

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

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SENATE BILL 1281
Judiciary I Committee Substitute Adopted 8/27/02

Short Title: Certain Occupational Licensing Board Changes.

(Public)

Sponsors:

Referred to:

June 10, 2002

A BILL TO BE ENTITLED

AN ACT TO CLARIFY TORT CLAIM AND DUTY TO DEFEND EMPLOYEES
LIABILITY OF OCCUPATIONAL LICENSING BOARDS; TO PROVIDE FOR
FLEXIBILITY IN DISCIPLINARY MATTERS AND TO SECURE EXAM
SCORES BY THE REAL ESTATE COMMISSION; AND TO AUTHORIZE THE
BOARD OF LANDSCAPE ARCHITECTS TO RETAIN PRIVATE COUNSEL.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 93B is amended by adding the following new section
to read:

"§ 93B-16. Occupational board liability for negligent acts.

(a) An occupational licensing board may purchase commercial insurance of any kind to cover all risks or potential liability of the board, its members, officers, employees, and agents, including the board's liability under Articles 31 and 31A of Chapter 143 of the General Statutes.

(b) Occupational licensing boards shall be deemed State agencies for purposes of Articles 31 and 31A of Chapter 143 of the General Statutes, and board members and employees of occupational licensing boards shall be considered State employees for purposes of Articles 31 and 31A of Chapter 143 of the General Statutes. To the extent an occupational licensing board purchases commercial liability insurance coverage in excess of one hundred fifty thousand dollars (\$150,000) per claim for liability arising under Articles 31 or 31A of Chapter 143 of the General Statutes, the provisions of G.S. 143-299.4 shall not apply.

(c) The purchase of insurance by an occupational licensing board under this section shall not be construed to waive sovereign immunity or any other defense available to the board, its members, officers, employees, or agents in an action or contested matter in any court, agency, or tribunal. The purchase of insurance by an occupational licensing board shall not be construed to alter or expand the limitations on claims or payments established in G.S. 143-299.2 or limit the right of board members, officers, employees, or agents to defense by the State as provided by G.S. 143-300.3."

1 **SECTION 2.** G.S. 143-300.2(4) reads as rewritten:

2 "(4) "The State" includes all departments, agencies, boards, commissions,
3 institutions, bureaus, and authorities of the State. Community colleges
4 and colleges, technical colleges and occupational licensing boards
5 regulated by Chapter 93B of the General Statutes shall be deemed
6 State agencies for purposes of this Article."

7 **SECTION 3.** G.S. 93A-3(f) reads as rewritten:

8 "(f) The Commission is authorized to ~~expend expense reserve funds as defined in~~
9 ~~G.S. 93A-3(b) for the purpose of conducting~~ acquire, hold, convey, rent, encumber,
10 alienate, and otherwise deal with real property in the same manner as a private person or
11 corporation, subject only to the approval of the Governor and Council of State as to the
12 acquisition, conveyance, rental, encumbrance, leasing, and sale of real property. The
13 rents, proceeds, and other revenues and benefits of the ownership of real property shall
14 inure to the Commission. Collateral pledged by the Commission for any encumbrance
15 of real property shall be limited to the assets, income, and revenues of the Commission.
16 Leases, deeds, and other instruments relating to the Commission's interest in real
17 property shall be valid when executed by the executive director of the Commission. The
18 Commission may create and conduct education and information programs relating to the
19 real estate brokerage business for the information, education, guidance and protection of
20 the general public, licensees, and applicants for license. The education and information
21 programs may include preparation, printing and distribution of publications and articles
22 and the conduct of conferences, seminars, and lectures. The Commission may claim the
23 copyright to written materials it creates and may charge reasonable fees for publications
24 and programs."

