

The Senate Judiciary Committee offered the following substitute to HB 53:

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 regarding certain activities requiring a license;
3 to clarify that persons certified by the Georgia Peace Officer Standard and Training Council
4 are excluded from certain training provisions and regulations of Chapter 38 of Title 43 and
5 may be excluded from licensure under certain circumstances; to change provisions relating
6 to the prohibition against certain licensees engaged in real estate activities engaging in unfair
7 trade practices; to provide for related matters; to provide an effective date; to repeal
8 conflicting laws; and for other purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

10 SECTION 1.

11 Title 43 of the Official Code of Georgia Annotated, relating to professions and businesses,
12 is amended by revising Code Section 43-38-14, relating to exceptions and local regulation
13 regarding operators of private detective businesses and private security businesses, as
14 follows:

15 "43-38-14.

16 (a) This chapter shall not apply to:

- 17 (1) An officer or employee of the United States of America or of this state or a political
18 subdivision thereof while the employee or officer is engaged in the performance of
19 official duties;
- 20 (2) A person engaged in the business of furnishing information in connection with credit
21 or marketing and a person or firm engaged as a consumer reporting agency, as defined
22 by the federal Fair Credit Reporting Act;
- 23 (3) An attorney at law or a bona fide legal assistant in performing his or her duties;
- 24 (4) Admitted insurers, agents, and insurance brokers licensed by the state while
25 performing duties in connection with insurance transacted by them;

26 ~~(5) A peace officer employed on a full-time basis by a federal, state, county, or local law~~
 27 ~~enforcement agency who contracts directly with an employer to work during his or her~~
 28 ~~off-duty hours and whose off-duty employment is conducted on an independent~~
 29 ~~contractor basis with another employer other than a peace officer engaged in the private~~
 30 ~~detective or private security business or a private detective or private security agency,~~
 31 ~~subject to Code Section 16-10-3, relating to the receipt of funds by state officers or~~
 32 ~~employees for the enforcement of penal laws;~~

33 ~~(6)~~(5) A firm engaged in the business of independent insurance claims adjusting whose
 34 employees hold a valid Georgia adjuster's license; or

35 ~~(7)~~(6) The employees of a firm ~~mentioned~~ identified in paragraph ~~(6)~~ (5) of this
 36 subsection.

37 ~~(b) This chapter does not apply to any person covered by Chapter 8 of Title 35, the~~
 38 ~~'Georgia Peace Officer Standards and Training Act.'~~ Any person with a valid peace officer
 39 certification issued pursuant to Chapter 8 of Title 35, the 'Georgia Peace Officer Standards
 40 and Training Act,' who is employed by or works as an independent contractor for a
 41 licensed:

42 (1) Private security business shall be exempt from any training provisions required by
 43 this chapter for such business and shall be deemed to have satisfied all board rules and
 44 regulations relative to training; and

45 (2) Private detective business or private security business shall be exempt from further
 46 licensure under this chapter and shall be permitted to carry a firearm without obtaining
 47 any weapons permit from the board; provided, however, that such licensed private
 48 detective business or private security business shall be required to register such employee
 49 or independent contractor with the board.

50 (c) This chapter shall not prevent the local authorities of any municipality or county, by
 51 ordinance and within the exercise of the police power of such municipality or county, from
 52 imposing local regulations upon any street patrol, special officer, or person furnishing
 53 street patrol service, including regulations requiring registration with an agency to be
 54 designated by such municipality or county.

55 (d) This chapter shall not apply to a person or corporation which employs persons who do
 56 private security work in connection with the affairs of such employer only and who have
 57 an employer-employee relationship with such employer. Neither such persons or
 58 corporations nor their employees shall be required to register or be licensed under this
 59 chapter, although such persons or corporations or their employees may elect to be licensed
 60 under this chapter."

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SECTION 2.

Said title is further amended by revising subsection (b) of Code Section 43-40-25, relating to violations by licensed community association managers, salespersons, associate brokers, brokers, schools, and instructors and sanctions and unfair trade practices, as follows:

"(b) Licensees shall not engage in any of the following unfair trade practices:

(1) Because of race, color, religion, sex, disability, familial status, or national origin:

(A) Refusing to sell or rent after the making of a bona fide offer, or refusing to negotiate for the sale or rental of, or otherwise making unavailable or denying, real estate to any person;

(B) Discriminating against any person in the terms, conditions, or privileges of sale or rental of real estate or in the provision of services or facilities in connection therewith;

(C) Making, printing, or publishing or causing to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of real estate, that indicates any preference, limitation, or discrimination or an intention to make any such preference, limitation, or discrimination;

(D) Representing to any person that any real estate is not available for inspection, sale, or rental when such real estate is in fact so available; or

(E) Representing explicitly or implicitly that a change has or will or may occur in a block, neighborhood, or area in order to induce or discourage the listing, purchasing, selling, or renting of real estate;

