

The House Committee on Regulated Industries offers the following substitute to HB 880.

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 real estate professionals; to provide
3 for definitions relative to real estate appraisers; to change certain provisions relating to
4 revocation of licenses; to change certain provisions relating to discipline, sanctions, and
5 citations; to provide for a letter of findings to be issued by the Georgia Real Estate
6 Appraisers Board and the Georgia Real Estate Commission; to change certain provisions
7 relating to qualifications for a broker or associate broker's license; to change certain
8 provisions relating to the real estate education, research, and recovery fund; to revise certain
9 provisions relating to the commission's subrogation rights; to provide for related matters; to
10 repeal conflicting laws; and for other purposes.

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

12 style="text-align:center">**SECTION 1.**

13 Title 43 of the Official Code of Georgia Annotated, relating to professions and businesses,
14 is amended by revising subparagraph (B) of paragraph (3) of Code Section 43-39A-2,
15 relating to definitions relative to real estate appraisers, as follows:

16 "(B) 'Appraisal management company' does not include:

- 17 (i) Any person licensed to practice law in this state who orders an appraisal in
18 connection with a bona fide client relationship when that person directly contracts
19 with an appraiser;
- 20 (ii) Any person who contracts with an appraiser acting as an independent contractor
21 for the completion of a real estate appraisal assignment and who, upon the completion
22 of such an assignment, cosigns the appraisal report with the appraiser who is acting
23 as an independent contractor;
- 24 (iii) Any federal, state, or local government or any of its departments, agencies, or
25 authorities that order appraisals; or

- 26 (iv) Any person who orders an appraisal on behalf of any federal, state, or local
 27 government or its departments, agencies, or authorities as an employee thereof; or
 28 (v) A relocation company."

29 **SECTION 2.**

30 Said title is further amended by revising Code Section 43-39A-2, relating to definitions
 31 relative to real estate appraisers, by adding a new paragraph to read as follows:

32 "(25.1) 'Relocation company' means a business entity that acts as an agent or contractor
 33 of an employer for the purposes of relocating the employees of such employer and
 34 determining an anticipated sales price of the residences of the employees being
 35 relocated."

36 **SECTION 3.**

37 Said title is further amended by revising subsection (e) of Code Section 43-39A-3, relating
 38 to the Georgia Real Estate Appraisers Board, membership, qualifications, recusal for conflict
 39 of interest, terms, removal, meetings, and compensation, as follows:

40 "(e) Upon expiration of their terms, members of the board shall continue to hold office until
 41 the appointment and qualification of their successors. The Governor, after giving notice
 42 and opportunity for a hearing, may remove from office any member of the board for any
 43 of the following:

- 44 (1) Inability to perform or neglecting to perform the duties required of members;
 45 (2) Incompetence;
 46 (3) Dishonest conduct; or
 47 (4) Having a disciplinary sanction other than a citation or a letter of findings authorized
 48 by this chapter imposed by any professional licensing agency on such member's right to
 49 practice a trade or profession."

50 **SECTION 4.**

51 Said title is further amended by revising Code Section 43-39A-14, relating to required
 52 conduct of applicants, refusal of classification, imposition of sanctions, revocation of
 53 classification, noncompliance with child support orders, and borrowers in default, as follows:

54 "43-39A-14.

55 (a) Appraiser classifications shall be granted only to persons who bear a good reputation
 56 for honesty, trustworthiness, integrity, and competence to transact real estate appraisal
 57 activity in such manner as to safeguard the interests of the public and only after satisfactory
 58 proof of such qualifications has been presented to the board.

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

60 (A) 'Conviction' means a finding or verdict of guilty or a plea of guilty to a charge of
 61 a felony or any crime involving moral turpitude, regardless of whether an appeal of the
 62 conviction has been brought; a sentencing to first offender treatment without an
 63 adjudication of guilt pursuant to a charge of a felony or any crime involving moral
 64 turpitude; or a plea of nolo contendere to a charge of a felony or any crime involving
 65 moral turpitude.

66 (B) 'Felony' ~~includes~~ means any offense ~~which, if committed in this state, would be~~
 67 ~~deemed a felony, without regard to its designation elsewhere~~ committed:

68 (i) Within this state and deemed a felony under the laws of this state or under the
 69 laws of the United States; or

70 (ii) In another state and deemed a felony under the laws of that state or the laws of
 71 the United States.

72 (1.1) No person who has a conviction shall be eligible to become an applicant for a
 73 license or an approval authorized by this chapter unless such person has successfully
 74 completed all terms and conditions of any sentence imposed for such conviction;,
 75 provided that if such individual has multiple convictions, at least five years shall have
 76 passed since the individual satisfied all terms and conditions of any sentence imposed for
 77 the last conviction before making application for licensure or approval; and provided,
 78 further, that if such individual has a single conviction, at least two years shall have passed
 79 since the individual satisfied all terms and conditions of any sentence imposed for the last
 80 conviction before making application for licensure or approval.