25 **SECTION 4.** G.S. 93A-4 reads as rewritten:

26 "**§ 93A-4. Applications for licenses; fees; qualifications; examinations; privilege**
27 **licenses; renewal or reinstatement of license; power to enforce**
28 **provisions.**

29 (a) Any person, partnership, corporation, limited liability company, association,
30 or other business entity hereafter desiring to enter into business of and obtain a license
31 as a real estate broker or real estate salesperson shall make written application for such
32 license to the Commission in the form and manner prescribed by the Commission. Each
33 applicant for a license as a real estate broker or real estate salesperson shall be at least
34 18 years of age. Each applicant for a license as a real estate salesperson shall, within
35 three years preceding the date application is made, have satisfactorily completed, at a
36 school approved by the Commission, a real estate fundamentals course consisting of at
37 least 67 hours of classroom instruction in subjects determined by the Commission, or
38 shall possess real estate education or experience in real estate transactions which the
39 Commission shall find equivalent to the course. Each applicant for a license as a real
40 estate broker shall, within three years preceding the date the application is made, have
41 satisfactorily completed, at a school approved by the Commission, an education
42 program consisting of at least 60 hours of classroom instruction in subjects determined
43 by the Commission, which shall be in addition to the course required for a real estate
44 salesperson license, or shall possess real estate education or experience in real estate

1 transactions which the Commission shall find equivalent to the education program. Each
2 applicant for a license as a real estate broker or real estate salesperson shall be required
3 to pay a fee, fixed by the Commission but not to exceed thirty dollars (\$30.00).

4 (b) Except as otherwise provided in this Chapter, any person who submits an
5 application to the Commission in proper manner for a license as real estate broker or a
6 license as real estate salesperson shall be required to take an oral or written
7 examination. The Commission may allow an applicant to elect to take the examination
8 by computer as an alternative to the written or oral examination and may require the
9 applicant to pay the Commission or a provider contracted by the Commission the actual
10 cost of administering the computerized examination. The cost of the computerized
11 examination shall be in addition to any other fees the applicant is required to pay under
12 subsection (a) of this section. The examination shall determine the applicant's
13 qualifications with due regard to the paramount interests of the public as to the
14 applicant's competency. A person holding a real estate salesperson license in this State
15 and applying for a real estate broker license shall not be required to take an additional
16 examination under this subsection. A person who fails the license examination shall be
17 entitled to know the result and his score. A person who passes the exam shall be notified
18 only that he passed the examination. Whether a person passed or failed the examination
19 shall be a matter of public record; however, the scores for license examinations shall not
20 be considered public records. Nothing in this subsection shall limit the rights granted to
21 any person under G. S. 93B-8.

22 An applicant for licensure under this Chapter shall satisfy the Commission that he or
23 she possesses the competency, honesty, truthfulness, integrity, and general moral
24 character necessary to protect the public interest and promote public confidence in the
25 real estate brokerage business. If the results of any required competency examination
26 and investigation of the applicant's moral character shall be satisfactory to the
27 Commission, then the Commission shall issue to the applicant a license, authorizing the
28 applicant to act as a real estate broker or real estate salesperson in the State of North
29 Carolina, upon the payment of privilege taxes now required by law or that may hereafter
30 be required by law.

31 (c) All licenses issued by the Commission under the provisions of this Chapter
32 shall expire on the 30th day of June following issuance or on any other date that the
33 Commission may determine and shall become invalid after that date unless reinstated. A
34 license may be renewed 45 days prior to the expiration date by filing an application with
35 and paying to the Executive Director of the Commission the license renewal fee. The
36 license renewal fee is thirty dollars (\$30.00) unless the Commission sets the fee at a
37 higher amount. The Commission may set the license renewal fee at an amount that does
38 not exceed fifty dollars (\$50.00). The license renewal fee may not increase by more than
39 five dollars (\$5.00) during a 12-month period. The Commission may adopt rules
40 establishing a system of license renewal in which the licenses expire annually with
41 varying expiration dates. These rules shall provide for prorating the annual fee to cover
42 the initial renewal period so that no licensee shall be charged an amount greater than the
43 annual fee for any 12-month period. ~~All licenses reinstated after the expiration date~~
44 ~~thereof shall be subject to a late filing fee of five dollars (\$5.00) in addition to the~~

