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BILL ANALYSIS

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Senate Bill 26 (Substitute S-1 as passed by the Senate)
Sponsor: Senator Mike Kowall
Committee: Regulatory Reform

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RATIONALE

Article 25 of the Occupational Code regulates real estate brokers, real estate associate brokers, and real estate salespersons. Additional regulations are found in administrative rules. Among other things, these professionals must be licensed by the Department of Licensing and Regulatory Affairs (LARA), must successfully complete prelicensure courses, and must comply with continuing education requirements. Legislation enacted in 2014 made a number of changes to Article 25 regarding these issues, and rescinded a rule that required LARA's preapproval of continuing education courses. After these amendments took effect on January 1, 2015, various interested parties worked together to identify provisions of Article 25 and the administrative rules that were in need of revision. Reportedly, this began as part of the ongoing efforts of the State's Office of Regulatory Reinvention to examine each occupational license and determine where efficiencies can be achieved. During this process, various rules evidently were found to be outdated or in conflict with the statute, or it was found that the subject of a rule already is in the Code. In other cases, apparently there is some question as to whether a rule was promulgated without the necessary statutory authority. As a result, it has been suggested that these concerns, as well as other issues related to the licensure and regulation of real estate brokers and salespersons, be addressed through amendments to Article 25.

CONTENT

The bill would amend Article 25 of the Occupational Code to do the following:

- **Rescind various administrative rules and incorporate them in Article 25 with some modifications.**
- **Regulate advertising associated with a licensee's purchase, sale, lease, or mortgaging of real property or a business opportunity.**
- **Require any advertising after January 1, 2018, that included the name of an associate broker, a salesperson, or a group of associate brokers or salespersons employed by the same broker, to include, in equal or larger type size, the business name and telephone number or address of the employing broker.**
- **Require a branch office maintained more than 25 miles from the limits of the municipality where a broker maintained a main office to be under the direct supervision of an associate broker, who would have to be physically present on a regular basis.**
- **Require the Department of Licensing and Regulatory Affairs to establish the term of a license cycle, and delete the current three-year term.**
- **Require prelicensure courses to meet criteria established by LARA, and authorize LARA to promulgate rules to establish the criteria.**
- **Permit prelicensure courses to be taken by distance learning.**
- **Require a license applicant to complete prelicensure courses within a certain period of time.**

- Revise provisions for the renewal of a license within three years after it has expired, and require prelicensure course to be completed within 12-months before the application.
- Permit LARA to contract with a statewide real estate association to review prelicensure courses and make recommendations to the Department.
- Allow a prelicensure course to be conducted by a Department-approved provider that met requirements LARA established by rule.
- Allow LARA to give credit toward prelicensure courses for possession of a law degree, a bachelor's or master's degree in finance or business, or another equivalent educational credential.
- Require continuing education requirements to meet standards that LARA established by rule.
- Revise provisions concerning a written examination or reexamination.
- Revise provisions concerning relicensure after a license has expired.
- Require LARA to grant an individual credit toward the experience required for a license, for experience in certain professions.
- Require an individual who was the owner of real estate to obtain a license as a real estate broker in order to engage in the sale of that real estate as a principal vocation.
- Require a business entity applying for a broker's license to designate which individuals who were control persons of the entity would be performing acts regulated by Article 25 as principals; and require a designated person to be licensed as an associate broker.
- Require a real estate broker or associate real estate broker to supervise the work of a real estate salesperson.
- Prohibit an individual from acting as a broker, associate broker, or salesperson if he or she had not received his or her license and pocket card or received a temporary license.
- Require the return of a license and pocket card to LARA if the license were suspended or revoked.
- Require the disclosure of licensure in situations in which a licensee bought or acquired an interest in property.
- Allow a broker to maintain more than one trust account, and to deposit up to \$2,000 of its own money in each trust account for certain purposes.
- Establish a time limit on filing a complaint seeking a penalty for an alleged violation.
- Prohibit LARA from issuing a license to an individual younger than 18 years of age.
- Require a licensee to allow an authorized representative of LARA to inspect the licensee's records at its place of business.

