



Sub. H.B. 272*

124th General Assembly

(As Reported by S. Insurance, Commerce, and Labor)

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.
- Permits licensed real estate brokers to pay the compensation earned by affiliated licensees to certain types of business entities under specified conditions, but prohibits such compensation from being paid to third-party creditors.
- Permits an owner of foreign real estate to receive a referral fee for referring a prospective buyer to the person who sold the owner that foreign real estate, when specified conditions are satisfied.

* *This analysis was prepared before the report of the Senate Insurance, Commerce, and Labor Committee appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.*

- Authorizes the Superintendent of Real Estate to investigate, and the Ohio Real Estate Commission to penalize, persons who operate without a license.
- 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, 2004, and upon implementing this triennial schedule, to adjust fees accordingly without increasing the current rate.

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 trusts or special accounts maintained by the Ohio broker;

(7) Deposits specified documentation, as well as records and documents related to a transaction, with the Ohio broker. (Secs. 4735.022(A), 4732.01(I)(7), and 4732.02.)

The bill requires that the Ohio broker retain the documentation that is provided by the out-of-state commercial broker, as described in (7) above, and the records and documents related to a transaction, for a period of three years after the date the documentation is provided, or the transaction occurred, as appropriate. (Sec. 4735.022(A).)

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 who is working in cooperation with the out-of-state broker with whom the salesperson is associated, 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) Collects money, including commissions, deposits, payments, rentals, or otherwise, only 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).)

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 allowed under the bill that requires a real estate broker license in Ohio. (Sec. 4735.022(D); also see above "**Out-of-state commercial real estate broker.**")

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 of the process 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).)

Commissions, fees, and other compensation

General

Under current law, licensed brokers and foreign real estate dealers cannot pay a commission to anyone who is not licensed under the Ohio Real Estate Broker's Law for performing the actions reserved to a broker, as defined under that law, except that they may both pay to, and receive a commission from, a licensed broker or foreign real estate broker of another state.

The bill modifies this general rule by expanding its application to "fees and other compensation," in addition to "commission." Additionally, it limits the ability to both pay to, and receive a commission from a licensed broker or foreign real estate broker of another state by specifying that this exchange must be done in accordance with rules adopted by the Commission. The bill also creates the two exceptions to this general rule that are described below. (Sec. 4735.20(A).)

Compensation earned by affiliated licensees

The bill permits a licensed real estate broker to pay all or part of a fee, commission, or other compensation earned by an "affiliated licensee" (see below,

Definitions) to a partnership, association, limited liability company, limited liability partnership, or corporation (hereafter referred to as "business entity") that is not licensed as a real estate broker on the condition that all of the following conditions are satisfied:

(1) At least one of the partners, members, officers, or shareholders of the unlicensed business entity holds a valid and active license issued under this chapter;

(2) At least one of the partners, members, officers, or shareholders of the unlicensed business entity is the affiliated licensee who earned the fee, commission, or other compensation;

(3) The unlicensed business entity does not perform any of the actions reserved to a broker, as defined by the Ohio Real Estate Broker's Law;

(4) The broker verifies that the affiliated licensee complies with (1) and (2) above, and keeps a record of this verification for a period of three years after the date of verification;

(5) The broker keeps a record of all of the following information for each transaction, for a period of three years after the date of the transaction:

- The name of the affiliated licensee who earned the fee, commission, or other compensation;
- The amount of the fee, commission, or other compensation that was earned;
- The name of the unlicensed business entity to which the broker paid the affiliated licensee's fee, commission, or other compensation. (Sec. 4735.20(C).)

The bill states that compliance with the requirements described above does neither of the following:

(1) Relieve a broker of any obligations to supervise an affiliated licensee, or of any other requirements of the Ohio Real Estate Broker's Law, or rules adopted under that Law;

(2) Render a broker or an affiliated licensee exempt from disciplinary sanctions, or immune from personal liability in a civil action against the broker or affiliated licensee for a violation of the Ohio Real Estate Broker's Law. (Sec. 4735.20(D) and (E).)

The bill prohibits a broker from paying a fee, commission, or other compensation that is due to an affiliated licensee to a third-party creditor of the affiliated licensee. (Sec. 4735.20(F).)

Under the bill, a violation of the provisions described above is cause for imposing disciplinary sanctions under the Ohio Real Estate Broker's Law. (Secs. 4735.18 and 4735.20(I).)