81 (1.2) A person who has a conviction in a court of competent jurisdiction of this state or
 82 any other state, ~~district, or territory of the United States, or of a foreign country,~~ shall be
 83 eligible to become an applicant for a licensure or an approval authorized by this chapter
 84 only if:

85 (A) Such person has satisfied all terms and conditions of any conviction such person
 86 may have had before making application for licensure or approval, provided that; if
 87 such individual has multiple convictions, at least five years shall have passed since the
 88 individual satisfied all terms and conditions of any sentence imposed for the last
 89 conviction before making application for licensure or approval; and provided, further,
 90 that if such individual has been convicted of a single felony or of a single crime of
 91 moral turpitude, at least two years shall have passed since the individual satisfied all
 92 terms and conditions of any sentence imposed for the last conviction before making
 93 application for licensure or approval;

94 (B) No criminal charges for forgery, embezzlement, obtaining money under false
 95 pretenses, theft, extortion, conspiracy to defraud, a felony, a ~~sex~~ sexual offense, a

96 probation violation, or a crime involving moral turpitude are pending against the
 97 person; and

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

102 (2) Where an applicant for any classification or approval authorized by this chapter has
 103 been convicted in a court of competent jurisdiction of this state or any other state, ~~district,~~
 104 ~~or territory of the United States or of a foreign country~~ of the offense of forgery,
 105 embezzlement, obtaining money under false pretenses, theft, extortion, or conspiracy to
 106 defraud or other like offense or offenses or has been convicted of a felony, a ~~sex~~ sexual
 107 offense, a probation violation, or a crime involving moral turpitude, such conviction in
 108 itself may be a sufficient ground for refusal of a classification or approval. An applicant
 109 for any classification or approval authorized by this chapter who has been convicted of
 110 any offense enumerated in this paragraph may be issued a classification or approval by
 111 the board only if:

112 (A) The time periods identified in paragraph ~~(1)~~ (1.1) of this subsection have passed
 113 since the applicant was convicted, sentenced, or released from any incarceration,
 114 whichever is later;

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

116 (C) The applicant presents to the board satisfactory proof that the applicant now bears
 117 a good reputation for honesty, trustworthiness, integrity, and competence to transact
 118 real estate appraisal activity in such a manner as to safeguard the interest of the public.

119 (c) Where an applicant or an appraiser has been found guilty of a violation of the federal
 120 fair housing law or Article 4 of Chapter 3 of Title 8 by an administrative law judge or a
 121 court of competent jurisdiction and after any appeal of such conviction is concluded, such
 122 conviction may in itself be a sufficient ground for refusal of an appraiser classification or
 123 the imposition of any sanction permitted by this chapter.

124 (d) Where an applicant or an appraiser has made a false statement of material fact on an
 125 application or caused to be submitted or been a party to preparing or submitting any
 126 falsified application to the board, such action may, in itself, be a sufficient ground for the
 127 refusal, suspension, or revocation of the appraiser classification.

128 (e) Grounds for suspension or revocation of an appraiser classification, as provided for by
 129 this chapter, shall also be grounds for refusal to grant an appraiser classification.

130 (f) The conduct provided for in subsections (a) through (d) and subsection (h) of this Code
 131 section which relates to the denial of an appraiser classification to an applicant shall also

132 be grounds for the imposition of any sanction permitted by this chapter when the conduct
133 is that of an appraiser.

134 (g) Whenever the board initiates an investigation as provided in Code Section 43-39A-22
135 to determine whether an appraiser has violated any provision of this chapter or the rules
136 and regulations adopted pursuant to this chapter and such appraiser:

137 (1) Surrendered or surrenders an appraiser classification to the board;

138 (2) Allowed or allows an appraiser classification to lapse due to failure to meet education
139 requirements provided by law; or

140 (3) Allowed or allows an appraiser classification to lapse due to failure to pay any
141 required fees,

142 the board may issue an order revoking such appraiser's classification. The order ~~will~~ shall
143 be effective ten days after the order is served on the appraiser unless the appraiser makes
144 a written request for a hearing before the board, in which event, the board ~~will~~ shall file a
145 notice of hearing in accordance with Chapter 13 of Title 50, the 'Georgia Administrative
146 Procedure Act.' Service shall be accomplished as provided for in Code Section 43-39A-21.
147 ~~If such surrender or lapsing occurs after the board has filed a notice of hearing alleging that~~
148 ~~such appraiser has violated any provision of this chapter or the rules and regulations~~
149 ~~adopted pursuant to this chapter but before the board enters a final order in the matter, then~~
150 ~~upon submission of a new application by such person the matters asserted in the notice of~~
151 ~~hearing shall be deemed admitted and may be used by the board as grounds for refusal of~~
152 ~~a new appraiser classification to such person.~~

153 (h) Whenever any occupational licensing body of this state; or any other state; ~~or any~~
154 ~~foreign country~~ has ~~sanctioned~~ disciplined any license or classification of an applicant for
155 any appraiser classification or whenever such an applicant has allowed a license or
156 classification to lapse or has surrendered a license or classification to any occupational
157 licensing body of this state; or any other state; ~~or any foreign country~~ after that
158 occupational licensing body has initiated an investigation or a disciplinary process
159 regarding such applicant's licensure or classification, such ~~sanction~~ discipline, lapsing, or
160 surrender in itself may be a sufficient ground for refusal of an appraiser classification.
161 Whenever any occupational licensing body of this state; or any other state; ~~or any foreign~~
162 ~~country~~ has revoked the license or classification of an applicant for a classification or
163 whenever such an applicant has allowed a license or classification to lapse or has
164 surrendered a license or classification to any occupational licensing body of this state; or
165 any other state; ~~or any foreign country~~ after that body has initiated an investigation or a
166 disciplinary process regarding such applicant's license or classification, the board may issue
167 an appraiser classification only if:

- 168 (1) At least five years have passed since the date that the applicant's occupational
 169 registration, license, or certification was revoked or surrendered;
- 170 (2) No criminal charges are pending against the applicant at the time of application; and
- 171 (3) The applicant presents to the board satisfactory proof that the applicant now bears a
 172 good reputation for honesty, trustworthiness, integrity, and competence to transact real
 173 estate appraisal activity in such a manner as to safeguard the interests of the public.
- 174 (i) Whenever any appraiser is convicted of any offense enumerated in subsection (b) of
 175 this Code section, such appraiser ~~must~~ shall immediately notify the board of that
 176 conviction. Such appraiser's appraiser classification shall automatically be revoked 60 days
 177 after the conviction unless the appraiser makes a written request to the board for a hearing
 178 during that 60 day period. Following any such hearing requested pursuant to this
 179 subsection, the board in its discretion may impose upon that appraiser any sanction
 180 permitted by this chapter.
- 181 (j) Where an applicant or licensee has been found not in compliance with an order for child
 182 support as provided in Code Section 19-6-28.1 or 19-11-9.3, such action ~~is~~ shall be
 183 sufficient grounds for refusal of a license or suspension of a license. For purposes of this
 184 subsection, the hearing and appeal procedures provided for in such Code sections shall be
 185 the only such procedures required under this article.
- 186 (k) Where an applicant or licensee has been found to be a borrower in default who is not
 187 in satisfactory repayment status as provided in Code Section 20-3-295, such finding ~~is~~ shall
 188 be sufficient grounds for refusal of a license or suspension of a license. For purposes of
 189 this subsection, the hearing and appeal procedures provided for in Code Section 20-3-295
 190 shall be the only such procedures required under this article.
- 191 (l) Where the board has previously sanctioned any applicant for a classification under
 192 Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act,' such sanction may in
 193 itself be a sufficient ground for refusing the classification."

194 **SECTION 5.**

195 Said title is further amended by revising subsection (a) of Code Section 43-39A-18, relating
 196 to penalties for violations, unfair trade practices, and civil judgments, as follows:

197 "(a) In accordance with the hearing procedures established for contested cases by Chapter
 198 13 of Title 50, the 'Georgia Administrative Procedure Act,' whenever an appraiser
 199 classification, a school approval, or an instructor approval has been obtained by false or
 200 fraudulent representation, ~~or~~ whenever an appraiser, an approved school, or an approved
 201 instructor has been found guilty of a violation of this chapter, ~~or~~ of the rules and regulations
 202 promulgated by the board, or of any unfair trade practices, including, but not limited to,

203 those listed in this Code section; the board shall have the power to take any one or more
 204 of the following actions:

- 205 (1) Refuse to grant or renew a classification to an applicant;
- 206 (2) Administer a reprimand;
- 207 (3) Suspend any classification or approval for a definite period of time or for an
 208 indefinite period of time in connection with any condition that may be attached to the
 209 restoration of the classification or approval;
- 210 (4) Revoke any classification or approval;
- 211 (5) Revoke any classification issued to an appraiser and simultaneously issue such
 212 appraiser a classification with more restricted authority to conduct appraisals;
- 213 (6) Impose on an appraiser, applicant, ~~approved school approval~~, or ~~approved instructor~~
 214 ~~approval~~ monetary assessments in an amount necessary to reimburse the board for
 215 administrative, investigative, and legal costs and expenses incurred by the board in
 216 conducting any proceeding authorized under this chapter or Chapter 13 of Title 50, the
 217 'Georgia Administrative Procedure Act';
- 218 (7) Impose a fine not to exceed \$1,000.00 for each violation of this chapter or its rules
 219 and regulations with fines for multiple violations limited to \$5,000.00 in any one
 220 disciplinary proceeding or such other amount as the parties may agree;
- 221 (8) Require completion of a course of study in real estate appraisal or instruction; or
- 222 (9) Limit or restrict any classification or approval as the board deems necessary for the
 223 protection of the public.

224 Any action taken by the board pursuant to this subsection may, at its discretion, be
 225 construed as a 'disciplinary sanction' or 'sanction' as such terms are used in this chapter.'

226 **SECTION 6.**

227 Said title is further amended by revising Code Section 43-39A-18.1, relating to alternative
 228 disciplinary procedures and citations, as follows:

229 "43-39A-18.1.

230 (a) It is the intent of the General Assembly to provide the board with a disciplinary ~~tool~~
 231 ~~which is an alternative~~ measures to use as alternatives to the sanctions provided for in
 232 subsection (a) of Code Section 43-39A-18. The citation and letter of findings provided for
 233 in this Code section shall not be construed as a disciplinary sanction.

234 (b) Whenever the evidence gathered in an investigation reveals an apparent violation by
 235 an appraiser of this chapter, the rules and regulations promulgated by the board, or a
 236 standard of conduct, the board, in its discretion, may:

237 (1) ~~initiate~~ Initiate the process for the imposition of sanctions, as provided for in
 238 subsection (a) of Code Section 43-39A-18 and in accordance with the hearing procedures
 239 established for contested cases by Chapter 13 of Title 50, ~~or;~~

240 (2) ~~issue~~ Issue a citation to the appraiser. Such citation, which shall be served personally
 241 or by mail, shall give notice to the appraiser of the alleged violation or violations of this
 242 chapter, commission rules, or standard or standards of conduct and inform the appraiser
 243 of the opportunity to request a contested case hearing to be held in accordance with the
 244 procedures established for such hearings by Chapter 13 of Title 50. A citation issued by
 245 the board may include an order to complete a course of study in real estate appraisal or
 246 instruction or to pay a fine not to exceed \$1,000.00 for each violation of this chapter or
 247 its rules and regulations, with fines for multiple violations limited to \$5,000.00 in any one
 248 citation, or both. If the appraiser fails to request a hearing within 30 days of the date of
 249 service of the citation, the order contained in the citation shall be final. The failure of an
 250 appraiser to comply with a final order contained in a citation may be cause for the
 251 imposition of a sanction on such person's classification, after notice and opportunity for
 252 a hearing; or