In addition, the bill would amend Article 2 of the Code to do the following:

- Allow LARA to deliver a notice or other communication to a licensee or registrant by email if certain conditions were met.
- Require a licensee to report a change of name, mailing address, or email address within 30 days.
- Delete provisions that allow LARA to renew the license of a person who does not meet requirements for renewal, except a continuing education requirement.
- Allow a board to waive a continuing education requirement for license renewal under certain circumstances.

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

The bill would take effect on January 1, 2017.

License Cycle; Definitions

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 instead would require LARA by rule to establish the term of a license cycle for a real estate broker, associate broker, or salesperson.

The bill would revise the definition of "real estate salesperson" to refer to an individual, rather than a person. (The definition of "person" includes an individual and various entities.) The bill would revise the definition of "real estate broker" to refer to an individual or a business entity (rather than an individual, sole proprietorship, partnership, association, corporation, common law trust, or a combination of those entities). A "business entity" would be partnership, association, corporation, limited liability company, or common law trust, or a combination of those entities or an entity and an individual.

The bill would define "associate real estate broker" as an individual who meets the requirements for licensure as a real estate broker under Article 25 and who is licensed to provide real estate brokerage services as an employee or independent contractor of a real estate broker.

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 or the name under which the broker was conducting business, the broker's 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 in the advertisement 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. 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, and in the licensed name, of the real estate broker that employed him or her. Any advertising displayed or published after January 1, 2018, that included the name of an associate broker, a salesperson, or a cooperating group of associate brokers or salespersons employed by the same real estate broker, would have to include, in equal or larger type size, the business name and telephone number, or the business name and address, of the employing broker.

A real estate salesperson could not advertise to sell real property under his or her name unless the property was the principal residence of the salesperson. A real estate salesperson could not advertise real property for rent or lease under his or her own name unless the salesperson was the owner of the property.

(Other than the requirement regarding advertising after January 1, 2018, these provisions are substantively the same as Rule 339.22329, which the bill would rescind.)

The bill also would prohibit a real estate broker from conducting business or advertising under a name other than that in which the broker's license was issued or under an assumed name that was authorized by law. A broker would have to notify LARA of its adoption of an assumed name with its license application, or within 30 days after it adopted an assumed name, whichever was earlier.

(The provisions concerning an assumed name are similar to Rule 339.22301, which the bill would rescind.)

Branch Office

Article 25 requires a real estate broker to maintain a place of business in the State. If a broker maintains more than one place of business, the broker must obtain a branch office license for each

one. A branch office maintained more than 25 miles from the limits of the city in which the broker maintains a main office must be under the personal, direct supervision of an associate broker.

The bill would retain these requirements but would refer to a municipality, rather than a city. The bill specifies that "direct supervision" would mean that an associate broker is physically present at the branch office on a regular basis to supervise and manage the business during ordinary business hours.

(Rule 339.22323, which the bill would rescind, requires a broker to maintain a place of business in the State that is a physical location where the broker conducts business and maintains records; requires a license for branch offices; and requires an individual broker, an associate broker, or an associate broker who manages a branch office to be reasonably available to supervise and manage the business during regular business hours.)

Prelicensure Courses

Currently, before receiving a real estate broker's license, the applicant must submit an application and 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.

The bill would require the applicant to complete the 90 hours within the 36-month period before the date of the application unless the applicant had held an active license as a real estate salesperson for that period.

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.

The bill would define "classroom course" as an educational course of instruction that is provided at either of the following:

- A physical location where instruction is offered and students and an instructor are present.
- A location where a student receives instruction provided by distance learning (e.g., instruction provided through an interactive classroom, a computer classroom, or an interactive computer system).

For a classroom course at a physical location, the bill would define "clock hour" as a period of 50 to 60 minutes of actual classroom instruction, not including outside assignments and reading. For a classroom course provided at a distance learning location, "clock hour" would mean the period required for a student to process the amount of material provided in 50 minutes of distance learning instruction.

The bill would permit LARA, by rule, to determine that possession of one or more of the following credentials was the equivalent to completing these prelicensure classroom courses, and the appropriate number of clock hours of credit that an applicant or principal of an applicant would receive for possessing each credential:

- A law degree.
- A bachelor's or master's degree in business or finance from a degree- or certificate-granting public or independent nonprofit college or university, junior college, or community college.

