

The House Committee on Regulated Industries offers the following substitute to SB 114:

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 43 of the Official Code of Georgia Annotated, relating to professions and
2 businesses, so as to change certain provisions relating to points given to disabled veterans
3 taking examinations for licensing; to provide that certain time periods shall have passed after
4 completing the terms and conditions of a sentence for certain criminal convictions before
5 making an application for appraiser classification or approval to the Georgia Real Estate
6 Appraiser Board; to provide for additional criminal offenses for which the board may deny
7 a classification or approval; to change provisions relating to lapsed appraisal classifications;
8 to permit the board to provide certain educational materials to consumers; to provide that
9 certain time periods shall have passed after completing the terms and conditions of a sentence
10 for certain criminal convictions before making an application for licensure to the Georgia
11 Real Estate Commission; to provide for additional criminal offenses for which the
12 commission may deny a license; to change the term "in-class hour" to "instructional hour";
13 to change the number of instructional hours for a broker prelicense course of study; to change
14 the required number of continuing education hours for each year of the renewal period
15 established by the commission; to provide for certain provisions relating to persons on active
16 military duty or serving in the General Assembly; to permit the commission to provide
17 certain educational materials to consumers; to provide that brokers are entitled to trust funds
18 only after consummation or termination of the transaction; to permit a licensee to deal
19 directly with another licensee's client under certain circumstances; to provide for related
20 matters; to repeal conflicting laws; and for other purposes.

21 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

22 **SECTION 1.**

23 Title 43 of the Official Code of Georgia Annotated, relating to professions and business, is
24 amended by revising paragraphs (2) and (3) as follows of Code Section 43-1-9, relating to
25 point credit for veterans taking examinations given by professional licensing boards, as
26 follows:

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1 (6) Stand and pass an examination administered by or approved by the board covering
 2 generally the matters confronting real property appraisers after completing the
 3 requirements of paragraph (5) of this subsection.

4 Failure to meet any of these requirements shall be grounds for denial of classification or
 5 approval without a hearing."

6 "(f) The board may prepare and distribute to appraisers under this chapter educational
 7 material deemed of assistance in the conduct of their business. The board may prepare and
 8 distribute to the public educational material deemed of assistance to consumers engaging
 9 in business in real estate appraisals with persons classified under this chapter."

10 SECTION 3.

11 Said title is further amended in Chapter 39A by revising subsection (f) of Code Section
 12 43-39A-11, relating to fees for examination, activation, and renewal and reactivation of
 13 lapsed or inactive appraiser classification, as follows:

14 "(f) Any resident appraiser whose appraiser classification lapses for failure to pay a
 15 renewal fee may reactivate that appraiser classification within two years of the date of its
 16 lapsing by paying the total amount of all renewal fees and late charges which would have
 17 been due during the period when the appraiser classification was lapsed plus a reactivation
 18 fee. If any resident appraiser allows an appraiser classification to lapse for a period longer
 19 than two years due solely to a failure to pay a renewal fee, the resident appraiser may have
 20 that appraiser classification reinstated by paying the total amount of all renewal fees and
 21 late charges which would have been due during the period when the appraiser classification
 22 was lapsed plus a reactivation fee and by successfully completing any educational course
 23 or courses which the board may require. Any resident appraiser whose appraiser
 24 classification has lapsed for longer than ~~ten~~ five years and who seeks to have that appraiser
 25 classification reinstated shall requalify as an original applicant as set forth in Code Section
 26 43-39A-8. Any nonresident appraiser whose appraiser classification lapses for failure to
 27 pay a renewal fee may reactivate that appraiser classification by paying the fee required of
 28 an original applicant if such nonresident appraiser has maintained an active classification
 29 in his or her state of residence during the period that his or her classification lapsed. The
 30 board may refuse to renew an appraiser classification if the appraiser has continued to
 31 perform real estate appraisal activities following the lapsing of that appraiser
 32 classification."