253 (3) Issue a letter of findings to the appraiser if the alleged violation appears to have done
 254 no harm to a third party or to the public. Such letter of findings, which shall be served
 255 personally or by mail, shall give notice to the appraiser of the alleged violation or
 256 violations of this chapter, commission rules, or standard or standards of conduct. A letter
 257 of findings shall be confidential and shall not appear on the classification history of an
 258 appraiser. A letter of findings shall not be subject to a subpoena in a civil action, shall
 259 not constitute a public record or be available for inspection by the public, and shall not
 260 be disclosed to any person or agency, except as provided in subsection (d) of Code
 261 Section 43-39A-22.

262 (c) The board is authorized to promulgate rules and regulations to implement this Code
 263 section. Such rules may limit the provisions of this chapter and of its rules and regulations
 264 and standards of conduct which may be the basis for the issuance of a citation or a letter
 265 of findings."

266 SECTION 7.

267 Said title is further amended by revising subsection (d) of Code Section 43-40-2, relating to
 268 creation of commission, members, meetings, recusal for conflict of interest, removal,
 269 compensation, annual report, and budget unit, as follows:

270 "(d) The Governor, after giving notice and an opportunity for a hearing, may remove from
 271 office any member of the commission for any of the following:

272 (1) Inability to perform or neglecting to perform the duties required of members;

- 273 (2) Incompetence;
 274 (3) Dishonest conduct; or
 275 (4) Having a disciplinary sanction, other than a citation or a letter of findings authorized
 276 by this chapter, imposed by any professional licensing agency on such member's right to
 277 practice a trade or profession."

278 **SECTION 8.**

279 Said title is further amended by revising subsection (c) of Code Section 43-40-8, relating to
 280 qualifications of licensees, course of study for licensed salespersons, lapse, reinstatement,
 281 renewal, continuing education, and standards for courses, as follows:

282 "(c) In order to qualify to become an applicant for a broker or associate broker's license,
 283 an individual shall:

- 284 (1) Have attained the age of 21 years;
 285 (2) Be a resident of the State of Georgia, unless that person has fully complied with the
 286 provisions of Code Section 43-40-9;
 287 (3) Be a high school graduate or the holder of a certificate of equivalency;
 288 (3.1) Have complied fully with the requirements of subsection (b) of Code Section
 289 43-40-15 regarding any criminal convictions;
 290 (4) Have maintained a license in active status for at least three of the five years
 291 immediately preceding the filing of an application to become a broker;
 292 (5) Furnish evidence of completion of 60 instructional hours in a broker's course of study
 293 approved by the commission, provided that if licensed as a community association
 294 manager, the applicant shall furnish evidence of completion of an additional 75
 295 instructional hours in courses or a course of study approved by the commission; and
 296 (6) Stand and pass a real estate examination administered by or approved by the
 297 commission covering generally the matters confronting real estate brokers after
 298 completing the requirements of paragraph (5) of this subsection and after ~~serving at least~~
 299 ~~two years of active licensure~~ maintaining a license in active status for at least three of the
 300 five years immediately preceding such examination.

301 Failure to meet any of these requirements shall be grounds for denial of license without a
 302 hearing."

303 **SECTION 9.**

304 Said title is further amended by revising Code Section 43-40-15, relating to grant, revocation,
 305 or suspension of licenses, other sanctions, surrender or lapse, conviction, noncompliance
 306 with child support order, and borrowers in default, as follows:

307 "43-40-15.

308 (a) Licenses shall be granted only to persons who bear a good reputation for honesty,
 309 trustworthiness, integrity, and competence to transact the business of a licensee in such
 310 manner as to safeguard the interest of the public and only after satisfactory proof of such
 311 qualifications has been presented to the commission. The commission may deny a license
 312 to a corporation, limited liability company, or partnership if a stockholder, member, or
 313 partner or any combination thereof which owns more than a 20 percent interest therein does
 314 not bear a good reputation for honesty, trustworthiness, and integrity; has been convicted
 315 of any of the crimes enumerated in subsection (b) of this Code section; or has been
 316 ~~sanctioned~~ disciplined by any legally constituted regulatory agency for violating a law
 317 regulating the sale of real estate.

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

319 (A) 'Conviction' means a finding or verdict of guilty or a plea of guilty to a charge of
 320 a felony or any crime involving moral turpitude, regardless of whether an appeal of the
 321 conviction has been brought; a sentencing to first offender treatment without an
 322 adjudication of guilt pursuant to a charge of a felony or any crime involving moral
 323 turpitude; or a plea of nolo contendere to a charge of a felony or any crime involving
 324 moral turpitude.

325 (B) 'Felony' ~~includes~~ means any offense ~~which, if committed in this state, would be~~
 326 ~~deemed a felony, without regard to its designation elsewhere~~ committed:

327 (i) Within this state and deemed a felony under the laws of this state or under the
 328 laws of the United States; or

329 (ii) In another state and deemed a felony under the laws of that state or the laws of
 330 the United States.

331 (1.1) No person who has a conviction shall be eligible to become an applicant for a
 332 license or an approval authorized by this chapter unless such person has successfully
 333 completed all terms and conditions of any sentence imposed for such conviction;
 334 provided that if such individual has multiple convictions, at least five years shall have
 335 passed since the individual satisfied all terms and conditions of any sentence imposed for
 336 the last conviction before making application for licensure or approval; and provided,
 337 further, that if such individual has a single conviction, at least two years shall have passed
 338 since the individual satisfied all terms and conditions of any sentence imposed for the last
 339 conviction before making application for licensure or approval.

