

Legislative Analysis



REAL ESTATE BROKERS AND SALESPERSONS: ELIMINATE LICENSE DISPLAY

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House Bill 4123 (Substitute H-1)
Sponsor: Rep. Martin Griffin
Committee: Regulatory Reform

Revised First Analysis (3-3-09)

BRIEF SUMMARY: Under the bill, the license of a real estate salesperson would no longer be in the custody and control of the employing real estate broker, nor would it have to be publicly displayed by the broker.

FISCAL IMPACT: The bill has no budgetary impact for the Department of Energy, Labor, and Economic Growth.

THE APPARENT PROBLEM:

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 Energy, Labor, and Economic Growth.

In addition, applicants now apply for a real estate salesperson license online before taking the license exam; if an applicant who is already employed by a broker passes the exam, a photo ID that includes the person's new license number is issued onsite by a vendor under contract with the department, allowing the person to begin work immediately. (An applicant who passes the exam but is not yet employed by a licensed broker does not receive a photo ID until obtaining employment and providing broker information to the department.) DELEG later mails a paper wall license and paper pocket card to the employing broker.

In light of the changing way real estate professionals conduct business, and since photo IDs are issued immediately upon passing the real estate exam, industry members are seeking amendments to the law to eliminate the requirement that DELEG mail paper licenses to their employers for public display.

THE CONTENT OF THE BILL:

Currently, a real estate broker is required to conspicuously display his or her own license in the broker's place of business. The licenses of the real estate salespersons employed by the broker are required to be kept in the custody and control of the broker and also displayed conspicuously. The Department of Energy, Labor, and Economic Growth (DELEG) is required 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.

House Bill 4123 would amend the Occupational Code to delete the above provisions. Instead, 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.

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.

MCL 339.2506

BACKGROUND INFORMATION:

The bill is similar to House Bill 5270 from last session; that bill was passed by the House but failed to see Senate action.

ARGUMENTS:

For:

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. The bill simply recognizes the change in business practices and streamlines the process.

Response:

The bill is not as simple or straightforward as described. Testimony presented last session implied that the department would no longer need to issue paper wall licenses and pocket cards and thus would incur a small savings. The stated intent was to use the new photo ID card issued at the examination site when a person passes the license exam as the new license. If so, the language of the bill may be inadequate to seamlessly implement the desired changes.

First, unlike other professional and occupational licenses, a real estate salesperson license is issued to the employing broker, not to the salesperson. The paper license issued to the broker, unlike the photo ID issued to salespersons when they pass the licensing examination, includes the broker's information. A person who passes the exam cannot work as a real estate salesperson unless he or she has an employing broker. When a salesperson leaves the employ of the broker, the broker must return the agent's license to the department. The department then updates its database. If the salesperson is hired by

another broker, the broker and agent complete a transfer of license request; the department again updates the database and issues a new paper license to the new employing broker and a new pocket card with the new broker's information included.

The bill as introduced would have only eliminated the requirement for a broker to display the agents' paper licenses. As reported from committee, the bill appears to eliminate the broker's custodial duties for the license; it is not clear then to whom the paper license would be mailed, or if the department would even still issue the paper license. This could result in delays tracking the employment of a real estate salesperson. After all, currently the broker is statutorily charged with alerting the department of a change in employment by mailing back the salesperson's paper license. The bill deletes the custodial responsibility, meaning the broker would no longer have access to or control of the paper license, but is silent as to whether and how soon the salesperson is to report a change in employment, if the salesperson is to return the paper license and/or photo ID, and if he or she would face penalties for not reporting in a timely manner. And, if the department ceases to issue the paper license and the photo ID becomes the salesperson's license, it would mark the first instance of a private contractor, rather than a state agency, generating what constitutes an official license.

In addition, other sections in the code reference the broker's duties regarding the salesperson's license; for instance, a broker faces license sanctions and a fine up to \$10,000 for not mailing back a salesperson's license within five days of the person's termination of employment (whether voluntary or involuntary). These sections would also need amending for uniformity and to avoid confusion.

Further, the changes contained in the committee substitute apply to more than salespersons; the bill would also delete the requirement for a broker to display his or her own license in the broker's place of business. There may be good reason to continue to require a broker to publicly display a license. Also, the bill retains a current requirement that a notice be given to the department by a "licensee" of a change of either a principal or branch business location. By deleting all references in the section to brokers, it is no longer clear that this duty to report is meant to apply to a broker, and not to a salesperson licensee, who moves his or her office to a new location.

POSITIONS:

A representative of the Michigan Association of Realtors testified in support of the bill.
(2-25-09)

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