supervise the work of a real estate salesperson. Supervision of a real estate salesperson would include at least all of the following:

- Direct communication in person or by radio, telephone, or electronic communication, on a regular basis.
- Review of the practice of the salesperson.
- Review of the salesperson's reports.
- Analysis and guidance of the salesperson's performance in regulated activities.
- Provision of written operating policies and procedures to the salesperson.

A real estate broker could not contract with an individual real estate salesperson or nonprincipal associate real estate broker who was employed by the real estate broker in a manner that limited the broker's authority to supervise the salesperson.

### Disclosure Requirements

Under the bill, if a licensee bought or otherwise acquired, directly or indirectly, an interest in real property, the licensee would have to disclose the licensee's licensure as a real estate broker, associate real estate broker, or real estate salesperson clearly, in writing, to the owner of the property before the owner was asked to sign the purchase agreement.

If a licensee acquired, directly or indirectly, an option to purchase real property from an owner who requested the licensee's services as a real estate licensee in connection with that property, the licensee would have to disclose the licensee's licensure as a real estate broker, associate real estate broker, or real estate salesperson, in writing, to the owner before the owner was asked to sign the option agreement.

A licensee that bought or otherwise acquired an interest in real property, directly or indirectly, and that was owed a commission, fee, or other valuable consideration as a result of the sale, would have to obtain the written permission from the seller or owner to receive the specified consideration.

On LARA's request, a licensee would have to provide written proof of any disclosures and consents required in these provisions to the Department.

### Provision of Documents to LARA

The bill would require a licensee to provide for inspection, by an authorized representative of LARA, of any document or record that LARA determined was reasonably necessary for an investigation of the licensee or the business activities of the licensee, the administration of the Occupational Code, or the administrative rules promulgated under Article 25.

MCL 339.105 et al.

Legislative Analyst: Drew Krogulecki

### **FISCAL IMPACT**

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

Fiscal Analyst: Josh Sefton

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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.