340 (1.2) A person who has a conviction in a court of competent jurisdiction of this state or
 341 any other state, ~~district, or territory of the United States, or of a foreign country,~~ shall be
 342 eligible to become an applicant for a licensure or an approval authorized by this chapter
 343 only if:

344 (A) Such person has satisfied all terms and conditions of any conviction such person
 345 may have had before making application for licensure or approval; provided that if
 346 such individual has multiple convictions, at least five years shall have passed since the
 347 individual satisfied all terms and conditions of any sentence imposed for the last
 348 conviction before making application for licensure or approval; and provided, further,
 349 that if such individual has been convicted of a single felony or of a single crime of
 350 moral turpitude, at least two years shall have passed since the individual satisfied all
 351 terms and conditions of any sentence imposed for the last conviction before making
 352 application for licensure or approval;

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

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

361 (2) Where an applicant for any license or approval authorized by this chapter has been
 362 convicted of forgery, embezzlement, obtaining money under false pretenses, theft,
 363 extortion, conspiracy to defraud, or other like offense or offenses or has been convicted
 364 of a felony, a ~~sex~~ sexual offense, a probation violation, or a crime involving moral
 365 turpitude and has been convicted thereof in a court of competent jurisdiction of this state
 366 or any other state, ~~district, or territory of the United States or of a foreign country~~ such
 367 conviction in itself may be sufficient ground for refusal of a license or approval
 368 authorized by this chapter. An applicant for licensure as an associate broker or a broker
 369 who has been convicted of any offense enumerated in this paragraph may be licensed by
 370 the commission as an associate broker or a broker only if:

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

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

374 (C) The applicant presents to the commission satisfactory proof that the applicant now
 375 bears a good reputation for honesty, trustworthiness, integrity, and competence to
 376 transact the business of a licensee in such a manner as to safeguard the interest of the
 377 public.

378 (c) Where an applicant or licensee has been found guilty of a violation of the federal fair
 379 housing law or Article 4 of Chapter 3 of Title 8 by an administrative law judge or a court
 380 of competent jurisdiction and after any appeal of such conviction is concluded, such

381 conviction may in itself be a sufficient ground for refusal of a license or the imposition of
382 any sanction permitted by this chapter.

383 (d) Where an applicant or licensee has made a false statement of material fact on his or her
384 application or caused to be submitted or been a party to preparing or submitting any
385 falsified application to the commission, such action may, in itself, be a sufficient ground
386 for the refusal, suspension, or revocation of the license.

387 (e) Grounds for suspension or revocation of a license, as provided for by this chapter, shall
388 also be grounds for refusal to grant a license.

389 (f) The conduct provided for in subsections (a), (b), (c), (d), and (h) of this Code section
390 which relates to the denial of a real estate license to an applicant shall also be grounds for
391 imposition of any sanction permitted by this chapter when the conduct is that of a licensee.

392 (g) Whenever the commission initiates an investigation as permitted by Code Section
393 43-40-27 to determine whether a licensee has violated any provision of this chapter or its
394 rules and regulations and such licensee has:

395 (1) Surrendered or voluntarily surrenders the license to the commission;

396 (2) Allowed or allows the license to lapse due to failure to meet educational requirements
397 provided by law; or

398 (3) Allowed or allows the license to lapse due to failure to pay any required fees,

399 ~~then if such surrender or lapsing takes place after before the commission has filed a notice~~
400 ~~of hearing alleging that such licensee has violated any provision of this chapter or its rules~~
401 ~~and regulations, but before the commission enters a final order in the matter, then upon~~
402 ~~submission of a new application by such licensee the matters asserted in the notice of~~
403 ~~hearing shall be deemed admitted and may be used by the commission as grounds for~~
404 ~~refusal of a new license to such licensee. If such surrender or lapsing takes place prior to~~
405 ~~the commission's filing of a notice of hearing, but after the commission initiates an~~
406 ~~investigation as permitted by Code Section 43-40-27, then the commission may issue an~~
407 ~~order revoking such licensee's license. Such order of revocation shall be final ten days~~
408 ~~after it is issued unless the licensee named in the order requests a hearing before the~~
409 ~~commission. If such licensee requests a hearing, the commission shall file a notice of~~
410 ~~hearing and provide a hearing for such licensee in accordance with Chapter 13 of Title 50,~~
411 ~~the 'Georgia Administrative Procedure Act.'~~ the commission may issue an order revoking
412 such licensee's license. The order shall be effective ten days after the order is served on
413 the licensee unless the licensee makes a written request for a hearing before the
414 commission, in which event, the commission shall file a notice of hearing in accordance
415 with Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act.' Service shall be
416 accomplished as provided for in Code Section 43-40-26.