- Any other educational credential that LARA, in consultation with the Board of Real Estate Brokers and Salespersons, determined was the equivalent to completing the required prelicensure courses.

Under Article 25, 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.

Under the bill, a course would have to cover one or more of those topics *and* meet criteria established by LARA. The Department could promulgate rules to establish those criteria.

Currently, a prelicensure course must be conducted by a local public school district, a community college, an institution of higher education authorized to grant degrees, or a proprietary school licensed under the Proprietary Schools Act. The bill would delete reference to a proprietary school, and would allow a prelicensure course to be conducted by any other education provider approved by LARA, if the provider met any requirements for prelicensure education providers established by the Department by rule, in consultation with the Board.

The bill would permit LARA to contract with a statewide real estate association with a membership representing more than 18,000 licensees to do either of the following:

- Review prelicensure courses and make recommendations to LARA of whether the Department should approve a course, based on criteria LARA established.
- Review prelicensure courses to determine whether their subject matter was relevant to the practice of real estate.

Relicensure; Late Renewal

The Code permits LARA to relicense a person without examination if the person fails to renew the license issued under Article 25 within the prescribed time period, if the person applies within three years after the last license expired; pays an application processing fee, a late renewal fee, and the per-year license fee for the upcoming license period; and completes six clock hours of continuing education for each year and partial year that have elapsed since the last license expired. Under the bill, this provision would apply to an individual, rather than a person.

The Code also permits LARA to relicense a person who failed to renew a real estate broker license within three years after the person's last broker license expired, if the person pays an application processing fee, a late renewal fee, and the per-year license fee for the upcoming license period and submits proof that the person, if an individual, or the individual designated as the person's principal if the person is not an individual, has completed six clock hours of continuing education for each year and partial year that have elapsed since the last license expired, has completed 90 clock hours of prelicensure courses, or has passed the exam required for a real estate broker license.

Under the bill, under these circumstances, LARA could relicense an individual who failed to renew a real estate broker or real estate associate broker license within three years after his or her last broker or associate broker license expired. Also, if the individual completed 90 hours of prelicensure courses, they would have to have been completed in the 12-month period before the date of the application.

In addition, the Code permits LARA to relicense an individual who failed to renew his or her real estate salesperson license within three year after the last license expired, if the individual pays an application processing fee, a late renewal fee, and the per-year license fee for the upcoming license

period and submits proof that he or she has completed 40 clock hours of prelicensure courses or has passed the exam required for a real estate salesperson. Under the bill, the 40 hours of prelicensure courses would have to have been completed in the 12-month period before the application.

The bill also would permit LARA to relicense a business entity that failed to renew a real estate broker's license within the prescribed time period if the business entity paid an application processing fee, a late renewal fee, and the per-year license fee for the upcoming license period and had designated a principal (as described below).

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 instead would require a licensee, within each year of a license cycle, to successfully complete at least six clock hours of eligible continuing education courses.

Currently, in each calendar year of each three-year license cycle, a licensee must complete at least two hours of the required 18 hours. The bill would delete that requirement.

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

The bill would require a licensee to produce that information at LARA's request, rather than produce the record. The bill also would delete the requirement that LARA consider the information as acceptable evidence.

Currently, if a real estate broker, associate broker, or salesperson receives a license issued in the second or third year of a three-year license cycle, the person must comply with the continuing education requirements except as follows:

- A person who receives a license in the second year of the cycle must complete 12 hours of continuing education.
- A person who receives a license in the third year of the cycle must complete six hours of continuing education.

Under the bill, instead, if a broker, associate broker, or salesperson received a license that was issued after the beginning of the current license cycle for that license, LARA could prorate the number of hours of eligible continuing education that the licensee was required to complete for the year of the license cycle in which the license was issued.

The bill would define "eligible continuing education course" as a continuing education course that meets the standards established by LARA by rule and, if successfully completed by a licensee, is counted toward the licensee's continuing education requirements.

Written Exam

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 that he or she

has fair knowledge of skills and subjects outlined under the article. Under the bill, before issuing a license, LARA could require and procure satisfactory proof of the business experience, competence, and good moral character of an applicant for a license under Article 25 if the applicant were an individual or of each principal if the applicant were a business entity; and would have to require that each of those individuals pass an examination.