1 ~~required renewal fee.~~ The fee for reinstatement of an expired license shall be fifty-five
2 dollars (\$55.00). In the event a licensee fails to obtain a reinstatement of such license
3 within ~~12~~ six months after the expiration date thereof, the Commission may, in its
4 discretion, consider such person as not having been previously licensed, and thereby
5 subject to the provisions of this Chapter relating to the issuance of an original license,
6 including the examination requirements set forth herein. Duplicate licenses may be
7 issued by the Commission upon payment of a fee of five dollars (\$5.00) by the licensee.
8 Commission certification of a licensee's license history shall be made only after the
9 payment of a fee of ten dollars (\$10.00).

10 (d) The Commission is expressly vested with the power and authority to make
11 and enforce any and all reasonable rules and regulations connected with license
12 application, examination, renewal, and reinstatement as shall be deemed necessary to
13 administer and enforce the provisions of this Chapter. The Commission is further
14 authorized to adopt reasonable rules and regulations necessary for the approval of real
15 estate schools, instructors, and textbooks and rules that prescribe specific requirements
16 pertaining to instruction, administration, and content of required education courses and
17 programs.

18 (e) Nothing contained in this Chapter shall be construed as giving any authority
19 to the Commission nor any licensee of the Commission as authorizing any licensee to
20 engage in the practice of law or to render any legal service as specifically set out in G.S.
21 84-2.1 or any other legal service not specifically referred to in said section."

22 **SECTION 5.** Chapter 93A of the General Statutes is amended by adding a
23 new section to read:

24 "**§ 93A-6.2. Hearings.**

25 Hearings in contested cases conducted by the Commission shall be governed by the
26 provisions of Article 3A of Chapter 150B of the General Statutes. In any contested case
27 in which the Commission takes disciplinary action authorized by any provision of this
28 Chapter, the Commission may also impose reasonable conditions, restrictions, and
29 limitations upon the license, registration, or approval issued to the disciplined person or
30 entity. In any contested case concerning an application for licensure, time share project
31 registration, or school, sponsor, instructor, or course approval, the Commission may
32 impose reasonable conditions, restrictions, and limitations on any license, registration,
33 or approval it may issue as a part of its final decision."

34 **SECTION 6.** G.S. 114-4.2G is repealed.

35 **SECTION 7.** G.S. 89A-3.1 reads as rewritten:

36 "**§ 89A-3.1. Board's powers and duties.**

37 The Board shall have the following powers and duties:

- 38 (1) Administer and enforce the provisions of this Chapter.
- 39 (2) Adopt rules to administer and enforce the provisions of this Chapter.
- 40 (3) Examine and determine the qualifications and fitness of applicants for
41 registration and renewal of registration.
- 42 (4) Determine the qualifications of firms, partnerships, or corporations
43 applying for a certificate of registration.

- 1 (5) Issue, renew, deny, suspend, or revoke certificates of registration and
2 conduct any disciplinary actions authorized by this Chapter.
- 3 (6) Establish and approve continuing education requirements for persons
4 registered under this Chapter.
- 5 (7) Receive and investigate complaints from members of the public.
- 6 (8) Conduct investigations for the purpose of determining whether
7 violations of this Chapter or grounds for disciplining registrants exist.
- 8 (9) Conduct administrative hearings in accordance with Article 3 of
9 Chapter 150B of the General Statutes.
- 10 (10) Maintain a record of all proceedings conducted by the Board and make
11 available to registrants and other concerned parties an annual report of
12 all Board action.
- 13 (11) Employ and fix the compensation of personnel that the Board
14 determines is necessary to carry out the provisions of this Chapter and
15 incur other expenses necessary to perform the duties of the Board.
- 16 (12) Adopt and publish a code of professional conduct for all registrants.
- 17 (13) Adopt a seal containing the name of the Board for use on all
18 certificates of registration and official reports issued by the Board.
- 19 (14) Retain private counsel subject to G.S. 114-2.3."

20 **SECTION 8.** This act becomes effective October 1, 2002, and applies to acts
21 committed on or after that date.