417 (h) Whenever any occupational licensing body of this state; or any other state; ~~or any~~
 418 ~~foreign country~~ has ~~sanctioned~~ disciplined the license of an applicant for any license
 419 authorized by this chapter or whenever such an applicant has allowed a license to lapse or
 420 has surrendered a license to any occupational licensing body of this state; or any other state;
 421 ~~or any foreign country~~ after that body has initiated an investigation or a disciplinary
 422 process regarding such applicant's license, such ~~sanction~~ discipline, lapsing, or surrender
 423 in itself may be a sufficient ground for refusal of a license. Whenever any occupational
 424 licensing body of this state; or any other state; ~~or any foreign country~~ has revoked the
 425 license of an applicant for any license authorized by this chapter or whenever such an
 426 applicant has allowed a license to lapse or has surrendered a license to any occupational
 427 licensing body of this state; or any other state; ~~or any foreign country~~ after that body has
 428 initiated an investigation or a disciplinary process regarding such applicant's license, the
 429 commission may issue an associate broker's or a broker's license only if:

430 (1) At least ten years have passed since the date that the applicant's occupational license
 431 was revoked or surrendered;

432 (2) No criminal charges are pending against the applicant at the time of application; and

433 (3) The applicant presents to the commission satisfactory proof that the applicant now
 434 bears a good reputation for honesty, trustworthiness, integrity, and competence to transact
 435 the business of a licensee in such a manner as to safeguard the interest of the public.

436 (i) Whenever any licensee is convicted of any offense enumerated in subsection (b) of this
 437 Code section, the licensee ~~must~~ shall immediately notify the commission of that conviction.
 438 The licensee's license shall automatically be revoked 60 days after the licensee's conviction
 439 unless the licensee makes a written request to the commission for a hearing during that 60
 440 day period. Following any such hearing requested pursuant to this subsection, the
 441 commission in its discretion may impose upon that licensee any sanction permitted by this
 442 chapter.

443 (j) Whenever the commission revokes or suspends the license of a community association
 444 manager, a salesperson, an associate broker, or a broker, then any school or instructor
 445 approval which such licensee holds shall also be revoked or suspended. Whenever a
 446 licensee surrenders a real estate license as provided for in subsection (g) of this Code
 447 section, any school or instructor approval which such licensee holds shall also be subject
 448 to the provisions of subsection (g) of this Code section.

449 (k) Where an applicant or licensee has been found not in compliance with an order for
 450 child support as provided in Code Section 19-6-28.1 or 19-11-9.3, such action ~~is~~ shall be
 451 sufficient grounds for refusal of a license or suspension of a license. In such actions, the
 452 hearing and appeal procedures provided for in those Code sections shall be the only such
 453 procedures required under this chapter.

454 (l) Where an applicant or licensee has been found to be a borrower in default who is not
 455 in satisfactory repayment status as provided in Code Section 20-3-295, such status ~~is~~ shall
 456 be sufficient grounds for refusal of a license or suspension of a license. In such cases, the
 457 hearing and appeal procedures provided for in Code Section 20-3-295 shall be the only
 458 such procedures required under this chapter.

459 (m) Where the commission has previously sanctioned any applicant for a license under
 460 Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act,' such sanction may in
 461 itself be a sufficient ground for refusing the license."

462 **SECTION 10**

463 Said title is further amended by revising subsection (b) of Code Section 43-40-22, relating
 464 to real estate education, research, and recovery fund, revocation of license upon court order
 465 for payment from fund, and subrogation, as follows:

466 "(b) The commission shall maintain a minimum balance of \$1 million in the real estate
 467 education, research, and recovery fund from which any person, except bonding companies
 468 when they are not principals in a real estate transaction, aggrieved by an act, representation,
 469 transaction, or conduct of a licensee which is in violation of this chapter or of the rules and
 470 regulations of the commission promulgated pursuant thereto, may recover, by order of any
 471 court having competent jurisdiction, actual or compensatory damages, not including
 472 interests and costs sustained by the act, representation, transaction, or conduct, provided
 473 that nothing shall be construed to obligate the fund for more than ~~\$15,000.00~~ \$25,000.00
 474 per transaction regardless of the number of persons aggrieved or parcels of real estate
 475 involved in such transaction. In addition:

476 (1) The liability of the fund for the acts of a licensee, when acting as such, is terminated
 477 upon the issuance of court orders authorizing payments from the fund for judgments, or
 478 any unsatisfied portion of judgments, in an aggregate amount of ~~\$45,000.00~~ \$75,000.00
 479 on behalf of such licensee;

480 (2) A licensee acting as a principal or agent in a real estate transaction has no claim
 481 against the fund; and

482 (3) No person who establishes a proper claim or claims under this Code section shall
 483 ever obtain more than ~~\$15,000.00~~ \$25,000.00 from the fund."

484 **SECTION 11**

485 Said title is further amended by revising subsection (d) of Code Section 43-40-22, relating
 486 to real estate education, research, and recovery fund, revocation of license upon court order
 487 for payment from fund, and subrogation, as follows:

488 "(d)(1) No action for a judgment which subsequently results in an order for collection
 489 from the real estate education, research, and recovery fund shall be started later than two
 490 years from the accrual of the cause of action thereon. ~~When any aggrieved person~~
 491 ~~commences action for a judgment which may result in collection from the real estate~~
 492 ~~education, research, and recovery fund, the aggrieved person shall notify the commission~~
 493 ~~in writing, by certified mail or statutory overnight delivery, return receipt requested, to~~
 494 ~~this effect at the time of the commencement of such action.~~ The commission shall have
 495 the right to intervene in and defend any such action.

496 (2) When any aggrieved person recovers a valid judgment in any court of competent
 497 jurisdiction against any licensee for any act, representation, transaction, or conduct which
 498 is in violation of this chapter, or of the regulations promulgated pursuant thereto, which
 499 act occurred on or after July 1, 1973, the aggrieved person may, upon termination of all
 500 proceedings, including reviews and appeals in connection with the judgment, file a
 501 verified claim in the court in which the judgment was entered and, upon ~~ten~~ 30 days'
 502 written notice to the commission, may apply to the court for an order directing payment
 503 out of the real estate education, research, and recovery fund of the amount unpaid upon
 504 the judgment, subject to the limitations stated in this Code section. The commission shall
 505 have the right to intervene in and object to such verified claim on the issue of whether or
 506 not the claim was in violation of this chapter or of the rules and regulations of the
 507 commission promulgated pursuant thereto.