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 instead 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 issue a license unless the individual achieved a passing score.

The bill specifies that a passing score on an examination, or on a portion of an exam if it were given in separate parts, would be valid for one year from the date of the examination.

The bill would permit LARA to relicense without examination an individual who was applying for a real estate broker's or associate real estate broker's license; had previously held a real estate broker's or associate broker's license that had lapsed; and had been continuously licensed as a real estate salesperson since the previous license lapsed.

(Rule 339.22207, which the bill would rescind, states that a written exam is required of all applicants, but allows exceptions to be granted for the following:

- An applicant who qualifies under the Americans with Disabilities Act, who may request reasonable accommodation.
- An applicant who, within the last three years, has held a license as a salesperson, broker, or associate broker.
- An applicant for a broker or associate broker license who, after surrendering a broker or associate broker license, has been continuously licensed as a salesperson since the surrender.

The rule also states that a passing score on an exam, or portion of an exam, is valid for one year.)

Experience Requirement

Currently, 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. Under the bill, 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 business 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. For purposes of calculating whether an individual had the equivalent of three years of experience, LARA would have to grant the following credit toward the three-year requirement:

- If the individual were a real estate salesperson, one year of credit for each 12-month period of licensure in which he or she closed five 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 five 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 five 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 credit for each year in which he or she acted as the attorney for at least six real estate transactions.
- If the individual were a licensed real estate appraiser, one year of credit for each period equivalent to at least 40 hours per week, and at least 48 weeks per year, in which he or she acted as a real estate appraiser.

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

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 company; a real estate officer of a corporation, who was not a licensed real estate broker; or a title insurance company officer engaged in the closing of escrow accounts and real estate closings.

In addition, LARA would have to grant credit for any other experience that was approved by the Department by rule, in consultation with the Board, as equivalent to the experience requirement.

(Rule 339.22205, which the bill would rescind, similarly requires LARA to give credit to salespersons, builders, investors, developers, attorneys, appraisers, and people in related occupations, although the rule allows credit for five transactions, rather than six, in the case of salespersons, builders, and investors. The rule also allows a broker to receive credit in the same manner as a salesperson.)

Requirement to Disclose Licensure

Under the bill, if a licensee bought or otherwise acquired, directly or indirectly, an interest in real property, the licensee would have to disclose to the owner of the property that the licensee was licensed under Article 25 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 to the owner of the property that the licensee was licensed under Article 25 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 disclose to the seller or owner that the licensee was licensed under Article 25, to receive the specified commission.

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

(Rule 339.22317, which the bill would rescind, requires a licensee who buys or acquires an interest in property and is due a commission, fee, or other valuable consideration, to disclose to the seller or owner that the licensee will be compensated for the sale; obtain the permission of the seller or owner to receive the consideration; and provide proof of compliance to LARA upon request.)

Broker License Application; Designation of Control Person

Currently, an applicant for a real estate broker's license must file an application containing the applicant's present residential and business address (and other information), and stating the name of the individual, sole proprietorship, partnership, association, corporation, limited liability corporation, common law trust, or a combination of those entities. An application that is a partnership, association, limited liability company, common law trust, or corporation or a combination must designate which individuals who are officers or members of that entity will be performing acts regulated by Article 25 as principals.

The bill instead would require an individual or business entity that was applying for a real estate broker's license to file an application including the applicant's current business address and, if the applicant were an individual, his or her residential address. The application would have to include the name of the individual or business entity that was the proposed licensee. If the applicant were a business entity, the application would have to designate which individuals who were control persons of the entity would be performing acts regulated by Article 25 as principals. An applicant could not designate a control person as a principal unless that person was licensed as an associate real estate broker.

The bill would define "control person" as an individual who is a sole proprietor, is a partner in a partnership or limited partnership, is an officer, director, or shareholder in a corporation, is a member or manager in a limited liability company, or holds a responsible position in any other form of business entity authorized under the laws of Michigan or the state in which the entity is organized or formed.

Supervision of Salesperson

The bill would require a real estate broker or associate real estate broker 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.
- Analyses and guidance of the salesperson's performance in regulated activities.
- Provision of written operating policies and procedures to the salesperson.

(These provisions currently are contained in Rule 339.22310, which the bill would rescind.)