(2) Intentionally advertising material which is misleading or inaccurate or which in any way misrepresents any property, terms, values, policies, or services of the business conducted;

(3) Failing to account for and remit any money coming into the licensee's possession which belongs to others;

(4) Commingling the money or other property of the licensee's principals with the licensee's own;

(5) Failing to maintain and deposit in a separate, federally insured checking account all money received by said broker acting in said capacity, or as escrow agent or the temporary custodian of the funds of others, in a real estate transaction unless all parties having an interest in said funds have agreed otherwise in writing;

~~(6) Accepting, giving, or charging any undisclosed commission, fee, rebate, direct profit, or other valuable consideration on expenditures made for a principal or any undisclosed commission, fee, rebate, direct profit for procuring a loan or insurance or for conducting a property inspection, or for any other service related to a real estate transaction~~

Failing to disclose in writing to a principal in a real estate transaction any of the following:

- 98 (A) The receipt of a fee, rebate, or other thing of value on expenditures made on behalf
99 of the principal for which the principal is reimbursing the licensee;
- 100 (B) The payment to another broker of a commission, fee, or other thing of value for the
101 referral of the principal for brokerage or relocation services; or
- 102 (C) The receipt of anything of value for the referral of any service or product in a real
103 estate transaction to a principal;
- 104 (7) Representing or attempting to represent a real estate broker, other than the broker
105 holding the licensee's license, without the express knowledge and consent of the broker
106 holding the licensee's license;
- 107 (8) Accepting a commission or other valuable consideration by a licensee from anyone
108 other than the broker holding that licensee's license without the consent of that broker;
- 109 (9) Acting in the dual capacity of agent and undisclosed principal in any transaction;
- 110 (10) Guaranteeing or authorizing any person to guarantee future profits which may result
111 from the resale of real property;
- 112 (11) Placing a sign on any property offering it for sale or rent without the written consent
113 of the owner or the owner's authorized agent and failing to remove such sign within ten
114 days after the expiration of listing;
- 115 (12) Offering real estate for sale or lease without the knowledge and consent of the
116 owner or the owner's authorized agent or on terms other than those authorized by the
117 owner or the owner's authorized agent;
- 118 (13) Inducing any party to a contract of sale or lease, or a brokerage agreement to break
119 such contract or brokerage agreement for the purpose of substituting in lieu thereof any
120 other contract or brokerage agreement with another principal;
- 121 (14) Negotiating a sale, exchange, or lease of real estate directly with an owner, a lessor,
122 a purchaser, or a tenant if the licensee knows that such owner or lessor has a written
123 outstanding listing contract in connection with such property granting an exclusive
124 agency or an exclusive right to sell to another broker or that such purchaser or tenant has
125 a written outstanding exclusive brokerage agreement with another broker, unless the
126 outstanding listing or brokerage agreement provides that the licensee holding such
127 agreement will not provide negotiation services to the client;
- 128 (15) Indicating that an opinion given to a potential seller, purchaser, landlord, or tenant
129 regarding a listing, lease, rental, or purchase price is an appraisal unless such licensee
130 holds an appraiser classification in accordance with Chapter 39A of this title;
- 131 (16) Performing or attempting to perform any of the acts of a licensee on property
132 located in another state without first having been properly licensed in that state or
133 otherwise having complied fully with that state's laws regarding real estate brokerage;

134 (17) Paying a commission or compensation to any person for performing the services of
135 a real estate licensee who has not first secured the appropriate license under this chapter
136 or is not cooperating as a nonresident who is licensed in such nonresident's state or
137 foreign country of residence, provided that nothing contained in this subsection or any
138 other provision of this Code section shall be construed so as to prohibit the payment of
139 earned commissions:

140 (A) To the estate or heirs of a deceased real estate licensee when such deceased real
141 estate licensee had a valid Georgia real estate license in effect at the time the
142 commission was earned and at the time of such person's death;

143 (B) To a citizen of another country acting as a referral agent if that country does not
144 license real estate brokers and if the Georgia licensee paying such commission or
145 compensation obtains and maintains reasonable written evidence that the payee is a
146 citizen of said other country, is not a resident of this country, and is in the business of
147 brokering real estate in said other country; or

148 (C) By the brokerage firm holding a licensee's license to an unlicensed firm in which
149 an individual licensee affiliated with the brokerage firm owns more than a 20 percent
150 interest provided:

151 (i) Such individual licensee earned the commission on behalf of the brokerage firm;

152 (ii) Such unlicensed firm does not perform real estate brokerage activity;

153 (iii) The affiliated licensee and the brokerage firm have a written agreement
154 authorizing the payment to the unlicensed firm; and

155 (iv) The brokerage firm obtains and retains written evidence that the affiliated
156 licensee owns more than a 20 percent interest in the unlicensed firm to which the
157 compensation will be paid;

158 (18) Failing to include a fixed date of expiration in any written listing agreement and
159 failing to leave a copy of said agreement with the principal;