508 (3) The court shall proceed upon such application in a summary manner and, upon the
 509 hearing thereof, the aggrieved person shall be required to show that such person:

510 (A) At the time of the cause of action, was not a spouse of the judgment debtor; or a
 511 parent, sibling, or child of the judgment debtor or the judgment debtor's spouse; or the
 512 personal representative of such person or persons;

513 (B) Has complied with all the requirements of this Code section;

514 (C) Has obtained a judgment, as set out in paragraph (2) of this subsection, stating the
 515 amount thereof and the amount owing thereon at the date of the application; and that,
 516 in such action, the aggrieved person had joined any and all bonding companies which
 517 issued corporate surety bonds to the judgment debtors as principals and all other
 518 necessary parties;

519 (D) Has caused to be issued a writ of execution upon such judgment and the officer
 520 executing the same has made a return showing that no personal or real property of the
 521 judgment debtor liable to be levied upon in satisfaction of the judgment could be found
 522 or that the amount realized on the sale of them or of such of them as were found, under
 523 such execution, was insufficient to satisfy the judgment, stating the amount so realized

524 and the balance remaining due to the judgment after application thereon of the amount
 525 realized;

526 (E) Has caused the judgment debtor to make discovery under oath concerning the
 527 judgment debtor's property, in accordance with Chapter 11 of Title 9, the 'Georgia Civil
 528 Practice Act';

529 (F) Has made all reasonable searches and inquiries to ascertain whether the judgment
 530 debtor is possessed of real or personal property or other assets liable to be sold or
 531 applied in satisfaction of the judgment;

532 (G) Has discovered by such search no personal or real property or other assets liable
 533 to be sold or applied or that certain of them, being described, owned by the judgment
 534 debtor and liable to be so applied have been discovered and that the aggrieved person
 535 has taken all necessary action and proceedings for the realization thereof and that the
 536 amount thereby realized was insufficient to satisfy the judgment, stating the amount so
 537 realized and the balance remaining due on the judgment after application of the amount
 538 realized; and

539 (H) Has applied the following items, if any, as recovered by the aggrieved person, to
 540 the actual or compensatory damages awarded by the court:

541 (i) Any amount recovered from the judgment debtor or debtors;

542 (ii) Any amount recovered from the bonding company or companies; or

543 (iii) Any amount recovered in out-of-court settlements as to particular defendants.

544 (4) Whenever the aggrieved person satisfies the court that it is not practical to comply
 545 with one or more of the requirements enumerated in subparagraphs (D), (E), (F), (G), and
 546 (H) of paragraph (3) of this subsection and that the aggrieved person has taken all
 547 reasonable steps to collect the amount of the judgment or the unsatisfied part thereof and
 548 has been unable to collect the same, the court may, in its discretion, dispense with the
 549 necessity for complying with such requirements.

550 (5) The court shall make an order directed to the commission requiring payment from
 551 the real estate education, research, and recovery fund of whatever sum it shall find to be
 552 payable upon the claim, pursuant to the provisions of and in accordance with the
 553 limitations contained in this Code section, if the court is satisfied, upon the hearing, of
 554 the truth of all matters required to be shown by the aggrieved person by paragraph (3) of
 555 this subsection and is satisfied that the aggrieved person has fully pursued and exhausted
 556 all remedies available to him or her for recovering the amount awarded by the judgment
 557 of the court.

558 (6) Should the commission pay from the real estate education, research, and recovery
 559 fund any amount in settlement of a claim or toward satisfaction of a judgment against a
 560 licensee, the license of such licensee shall be automatically revoked upon the issuance of

561 a court order authorizing payment from the real estate education, research, and recovery
 562 fund. If such license is that of a firm, the license of the qualifying broker of the firm shall
 563 automatically be revoked upon the issuance of a court order authorizing payment from
 564 the real estate education, research, and recovery fund. No such licensee shall be eligible
 565 to receive a new license until such licensee has repaid in full, plus interest at the judgment
 566 rate in accordance with Code Section 7-4-12, the amount paid from the real estate
 567 education, research, and recovery fund on such licensee's account. A discharge in
 568 bankruptcy shall not relieve a person from the penalties and disabilities provided in this
 569 subsection.

570 (7) If, at any time, the money deposited in the real estate education, research, and
 571 recovery fund is insufficient to satisfy any duly authorized claim or portion thereof, the
 572 commission shall, when sufficient money has been deposited in the real estate education,
 573 research, and recovery fund, satisfy such unpaid claims or portions thereof in the order
 574 that such claims or portions thereof were originally filed, plus accumulated interest at the
 575 rate of 4 percent a year."

