



H.B. 272

124th General Assembly
(As Passed by the House)

Reps. G. Smith, Williams, Cates, Clancy, Kilbane, Collier, Husted, Goodman, Evans, Flowers, Blasdel, Carmichael, Schaffer, Schmidt, Seitz, Lendrum, Brinkman, Olman, Carano, Rhine, D. Miller, Distel, Fedor, Hughes, Reidelbach, Wolpert, Salerno, Grendell, Damschroder, Jones, Niehaus, Sferra, Hartnett, Fessler, Strahorn, Sulzer, Allen, Wilson, Ogg, DeWine, Calvert, Redfern, Key, Woodard, Metelsky, Carey, Hagan, Roman, Otterman, Schneider, Latta, Faber

BILL SUMMARY

- ? Allows a real estate broker not licensed in Ohio, but licensed in another state, to transact business on commercial property in Ohio in cooperation with an Ohio licensed real estate broker under specific conditions.
- ? Allows a real estate salesperson not licensed in Ohio, but licensed in another state, subject to limitations, to perform those acts that otherwise require a real estate salesperson license in Ohio with respect to commercial property.
- ? Modifies two existing reasons for imposing disciplinary sanctions upon licensees.
- ? Requires the Ohio Real Estate Commission to adopt rules to implement a three-year license and renewal system for real estate salespersons and brokers by not later than January 1, 2005.

CONTENT AND OPERATION

Out of state commercial real estate broker

Under current law, no person or business entity is allowed to act as a real estate broker or salesperson in Ohio without first obtaining a license from the Ohio Real Estate Commission. Currently, this precludes persons, even if licensed in another state, from selling property in Ohio for another for a fee, commission, or

other valuable consideration, or otherwise acting as a real estate broker or salesperson. (Sec. 4735.02.)

The bill allows a person to operate as an "out of state commercial broker" under certain conditions, without obtaining a real estate broker or real estate salesperson license otherwise required under Ohio law. If a person fits within the definition of an out of state commercial broker (see below, "Definitions"), that person may for a fee, commission, or other valuable consideration, or in the expectation, or upon the promise of receiving or collecting a fee, commission, or other valuable consideration, perform acts that require a real estate broker or real estate salesperson license in Ohio, with respect to commercial real estate only, if the person does all of the following:

- (1) Works in cooperation with a real estate broker who holds a valid, active Ohio real estate broker license;
- (2) Enters into a written agreement with the Ohio broker that includes terms of cooperation and compensation and a statement that the out of state commercial broker and its agents agree to adhere to Ohio law;
- (3) Furnishes the Ohio broker with a copy of the person's current certificate of good standing from the jurisdiction where the person maintains an active real estate license;
- (4) Files an irrevocable written consent with the Ohio broker that legal actions arising out of the conduct of the out of state commercial broker or the actions of its agents may be commenced in a court of proper jurisdiction of any Ohio county where the cause of action arises or the plaintiff resides;
- (5) Includes the name of the Ohio broker on all advertising as required under existing advertising laws;
- (6) Deposits all escrow funds, security deposits, and other money received by the out of state commercial broker or the Ohio broker in accordance with existing laws governing accounts maintained by real estate brokers licensed in Ohio;
- (7) Deposits specified documentation, as well as records and documents related to a transaction, with the Ohio broker who maintains those records and documents, in accordance with the law's record retention requirements. (Secs. 4735.022(A), 4732.01(I)(7), and 4732.02.)

Out of state commercial real estate salesperson

Under the bill a person who qualifies as an "out of state commercial salesperson" (see below, **Definitions**) may perform those acts that require an Ohio real estate salesperson license with respect to commercial real estate, provided the person meets all of the following requirements:

(1) Is licensed with and works under the direct supervision of an out of state commercial broker;

(2) The out of state commercial broker with whom the out of state commercial salesperson is associated meets all of the requirements to operate as an out of state commercial broker in Ohio;

(3) Provides the Ohio real estate broker a copy of the out of state commercial salesperson's current certificate of good standing from the jurisdiction where the out of state commercial salesperson maintains an active real estate license in connection with the out of state commercial broker;

(4) Only collects money, including commissions, deposits, payments, rentals, or otherwise, in the name of and with the consent of the out of state commercial broker under whom the salesperson is licensed. (Sec. 4735.022(B).)