160 (19) Failing to deliver, within a reasonable time, a completed copy of any purchase
161 agreement or offer to buy or sell real estate to the purchaser and to the seller;

162 (20) Failure by a broker to deliver to the seller in every real estate transaction, at the time
163 said transaction is consummated, a complete, detailed closing statement showing all of
164 the receipts and disbursements handled by such broker for the seller or failure to deliver
165 to the buyer a complete statement showing all money received in said transaction from
166 such buyer and how and for what the same was disbursed; the broker shall retain true
167 copies of such statements in the broker's files;

168 (21) Making any substantial misrepresentations;

169 (22) Acting for more than one party in a transaction without the express written consent
170 of all parties to the transaction;

- 171 (23) Failure of an associate broker, salesperson, or community association manager to
172 place, as soon after receipt as is practicably possible, in the custody of the broker holding
173 the licensee's license any deposit money or other money or funds entrusted to the licensee
174 by any person dealing with the licensee as the representative of the licensee's licensed
175 broker;
- 176 (24) Filing a listing contract or any document or instrument purporting to create a lien
177 based on a listing contract for the purpose of casting a cloud upon the title to real estate
178 when no valid claim under said listing contract exists;
- 179 (25) Having demonstrated incompetency to act as a real estate licensee in such manner
180 as to safeguard the interest of the public or any other conduct whether of the same or a
181 different character than heretofore specified which constitutes dishonest dealing;
- 182 (26) Obtaining a brokerage agreement, a sales contract, or a lease from any owner,
183 purchaser, or tenant while knowing or having reason to believe that another broker has
184 an exclusive brokerage agreement with such owner, purchaser, or tenant, unless the
185 licensee has written permission from the broker having the first exclusive brokerage
186 agreement; provided, however, that notwithstanding the provisions of this paragraph, a
187 licensee shall be permitted to present a proposal or bid for community association
188 management if requested to do so in writing from a community association board of
189 directors;
- 190 (27) Failing to keep for a period of three years a true and correct copy of all sales
191 contracts, closing statements, any offer or other document that resulted in the depositing
192 of trust funds, accounting records related to the maintenance of any trust account required
193 by this chapter, and other documents relating to real estate closings or transactions or
194 failing to produce such documents at the reasonable request of the commission or any of
195 its agents for their inspection;
- 196 (28) Being or becoming a party to any falsification of any portion of any contract or
197 other document involved in any real estate transaction;
- 198 ~~(29) Failing to cause or preventing the disclosure of, on a real estate transaction~~
199 ~~settlement statement, settlement document, lease agreement, or management agreement,~~
200 ~~any fee, charge, rebate, profit, commission, referral fee, or other valuable consideration~~
201 ~~for any service related to such transaction and the recipient of the consideration;~~
- 202 ~~(30)~~(29) Failing to obtain the written agreement of the parties indicating to whom the
203 broker shall pay any interest earned on trust funds deposited into an interest-bearing
204 checking account prior to depositing those funds into such account;
- 205 ~~(31)~~(30) Failing to disclose in a timely manner to all parties in a real estate transaction
206 any agency relationship that the licensee may have with any of the parties;

207 ~~(32)~~(31) Attempting to perform any act authorized by this chapter to be performed only
 208 by a broker, associate broker, or salesperson while licensed as a community association
 209 manager;

210 ~~(33)~~(32) Attempting to sell, lease, or exchange the property of any member of a
 211 community association to which a licensee is providing community association
 212 management services without the express written consent of that association to do so;

213 ~~(33.1)~~(33) Failure to deliver to a community association terminating a management
 214 contract within 30 days of the termination, or within such other time period as the
 215 management contract shall provide:

216 (A) A complete and accurate record of all transactions and funds handled during the
 217 period of the contract and not previously accounted for;

218 (B) All records and documents received from the community association or received
 219 on the association's behalf; and

220 (C) Any funds held on behalf of the community association;

221 ~~(33.2)~~(34) Failure to deliver to a property owner terminating a management contract
 222 within 30 days of the termination, or within such other time period as the management
 223 contract shall provide:

224 (A) A complete and accurate record of all transactions and funds handled during the
 225 period of the contract and not previously accounted for;

226 (B) All records and documents received from the property owner or received on the
 227 owner's behalf; and

228 (C) Any funds held on behalf of the property owner;

229 ~~(34)~~(35) Inducing any person to alter, modify, or change another licensee's fee or
 230 commission for real estate brokerage services without that licensee's prior written
 231 consent; or

232 ~~(35)~~(36) Failing to obtain a person's written agreement to refer that person to another
 233 licensee licensed broker for brokerage or relocation services and to inform such person
 234 being referred whether or not the licensee will receive a valuable consideration for such
 235 referral and an estimate of such consideration."

236 **SECTION 3.**

237 This Act shall become effective upon its approval by the Governor or upon its becoming law
 238 without such approval.

239 **SECTION 4.**

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