33 SECTION 4.

34 Said title is further amended in Chapter 39A by revising subsection (b) of Code Section
 35 43-39A-14, relating to required conduct of applicants and refusal of classification, as follows:

1 "(b)(1) As used in this subsection, the term:

2 (A) 'Conviction' means a finding or verdict of guilty or a plea of guilty to a charge of
3 a felony or any crime involving moral turpitude, regardless of whether an appeal of the
4 conviction has been brought; a sentencing to first offender treatment without an
5 adjudication of guilt pursuant to a charge of a felony or any crime involving moral
6 turpitude; or a plea of nolo contendere to a charge of a felony or any crime involving
7 moral turpitude.

8 (B) 'Felony' includes any offense which, if committed in this state, would be deemed
9 a felony, without regard to its designation elsewhere.

10 (1.1) No person who has a conviction shall be eligible to become an applicant for a
11 license or an approval authorized by this chapter unless such person has successfully
12 completed all terms and conditions of any sentence imposed for such conviction;
13 provided that if such individual has multiple convictions, at least five years shall have
14 passed since the individual satisfied all terms and conditions of any sentence imposed for
15 the last conviction before making application for licensure or approval; and provided that
16 if such individual has a single conviction, at least two years shall have passed since the
17 individual satisfied all terms and conditions of any sentence imposed for the last
18 conviction before making application for licensure or approval.

19 (1.2) A person who has a conviction in a court of competent jurisdiction of this or any
20 other state, district, or territory of the United States, or of a foreign country, shall be
21 eligible to become an applicant for a licensure or an approval authorized by this chapter
22 only if:

23 (A) Such person has satisfied all terms and conditions of any conviction such person
24 may have had before making application for licensure or approval; provided that if such
25 individual has multiple convictions, at least five years shall have passed since the
26 individual satisfied all terms and conditions of any sentence imposed for the last
27 conviction before making application for licensure or approval; and provided that if
28 such individual has been convicted of a single felony or of a single crime of moral
29 turpitude, at least two years shall have passed since the individual satisfied all terms and
30 conditions of any sentence imposed for the last conviction before making application
31 for licensure or approval;

32 (B) No criminal charges for forgery, embezzlement, obtaining money under false
33 pretenses, theft, extortion, conspiracy to defraud, a felony, a sex offense, a probation
34 violation, or a crime involving moral turpitude are pending against the person; and

35 (C) Such person presents to the commission satisfactory proof that the person now
36 bears a good reputation for honesty, trustworthiness, integrity, and competence to

1 transact the business of a licensee in such a manner as to safeguard the interest of the
 2 public.

3 (2) Where an applicant for ~~an appraiser~~ any classification or approval authorized by this
 4 chapter has been convicted in a court of competent jurisdiction of this or any other state,
 5 district, or territory of the United States; or of a foreign country of the offense of forgery,
 6 embezzlement, obtaining money under false pretenses, theft, extortion, or conspiracy to
 7 defraud or other like offense or offenses or has been convicted of a felony, a sex offense,
 8 a probation violation, or a crime involving moral turpitude, such conviction in itself may
 9 be a sufficient ground for refusal of ~~an appraiser~~ a classification or approval. An
 10 applicant for any ~~appraiser~~ classification or approval authorized by this chapter who has
 11 been convicted of any offense enumerated in this paragraph may be issued ~~an appraiser~~
 12 a classification or approval by the board only if:

13 (A) ~~At least five years~~ The time periods identified in paragraph (1) of this subsection
 14 have passed since the applicant was convicted, sentenced, or released from any
 15 incarceration, whichever is later;

16 (B) No criminal charges are pending against the applicant; and

17 (C) The applicant presents to the board satisfactory proof that the applicant now bears
 18 a good reputation for honesty, trustworthiness, integrity, and competence to transact
 19 real estate appraisal activity in such a manner as to safeguard the interests of the
 20 public."

21 SECTION 5.

22 Said title is further amended in Chapter 40, relating to real estate brokers and salespersons,
 23 by revising Code Section 43-40-8, relating to license requirements, as follows:

24 "43-40-8.