The bill also would prohibit a real estate broker from contracting 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. (This provision currently is contained in Rule 339.22325, which the bill would rescind.)

Licensure after Revocation

Under the bill, an individual whose license was 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.

(This provision is virtually the same as Rule 339.22211, which the bill would rescind.)

Owner's Sale of Property; Disclosure of Licensee's Interest

Under the bill, an individual who was the owner of real estate would have to obtain a license as a real estate broker to engage in the sale of that real estate as a principal vocation, unless the owner engaged the services of a real estate broker in connection with the sales. 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 he or she was principally engaged in the sale of real estate.
- Devoting over 50% of his or her working time, or more than 15 hours per week in any six-month period, to the sale of real estate.
- If the individual 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.

(These provisions are virtually the same as Rule 339.22319, which the bill would rescind.)

Possession & Return of License & Pocket Card

Except as provided below for the transfer of a license, the bill would prohibit an individual from acting as a real estate broker, associate real estate broker, or real estate salesperson if he or she had not received from LARA his or her license and pocket card or 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 or a photocopy or digital image of that pocket card or temporary license.

(Rule 339.22325, which the bill would rescind, prohibits a broker, associate broker, or salesperson from serving in that capacity without having received his or her license and pocket card or temporary license; and prohibits a licensee from rendering services without having a pocket card or temporary license in his or her possession.)

Under the bill, 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 broker that was a business entity, 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 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 broker who was the sole associate broker for a broker that was a business entity, 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 brokers issued under the real estate broker, and all of the broker's branch office licenses.

If LARA received a completed application for transfer of a real estate salesperson's license or an associate broker's license to a new real estate broker and the applicable fees, the Department would have to consider the pocket card as proper evidence of licensing for 45 days from the latest date written on the back of the card. If the salesperson or associate broker were notified that the application was incomplete, or that the broker to which he or she was transferring his or her license was not licensed, the salesperson's or associate broker's pocket card would no longer be valid and the applicant would have to wait until the new broker received a wall license and pocket card before engaging in activities regulated under Article 25.

(These provisions are substantively the same as Rules 339.22211 and 339.22405, which the bill would rescind.)

Broker Trust Account

Except in connection with a property management account, a licensee may be subject to penalties for failing to deposit another person's money in the licensee's possession in a custodial trust or escrow account that is maintained by the real estate broker, in a manner that complies with various conditions.

The bill specifies that a real estate broker could maintain more than one trust account. A broker could deposit up to \$2,000 of its own money in each trust account to cover bank service charges and bank minimum balance requirements or to avoid the closing of the account because there was no money in it. The broker would have to account for any of its money in a trust account in its records of money deposited in the broker's custodial trust or escrow account.

Time Limit on Complaint Seeking Penalties

Article 5 of the Occupational Code governs complaints alleging that a person has violated the Code, a rule promulgated under it, or an order issued under it. Article 6 lists penalties that may be imposed for a violation.

Under Section 2512, a licensee who commits any of the activities listed in the section is subject to the penalties set forth in Article 6.

Under the bill, a complaint that sought a penalty under Article 5 for a violation of Section 2512 would have to be filed within 18 months after one of the following dates, whichever occurred later:

- The date of the alleged violation.
- The date the transaction was completed, if the alleged violation occurred in connection with a real estate transaction.

Earned Commissions

The bill provides that if an individual earned commissions or other income while employed by a real estate broker, it would not be grounds for disciplinary action under Section 2512 for that broker to pay those commissions to that individual, regardless of whether he or she was currently employed by another real estate broker or was no longer licensed.

(This provision is virtually the same as Rule 339.22339, which the bill would rescind.)

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 bill would refer to a licensee, rather than a broker or salesperson.

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 seller to provide the purchaser with a fee title policy in the amount of the purchase price, issued or certified to the approximate date of closing of the real estate transaction. (This requirement would be the same as Rule 339.22309, which the bill would rescind.)

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. Under the bill, this would not apply if the closing were conducted by a title insurance company, or a person designated to act as the agent of a title insurance company, that was licensed or authorized to be business in the State.

(Rule 339.22311, which the bill would rescind, also requires a broker or associate broker to furnish a closing statement, as Article 25 requires, and prescribes other requirements or restrictions concerning closing transactions.)