Consent to jurisdiction

Under the bill, an out of state commercial broker is required to file an irrevocable written consent to jurisdiction prior to engaging in business as an out of state commercial broker in Ohio. The bill clarifies that this "consent-to-jurisdiction" document makes and constitutes the Secretary of State as an agent for service of process in Ohio. The bill allows service of process to be initiated by leaving with the Secretary of State, or an assistant secretary of state, four copies of the process, together with an affidavit stating the address of the person given on the consent-to-jurisdiction document and a fee of \$5. Upon receipt, the Secretary of State is required to give notice immediately to the person at the address listed on the affidavit and forward to that address by certified mail, return receipt requested, a copy of the process. Service is complete upon mailing. (Sec. 4735.022(C).)

Disciplinary sanctions

Under current law, the Ohio Real Estate Commission must impose disciplinary sanctions upon any licensee who, in the licensee's capacity as a real estate broker or salesperson, or in handling the licensee's own property, is found

guilty of specified acts.¹ The bill modifies two existing reasons for discipline. Currently, a licensee can be disciplined for having paid commissions or fees to, or divided commissions or fees with, anyone not licensed as a real estate broker or salesperson. The bill specifies that this applies specifically to real estate brokers or salespersons that are licensed under Ohio's Real Estate Broker's Law (R.C. Chapter 4735.), and adds that it also applies to anyone not operating as an out of state commercial real estate broker or salesperson under the bill's provisions.

A licensee also may be disciplined for having authorized or permitted a person to act as an agent in the capacity of a real estate broker, or a real estate salesperson, who was not then licensed as a real estate broker or real estate salesperson under Ohio's Real Estate Broker's Law. The bill specifies that this also applies with respect to a person acting as an agent in the capacity of a real estate broker or a real estate salesperson who was not then operating as an out of state commercial real estate broker or salesperson under the bill's provisions. (Sec. 4735.18(A)(11) and (34).)

Terminology used in other states

The bill requires a person or business entity licensed in a jurisdiction where there is no legal distinction between a real estate broker license and a real estate salesperson license to meet the requirements to operate as an out of state commercial broker before engaging in any activity that requires a real estate broker license in Ohio. (Sec. 4735.022(D); also see above "**Out of state commercial real estate broker.**")

License renewal cycle

Under current law, persons licensed in Ohio as real estate brokers or salespersons must renew their licenses annually on a date adopted by rule by the Ohio Real Estate Commission (secs. 4735.01(M) and (N), 4735.10(A)(2)(e), 4735.13(G), 4735.14, and 4735.15). By contrast, current law also requires licensees to show proof of the satisfactory completion of their continuing education requirements once every three years (sec. 4735.141 (not in the bill)).

The bill requires the Ohio Real Estate Commission to adopt rules implementing, by no later than January 1, 2005, a three-year license and a three-year license renewal system (sec. 4735.10(A)(2)(b)).

¹ Sanctions include revoking or suspending a license, imposing a fine, issuing a public reprimand, and requiring additional continuing education course work.

Definitions

The bill defines new terms used throughout the bill. "Commercial real estate" means any parcel of real estate in Ohio other than real estate containing one to four residential units, but does not include: single-family residential units such as condominiums, townhouses, manufactured homes, or homes in a subdivision when sold, leased, or otherwise conveyed on a unit-by-unit basis, even when those units are a part of a larger building or parcel of real estate containing more than four residential units. An "out of state commercial broker" includes any person, partnership, association, limited liability company, limited liability partnership, or corporation licensed to do business as a real estate broker in a jurisdiction other than Ohio. An "out of state commercial salesperson" includes any person affiliated with an out of state commercial broker who is not licensed as a real estate salesperson in Ohio. (Sec. 4735.01(R) to (T).)

Other

Current law not amended by the bill requires the payment of *annual* renewal fees for licensed real estate salespersons, brokers, and foreign real estate salespersons and brokers. (R.C. 4735.01(M) and (N), 4735.10(A)(2)(e), 4735.13(G), 4735.14, 4735.15, and 4735.29--not all in the bill.) Given that the bill implements a triennial term of licensure and renewal schedule, the continued requirement for payment of annual fees, however, appears to be in conflict with the intent of the bill. An amendment to eliminate this ambiguity seems necessary.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	05-24-01	p. 468
Reported, H. Commerce & Labor	06-27-01	p. 714
Passed House (97-0)	06-28-01	p. 746

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