25 (a) In order to qualify to become an applicant for a community association manager's
 26 license, an ~~applicant must~~ individual shall:

27 (1) Have attained the age of 18 years;

28 (2) Be a resident of the State of Georgia, unless that person has fully complied with the
 29 provisions of Code Section 43-40-9;

30 (3) Be a high school graduate or the holder of a certificate of equivalency;

31 (3.1) Have complied fully with the requirements of subsection (b) of Code Section
 32 43-40-15 regarding any criminal convictions;

33 (4) Furnish evidence of completion of at least 25 ~~in-class~~ instructional hours in a
 34 community association manager's course ~~or courses~~ of study approved by the
 35 commission; and

1 (5) Stand and pass a real estate examination administered by or approved by the
 2 commission covering generally the matters confronting real estate brokers who provide
 3 community association management services and community association managers after
 4 completing the requirements of paragraph (4) of this subsection.

5 Failure to meet any of these requirements shall be grounds for denial of license without a
 6 hearing.

7 (b) In order to qualify to become an applicant for a salesperson's license, an ~~applicant must~~
 8 individual shall:

9 (1) Have attained the age of 18 years;

10 (2) Be a resident of the State of Georgia, unless that person has fully complied with the
 11 provisions of Code Section 43-40-9;

12 (3) Be a high school graduate or the holder of a certificate of equivalency;

13 (3.1) Have complied fully with the requirements of subsection (b) of Code Section
 14 43-40-15 regarding any criminal convictions;

15 (4) Furnish evidence of completion of at least 75 ~~in-class~~ instructional hours in a
 16 salesperson's course ~~or courses~~ of study approved by the commission; and

17 (5) Stand and pass a real estate examination administered by or approved by the
 18 commission covering generally the matters confronting real estate brokers and
 19 salespersons after completing the requirements of paragraph (4) of this subsection.

20 Failure to meet any of these requirements shall be grounds for denial of license without a
 21 hearing.

22 (c) In order to qualify to become an applicant for a broker or associate broker's license,
 23 an ~~applicant must~~ individual shall:

24 (1) Have attained the age of 21 years;

25 (2) Be a resident of the State of Georgia, unless that person has fully complied with the
 26 provisions of Code Section 43-40-9;

27 (3) Be a high school graduate or the holder of a certificate of equivalency;

28 (3.1) Have complied fully with the requirements of subsection (b) of Code Section
 29 43-40-15 regarding any criminal convictions;

30 (4) Have ~~served actively for three years as a licensee~~ maintained a license in active status
 31 for at least three of the five years immediately preceding the filing of an application to
 32 become a broker;

33 (5) Furnish evidence of completion of 60 ~~in-class hours~~ instructional hours in a broker's
 34 course of study approved by the commission, provided that if licensed as a community
 35 association manager, the applicant ~~must~~ shall furnish evidence of completion of an
 36 additional 75 ~~in-class~~ instructional hours in courses or a course of study approved by the
 37 commission; and

1 (6) Stand and pass a real estate examination administered by or approved by the
 2 commission covering generally the matters confronting real estate brokers after
 3 completing the requirements of paragraph (5) of this subsection and after serving at least
 4 two years of active licensure.

5 Failure to meet any of these requirements shall be grounds for denial of license without a
 6 hearing.

7 (d) Upon being issued an original salesperson's license, each salesperson shall be required
 8 to furnish the commission, within one year of the issuance of a license, evidence of
 9 satisfactory completion of a course of study of at least 25 ~~in-class~~ instructional hours
 10 approved by the commission. As a part condition of satisfactory completion of this course,
 11 the licensee ~~must~~ shall stand and pass an examination ~~covering that the commission~~
 12 approves and that covers the subject matter contained in the course. ~~The commission, in~~
 13 ~~its discretion, may approve an examination prepared by and administered by the school~~
 14 ~~offering the course or may prepare and administer an examination itself.~~ The license of
 15 any salesperson who fails to complete satisfactorily in a timely manner the course provided
 16 for in this subsection shall lapse, and the salesperson's wall certificate of licensure and
 17 pocket card shall immediately be surrendered to the commission. Any salesperson whose
 18 license lapses for failure to complete satisfactorily ~~this~~ an approved 25 instructional hour
 19 course may reinstate the license in the following manner:

20 (1) Any salesperson who has enrolled in ~~the~~ any approved 25 instructional hour course
 21 within one year of the issuance of an original license, has paid all required fees for the
 22 course, and:

23 ~~(A) Has~~ has not completed all in-class sessions, required exercises, or examinations;
 24 for any reason

25 ~~(B) Produces a medical doctor's certification of incapacitation which caused the~~
 26 ~~licensee to be unable to complete all in-class sessions and the examination; or~~

27 ~~(C) Has not completed the course or the examination due to cancellation of the course~~
 28 ~~by the approved school~~

29 may reinstate the license by completing the course within six months of the lapsing of the
 30 license; or

31 (2) Any salesperson who fails to reinstate a lapsed license as provided in paragraph (1)
 32 of this subsection ~~must qualify as an original applicant by passing a new examination as~~
 33 ~~required in subsection (b) of this Code section and must~~ shall complete 25 in-class
 34 instructional hours of instruction in a course of study approved by the commission and
 35 pay such penalty fees as the commission may require through its rules and regulations
 36 before making application to reinstate such license.

1 (e) Except those individuals actively licensed on January 1, 1980, each applicant for
2 renewal of an active license ~~must~~ shall furnish to the commission before renewing a license
3 evidence of satisfactorily completing a continuing education course or courses approved
4 by the commission. The length of the course or courses taken by licensees to meet this
5 requirement of continuing education ~~must~~ shall total at least six instructional hours for each
6 year of the renewal period established by the commission. The commission shall not
7 require the passing of an examination to meet this requirement. Continuing education
8 courses ~~will~~ shall be provided by all educational or duly authorized instructional
9 organizations teaching real estate licensing courses. No licensee whose license has been
10 placed on inactive status shall be allowed to reactivate unless the provisions of this
11 subsection and subsection (g) of Code Section 43-40-12 are met. Individuals serving on
12 active duty in the armed forces of the United States or in the General Assembly may
13 choose not to meet the continuing education requirements of this subsection while on active
14 duty or during their terms of office. Members of the armed forces or the General Assembly
15 who choose to exercise this temporary exemption option and whose term of active duty or
16 of office exceeds two years shall be required to complete the 25 instructional hour course
17 referenced in subsection (d) above within six months of the conclusion of their active duty
18 or term of office.

19 (f) Instructors in all of the approved courses ~~must~~ shall be approved by the commission
20 and, where the commission deems necessary, receive any special instruction the
21 commission may require.

22 (g) Failure to complete any of the educational requirements as provided in this Code
23 section shall be grounds for denial of a license or denial of renewal of a license without
24 further hearing. No fees or portion of fees paid shall be refunded if a licensee fails to meet
25 the continuing education provisions of subsections (d) and (e) of this Code section or any
26 other provisions of this chapter.

27 (h) The commission may prepare and distribute to licensees under this chapter educational
28 material deemed of assistance in the conduct of their business. The commission may
29 prepare and distribute to the public educational material deemed of assistance to consumers
30 engaging in business in real estate transactions with persons licensed under this chapter.

31 (i) The commission, through its rules and regulations, shall establish standards for the
32 approval of schools and instructors to offer the education courses required by this chapter.
33 Each approved school ~~must~~ shall comply with Code Sections 43-40-15 through 43-40-32.
34 Each approved school ~~must~~ shall designate an individual approved by the commission to
35 act as its director and such designated individual shall be responsible for assuring that the
36 approved school complies with the requirements of this chapter and rules and regulations
37 promulgated under this chapter. An approved school ~~must~~ shall authorize its director to

1 bind the school to any settlement of a contested case before the commission as defined in
 2 Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act.' The commission,
 3 through its rules and regulations, shall establish standards for the offering of the prelicense
 4 education courses required by this chapter by methods of instruction, which it deems to be
 5 educationally sound, other than in-class instruction. The commission, through its rules and
 6 regulations, may establish standards for the offering of continuing education courses
 7 required by this chapter by methods of instruction, which it deems to be educationally
 8 sound, other than in-class instruction."