576 **SECTION 12.**

577 Said title is further amended by revising subsection (a) of Code Section 43-40-25, relating
 578 to violations by licensees, schools, and instructors, sanctions, and unfair trade practices, as
 579 follows:

580 "(a) In accordance with the hearing procedures established for contested cases by Chapter
 581 13 of Title 50, the 'Georgia Administrative Procedure Act,' whenever a license, a school
 582 approval, or an instructor approval has been obtained by false or fraudulent representation;
 583 or whenever a licensee, an approved school, or an approved instructor has been found
 584 guilty of a violation of this chapter, or of the rules and regulations promulgated by the
 585 commission, or of any unfair trade practices, including, but not limited to, those listed in
 586 this Code section; the commission shall have the power to take any one or more of the
 587 following actions:

- 588 (1) Refuse to grant or renew a license to an applicant;
 589 (2) Administer a reprimand;
 590 (3) Suspend any license or approval for a definite period of time or for an indefinite
 591 period of time in connection with any condition that may be attached to the restoration
 592 of the license or approval;
 593 (4) Revoke any license or approval;
 594 (5) Revoke the license of a broker, qualifying broker, or associate broker and
 595 simultaneously issue such licensee a salesperson's license;

596 (6) Impose on a licensee, applicant, approved school ~~approval~~, or approved instructor
 597 ~~approval~~ monetary assessments in an amount necessary to reimburse the commission for
 598 the administrative, investigative, and legal costs and expenses incurred by the
 599 commission in conducting any proceeding authorized under this chapter or Chapter 13
 600 of Title 50, the 'Georgia Administrative Procedure Act';

601 (7) Impose a fine not to exceed \$1,000.00 for each violation of this chapter or its rules
 602 and regulations with fines for multiple violations limited to \$5,000.00 in any one
 603 disciplinary proceeding or such other amount as the parties may agree;

604 (8) Require completion of a course of study in real estate brokerage or instruction;

605 (9) Require the filing of periodic reports by an independent accountant on a real estate
 606 broker's designated trust account; or

607 (10) Limit or restrict any license or approval as the commission deems necessary for the
 608 protection of the public.

609 Any action taken by the commission pursuant to this subsection may, at its discretion, be
 610 construed as a 'disciplinary sanction' or 'sanction' as such terms are used in this chapter."

611 **SECTION 13.**

612 Said title is further amended by revising subsection (c) of Code Section 43-40-25, relating
 613 to violations by licensees, schools, and instructors, sanctions, and unfair trade practices, as
 614 follows:

615 "(c) When a licensee has previously been sanctioned by the commission or disciplined by
 616 any other state's real estate brokerage licensing authority, the commission may consider any
 617 such prior sanctions or disciplinary actions by another state's real estate brokerage licensing
 618 authority in determining the severity of a new sanction which may be imposed upon a
 619 finding that the licensee has committed an unfair trade practice, that the licensee has
 620 violated any provision of this chapter, or that the licensee has violated any of the rules and
 621 regulations of the commission. The failure of a licensee to comply with or to obey a final
 622 order of the commission may be cause for suspension or revocation of the individual's
 623 license after opportunity for a hearing."

624 **SECTION 14.**

625 Said title is further amended by revising Code Section 43-40-25.2, relating to alternative
 626 disciplinary procedures and citations, as follows:

627 "43-40-25.2.

628 (a) It is the intent of the General Assembly to provide the commission with ~~a disciplinary~~
 629 ~~tool which is an alternative~~ measures to use as alternatives to the sanctions provided for in

630 subsection (a) of Code Section 43-40-25. The citation and letter of findings provided for
 631 in this Code section shall not be construed as a disciplinary sanction.

632 (b) Whenever the evidence gathered in an investigation reveals an apparent violation of
 633 this chapter or of the rules and regulations promulgated by the commission or the apparent
 634 commission of any unfair trade practice by a licensee, the commission, in its discretion,
 635 may:

636 (1) ~~initiate~~ Initiate the process for the imposition of sanctions, as provided for in
 637 subsection (a) of Code Section 43-40-25 and in accordance with the hearing procedures
 638 established for contested cases by Chapter 13 of Title 50, ~~or;~~

639 (2) ~~issue~~ Issue a citation to the licensee. Such citation, which shall be served personally
 640 or by mail, shall give notice to the licensee of the alleged violation or violations of this
 641 chapter or commission rules or alleged unfair trade practice or practices and inform the
 642 licensee of the opportunity to request a contested case hearing to be held in accordance
 643 with the procedures established for such hearings by Chapter 13 of Title 50. A citation
 644 issued by the commission may include an order to complete a course of study in real
 645 estate brokerage or instruction; to file periodic reports by an independent accountant on
 646 a real estate broker's designated trust account; or to pay a fine not to exceed \$1,000.00
 647 for each violation of this chapter or its rules and regulations, with fines for multiple
 648 violations limited to \$5,000.00 in any one citation, or a combination of the above. If the
 649 licensee fails to request a hearing within 30 days of the date of service of the citation, the
 650 order contained in the citation shall be final. The failure of a licensee to comply with a
 651 final order contained in a citation may be cause for the imposition of a sanction on such
 652 person's license, after notice and opportunity for a hearing; ~~or~~

653 (3) Issue a letter of findings to the licensee if the alleged violation appears to have done
 654 no harm to a third party or to the public. Such letter of findings, which shall be served
 655 personally or by mail, shall give notice to the licensee of the alleged violation or
 656 violations of this chapter or commission rules or alleged unfair trade practice or practices.
 657 A letter of findings shall be confidential and shall not appear on the license history of a
 658 licensee. A letter of findings shall not be subject to a subpoena in a civil action, shall not
 659 constitute a public record or be available for inspection by the public, and shall not be
 660 disclosed to any person or agency, except as provided in subsection (d) of Code Section
 661 43-40-27.

662 (c) The commission is authorized to promulgate rules and regulations to implement this
 663 Code section. Such rules may limit the provisions of this chapter and of its rules and
 664 regulations and unfair trade practices which may be the basis for the issuance of a citation
 665 or a letter of findings."

666

SECTION 15.

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