Foreign real estate referrals

The bill also permits any owner of any interest in foreign real estate to refer a prospective buyer to the person who sold the owner that foreign real estate with the expectation of receiving valuable consideration, if all of the following conditions are satisfied:

(1) The person who sold the owner that foreign real estate is selling qualified foreign real estate in accordance with the applicable requirements of the Ohio Real Estate Broker's Law;

(2) Any fee, commission, or other valuable consideration promised or collected during any period consisting of 12 consecutive months does not exceed \$1,000;

(3) The owner does not engage in referring prospective buyers of foreign real estate in the ordinary course of business or as a regular business practice;

(4) The owner does not show the foreign real estate, discuss terms or conditions of purchasing the foreign real estate, or otherwise participate in negotiations with regard to the offering or sale of the foreign real estate;

(5) If a foreign real estate transaction is consummated with a buyer who was referred by the owner to the person who sold the owner that foreign real estate, the occurrence of the referral must be disclosed by the person who sold the owner that foreign real estate. (Sec. 4735.20(G).)

Under the bill, a violation of the provisions described above is cause for imposing disciplinary sanctions under the Ohio Real Estate Broker's Law. (Sec. 4735.20(I).)

Disciplinary sanctions for licensees

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).)

Authority of the Superintendent to investigate and the Commission to penalize persons who operate without a license

The bill establishes new authority for the Superintendent to investigate, and the Commission to penalize, persons who operate without a license. Under the bill, upon receipt of a written complaint or upon the Superintendent's own motion, the Superintendent may investigate any person that has allegedly operated without a required license, except that the Superintendent cannot initiate an investigation of any person who held a valid license any time during the 12 months preceding the date of the alleged violation.

If, after investigation, the Superintendent determines there exists reasonable evidence of a violation, within seven business days after that determination, the Superintendent must send the party investigated, a written notice, by regular mail, that includes all of the following information:

- (1) A description of the activity in which the party allegedly is engaging or has engaged that is a violation of the licensing requirements under the Real Estate Broker's Law;
- (2) The applicable law allegedly violated;

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

(3) A statement informing the party that a hearing concerning the alleged violation will be held at the next regularly scheduled meeting of the Ohio Real Estate Commission, and a statement giving the date and place of that meeting;

(4) A statement informing the party that the party or the party's attorney may appear in person at the hearing and present evidence and examine witnesses appearing for and against the party, or the party may submit written testimony stating any positions, arguments, or contentions.

The Commission must hear the testimony of all parties present at the hearing and consider any written testimony submitted, and determine if there has been a violation. If the Commission finds that a violation has occurred, it may assess a civil penalty, in an amount it determines, not to exceed \$1,000 per violation. Each day a violation occurs or continues is a separate violation. The Commission determines the terms of payment. The Commission must maintain a transcript of the proceedings of the hearing and issue a written opinion to all parties, citing its findings and grounds for any action taken. Civil penalties collected under this provision are deposited in the Real Estate Recovery Fund.

If a party fails to pay a civil penalty within the time prescribed by the Commission, the Superintendent must forward to the Attorney General the name of the party and the amount of the civil penalty for collection purposes. In addition, the party must pay any fee assessed by the Attorney General for collecting the civil penalty. (Sec. 4735.052.)

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 Commission to adopt rules implementing, by no later than January 1, 2004, a three-year license and a three-year license renewal system, except that, foreign real estate salespersons and foreign real estate brokers remain on an annual renewal basis (sec. 4735.10(A)(2)(b)). Corresponding to this shift to triennial renewal, the bill allows the Commission to continue collecting initial license fees, renewal fees, and other assessments at the current annual rate and then collect that same rate, times three, upon shifting to the new three-year cycle. The bill further specifies that for a salesperson who applies for a broker's license, if the salesperson holds a three-year license, the Superintendent must prorate the initial broker's license fee based upon the number of years remaining in the salesperson's licensing period. Additionally, under current law, \$4 of each fee

collected for branch office licenses, license renewals, late filings, and reactivation or transfer of a license is credited to the Real Estate Education and Research Fund. The bill specifies that, upon adoption of the triennial schedule, for fees that are assessed only once every three years, \$12 instead of \$4 of those fees will be credited to the Real Estate Education and Research Fund. (Secs. 4735.01(M) and (N), 4735.06, 4735.09, 4735.10(A)(2)(b), 4735.13(G), 4735.14, and 4735.15.)

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. An "affiliated licensee" means a person who holds a valid and active license issued under the Ohio Real Estate Broker's Law and who is associated with the broker that is paying a fee, commission, or other compensation at the time that that fee, commission, or other compensation is earned. (Secs. 4735.01(R) to (T) and 4735.20(J).)

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
Reported, S. Insurance, Commerce, & Labor	---	---

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