9 **SECTION 6.**

10 Said title is further amended in Chapter 40 by revising subsections (f) and (g) of Code
 11 Section 43-40-12, relating to inactive status of a license, as follows:

12 "(f) Any licensee whose license lapses for failure to pay a renewal fee may reinstate that
 13 license within two years of the date of its lapsing by paying the total amount of all renewal
 14 fees and late charges which would have been due during the period when the license was
 15 lapsed plus a reinstatement fee. If any licensee who has passed an examination
 16 administered by or approved by the commission allows a license to lapse for a period
 17 longer than two years and less than ~~ten~~ five years due solely to a failure to pay a renewal
 18 fee, the licensee may reinstate that license by paying the total amount of all renewal fees
 19 and late charges which would have been due during the period when the license was lapsed
 20 plus a reinstatement fee and by successfully completing any educational course or courses
 21 which the commission may require. Any licensee whose license has lapsed for longer than
 22 ~~ten~~ five years for failure to pay a renewal fee and who seeks to reinstate that license ~~must~~
 23 shall meet the education and examination requirements for that license as set forth in Code
 24 Section 43-40-8. Any nonresident licensee whose license lapses for failure to pay a renewal
 25 fee may reactivate that license by paying the fee required of an original applicant if such
 26 nonresident licensee has maintained an active license in his or her state of residence during
 27 the period that his or her license lapsed and has met its continuing education requirements.
 28 Any licensee whose license has lapsed for longer than one year and who is not subject to
 29 the continuing education requirements of subsection (e) of Code Section 43-40-8 and who
 30 reinstates such license under the terms of this subsection shall thereafter be subject to the
 31 continuing education requirements of subsection (e) of Code Section 43-40-8.

32 (g) Any real estate broker who does not wish to be actively engaged in the brokerage
 33 business or any licensee who is temporarily not actively engaged on behalf of a broker may
 34 continue a license by making a written request within 30 days of ceasing work that the
 35 license be placed on inactive status. Any licensee whose license has been placed on an
 36 inactive status ~~may~~ shall not engage in the real estate brokerage business except in

1 connection with property owned by the licensee. To reinstate a license held on inactive
 2 status, a licensee other than a broker ~~must~~ shall secure the signature of the broker for whom
 3 the licensee wishes to act; and a broker ~~must~~ shall make application to the commission
 4 prior to resuming brokerage activity. Any individual licensee who seeks to activate a
 5 license which has been on inactive status ~~for a period of two years or longer shall be~~
 6 ~~required to attend a commission approved course of study prior to activating an inactive~~
 7 ~~license. The course of study shall consist of a commission approved education course or~~
 8 ~~courses totaling at least six hours for each year the license was on inactive status. This~~
 9 ~~education requirement for activating a license on inactive status shall not apply to licensees~~
 10 ~~who shall first~~ meet the continuing education requirement of subsection (e) of Code Section
 11 43-40-8 ~~in each renewal period that they are on inactive status nor to licensees who~~ which
 12 would have been required had such person been on active status unless such person
 13 maintained an active license in another state that has continuing education requirements
 14 while such licensee's license was on inactive status in Georgia."

15 SECTION 7.

16 Said title is further amended in Chapter 40 by revising subsection (b) of Code Section
 17 43-40-15, relating to the grant, revocation, or suspension of licenses, as follows:

18 "(b)(1) As used in this Code section, the term:

19 (A) 'Conviction' means a finding or verdict of guilty or a plea of guilty to a charge of
 20 a felony or any crime involving moral turpitude, regardless of whether an appeal of the
 21 conviction has been brought; a sentencing to first offender treatment without an
 22 adjudication of guilt pursuant to a charge of a felony or any crime involving moral
 23 turpitude; or a plea of nolo contendere to a charge of a felony or any crime involving
 24 moral turpitude.

25 (B) 'Felony' includes any offense which, if committed in this state, would be deemed
 26 a felony, without regard to its designation elsewhere.