Inspection of Records

The bill would require a licensee, during normal business hours, to allow any authorized representative of LARA to enter any of its places of business in the State and inspect any document or record that the Department determined was reasonably necessary for an investigation of the licensee or a review of the licensee's business activities, the administration of the Code, or the administrative rules promulgated under it.

(Rule 339.22401, which the bill would rescind, requires a licensee to provide for inspection by an authorized LARA representative of any document or record that may be reasonably necessary for investigation or audit in the enforcement of the Code and the rules.)

Article 2 Amendments

Notice by Email; Change of Name or Address. If LARA were required or permitted under the Code to deliver or serve a notice or other communication to a licensee or registrant by mail, the bill would permit the Department to deliver or serve the notice or communication by email instead of first-class mail, if the person had provided an email address to LARA, authorized the Department in writing to deliver or serve notices and communications to him or her at the email address, and agreed in writing that he or she consented to the service of notices or communications sent to the email address that LARA would otherwise serve by mail.

The bill would require a licensee or registrant to report to LARA a change in name or mailing address, or a change of electronic mail address if the licensee or registrant had provided an email address to the Department, within 30 days after the change occurred.

Waiver of Renewal Requirements. Currently, except as otherwise provided in the Code, LARA may renew the license or registration of a person who does not meet the requirements for renewal, if he or she demonstrates to the satisfaction of LARA and an occupational board that the requirements do not constitute a fair and adequate measure of the person's knowledge and skills or that the requirements do not serve as an adequate basis for determining whether the person could perform an occupation with competence. A continuing education requirement may not be waived, however. The bill would delete these provisions.

Under the bill, a board that required evidence of attendance in a continuing education program as a condition of license renewal could waive that requirement if, after receiving a written application, the board found that the licensee's failure to attend was due to his or her disability, military service, or absence from the continental United States, or due to circumstances beyond the licensee's control that the board considered sufficient cause to waive the requirement.

MCL 339.105 et al.

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 bill would enhance consumer protections in a number of ways. For example, the bill would codify rules that regulate advertising and, for any advertising after January 1, 2018, the bill would require that the name of the broker be at least as prominent as the name of the salesperson or associate broker. This requirement would address a recent trend in which brokers' names have become increasingly small in advertisements. The bill would also codify requirements under which a broker, associate broker, or salesperson must inform a property owner that the person is licensed under Article 25, in situations in which the licensee buys or acquires an interest in property. In addition, consumers would benefit from the proposed requirement that branch offices more than 25 miles outside of a municipality's limits be supervised by an associate broker who would have to be physically present on a regular basis. This would give people a direct contact for questions and concerns.

Further, the bill would improve and update the regulation of the real estate brokerage and sales profession. By providing for distance learning, the bill would recognize modern instructional techniques and accommodate emerging technology. The bill also would authorize LARA to promulgate rules establishing criteria for prelicensure courses as well as continuing education courses. Allowing the Department to prescribe continuing education criteria would fill a gap that was created when the 2014 amendments rescinded a rule that required LARA to preapprove these courses. In addition, the bill would clarify and codify procedures for LARA to renew a license that had been expired for less than three years.

The bill also would remove the current three-year licensing cycle and require LARA to establish the term of a license under Article 25. Evidently, the Department is moving toward four-year license cycles, and the bill would enable LARA to make that change for the licensure of real estate brokers, associate brokers, and salespersons.

By rescinding administrative rules and substantially incorporating many of their provisions in Article 25, the bill would continue ongoing efforts to streamline Michigan's body of rules, and would eliminate some inconsistencies and redundancy between the rules and the statute. In addition, codifying some of the provisions in the rules would address concerns that they exceed statutory authority.

Supporting Argument

The bill would enhance efficiency and save resources within LARA by allowing the Department to deliver a notice or communication by email to any person licensed or registered under the Occupational Code, if the person gave LARA his or her email address and agreed to electronically receive notices and communications that otherwise would be sent by mail. The bill also would improve LARA's ability to communicate with, and keep track of, licensees and registrants by requiring them to inform LARA of a change of name, mailing address, or email address within 30 days of the change.

Legislative Analyst: Suzanne Lowe

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.