27 (1.1) No person who has a conviction shall be eligible to become an applicant for a
 28 license or an approval authorized by this chapter unless such person has successfully
 29 completed all terms and conditions of any sentence imposed for such conviction;
 30 provided that if such individual has multiple convictions, at least five years shall have
 31 passed since the individual satisfied all terms and conditions of any sentence imposed for
 32 the last conviction before making application for licensure or approval; and provided that
 33 if such individual has a single conviction, at least two years shall have passed since the
 34 individual satisfied all terms and conditions of any sentence imposed for the last
 35 conviction before making application for licensure or approval.

1 (1.2) A person who has a conviction in a court of competent jurisdiction of this or any
 2 other state, district, or territory of the United States, or of a foreign country, shall be
 3 eligible to become an applicant for a licensure or an approval authorized by this chapter
 4 only if:

5 (A) Such person has satisfied all terms and conditions of any conviction such person
 6 may have had before making application for licensure or approval; provided that if such
 7 individual has multiple convictions, at least five years shall have passed since the
 8 individual satisfied all terms and conditions of any sentence imposed for the last
 9 conviction before making application for licensure or approval; and provided that if
 10 such individual has been convicted of a single felony or of a single crime of moral
 11 turpitude, at least two years shall have passed since the individual satisfied all terms and
 12 conditions of any sentence imposed for the last conviction before making application
 13 for licensure or approval;

14 (B) No criminal charges for forgery, embezzlement, obtaining money under false
 15 pretenses, theft, extortion, conspiracy to defraud, a felony, a sex offense, a probation
 16 violation, or a crime involving moral turpitude are pending against the person; and

17 (C) Such person presents to the commission satisfactory proof that the person now
 18 bears a good reputation for honesty, trustworthiness, integrity, and competence to
 19 transact the business of a licensee in such a manner as to safeguard the interest of the
 20 public.

21 (2) Where an applicant for ~~a community association manager's license or a salesperson's~~
 22 ~~license~~ any license or approval authorized by this chapter has been convicted of forgery,
 23 embezzlement, obtaining money under false pretenses, theft, extortion, conspiracy to
 24 defraud, or other like offense or offenses or has been convicted of a felony, a sex offense,
 25 a probation violation, or a crime involving moral turpitude and has been convicted thereof
 26 in a court of competent jurisdiction of this or any other state, district, or territory of the
 27 United States; or of a foreign country; such conviction in itself may be a sufficient ground
 28 for refusal of a license or approval authorized by this chapter. An applicant for licensure
 29 as an associate broker or a broker who has been convicted of any offense enumerated in
 30 this ~~subsection~~ paragraph may be licensed by the commission as an associate broker or
 31 a broker only if:

32 (A) At least ten years have passed since the applicant was convicted, sentenced, or
 33 released from any incarceration, whichever is later;

34 (B) No criminal charges are pending against the applicant; and

35 (C) The applicant presents to the commission satisfactory proof that the applicant now
 36 bears a good reputation for honesty, trustworthiness, integrity, and competence to

1 transact the business of a licensee in such a manner as to safeguard the interest of the
2 public."

3 **SECTION 8.**

4 Said title is further amended in Chapter 40 by revising subsection (e) of Code Section
5 43-40-20, relating to when a broker is entitled to commission or fee, as follows:

6 "(e) A broker shall not be entitled to any part of the earnest money, security deposit, or
7 other ~~money~~ trust funds paid to the broker in connection with any real estate transaction
8 as part or all of the broker's commission or fee until the transaction has been
9 consummated or terminated."

10 **SECTION 9.**

11 Said title is further amended in Chapter 40 by revising paragraph (14) of subsection (b) of
12 Code Section 43-40-25, relating to unfair trade practices, as follows:

13 "(14) Negotiating a sale, exchange, or lease of real estate directly with an owner, a lessor,
14 a purchaser, or a tenant if the licensee knows that such owner or lessor has a written
15 outstanding listing contract in connection with such property granting an exclusive
16 agency or an exclusive right to sell to another broker or that such purchaser or tenant has
17 a written outstanding exclusive brokerage agreement with another broker, unless the
18 outstanding listing or brokerage agreement provides that the licensee holding such
19 agreement will not provide negotiation services to the client;"

20 **SECTION 10.**

21 All laws and parts of laws in conflict with this Act are repealed.