

45:15-~~18~~9

LEGISLATIVE HISTORY CHECKLIST

NJSA: 45:15-⁹~~18~~ et al (Real estate brokers and salespeople-- misconduct-- increase penalties)

LAWS OF: 1989 CHAPTER: 126

BILL NO: A616

SPONSOR(S): Foy

Date Introduced: Pre-field

Committee: Assembly: Higher Education and Regulated Professions
Senate: Labor, Industry and Professions

Amended during passage: Yes Amendmenst dentoed by asterisks according to Governor's recommendations.

Date of Passage: Assembly: February 29, 1989 Re-enacted 6-22-89

Senate: January 30, 1989 Re-enacted 6-29-89

Date of Approval: July 3, 1989

Following statements are attached if available:

Sponsor statement: Yes

Committee statement: Assembly Yes

Senate Yes

Fiscal Note: No

Veto Message: Yes

Message on Signing: No

Following were printed:

Reports: No

Hearings: No

See newspaper clipping-- attached:

"New bill means tighter controls," 6-30-89 Home news.

RDV

Original removed from file

P.L.1989, CHAPTER 126, approved July 3, 1989
1988 Assembly No. 616 (Second Reprint)

1 AN ACT concerning real estate brokers and real estate
salespersons, ²[supplementing Title 45 of the Revised Statutes
3 and revising] amending various² parts of the statutory law ²and
repealing R.S.45:15-23².

5

7 BE IT ENACTED by the Senate and General Assembly of the
State of New Jersey:

1. R.S.45:15-9 is amended to read as follows:

9 45:15-9. All persons desiring to become real estate brokers or
real estate [salesmen] salespersons shall apply to the commission
11 for a license under the provisions of this article. Every
applicant for a license as a broker or [salesman] salesperson
13 shall be of the age of 18 years or over [and a citizen of the
United States], and in the case of an association or a corporation
15 the directors thereof shall be of the age of 18 years or over.
Application for a license, whether as a real estate broker or a
17 real estate [salesman] salesperson, shall be made to the
commission upon forms prescribed by it and shall be
19 accompanied by a fee of \$10.00 which fee shall not be
refundable. Every applicant for a license whether as a real
21 estate broker or real estate [salesman] salesperson shall have
the equivalent of a high school education. The issuance of a
23 license to an applicant who is a nonresident of this State shall be
deemed to be his irrevocable consent that service of process
25 upon him as a licensee in any action or proceeding may be made
upon him by service upon the secretary of the commission or the
27 person in charge of the office of the commission. The applicant
shall furnish evidence of good moral character, and in the case
29 of an association, partnership or corporation, the members,
officers or directors thereof shall furnish evidence of good
31 moral character. The commission may make such investigation
and require such proof as it deems proper and in the public

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the
above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Assembly AHE committee amendments adopted February 1, 1988.

² Assembly amendments adopted in accordance with Governor's
recommendations March 20, 1989.

1 interest as to the honesty, trustworthiness, character and
2 integrity of an applicant. [Every such application shall be on
3 file with the commission at least 10 days prior to the granting of
4 a license, except in the case of record changes.] Every
5 applicant for a license as a broker shall have first served an
6 apprenticeship of two full years as a duly licensed real estate
7 [salesman] salesperson in this State immediately preceding the
8 date of application which requirement may be waived by the
9 commission where the applicant has been the holder of a
10 broker's license in another state and actively engaged in the
11 real estate business for at least two years immediately
12 preceding the date of his application, meets the educational
13 requirements and qualifies by examination. No license as broker
14 shall be granted to a partnership or corporation unless at least
15 one of the partners or officers of said partnership or corporation
16 qualifies as and holds a license as a broker to transact business
17 in the name and on behalf of said partnership or corporation as
18 its authorized broker and no such authorized broker shall act as
19 a broker on his own individual account unless he is also licensed
20 as a broker in his individual name; the license of said partnership
21 or corporation shall cease if at least one partner or officer does
22 not hold a license as its authorized broker at all times. A
23 change in the status of the license of an authorized broker to an
24 individual capacity or vice versa shall be effected by application
25 to the commission accompanied by a fee of \$5.00.

26 In the event that any person to whom a broker's license has
27 been or shall have been issued shall fail to renew such license or
28 obtain a new license for a period of two consecutive years or
29 more after the expiration of the last license, the commission
30 shall require such person to serve the same apprenticeship, to
31 pass an examination, and to attend school. This paragraph shall
32 not apply to a person reapplying for a broker's license who was
33 a licensed broker [on or after January 1, 1982] and who allowed
34 his license to expire due to subsequent employment in a public
35 agency in this State with responsibility for dealing with matters
36 relating to real estate if the person reapplying does so within
37 [three months] one year of termination of that employment.

38 In the event that any person to whom a [salesman's]
39 salesperson's license has been or shall have been issued shall fail

1 to renew such license or obtain a new license for a period of two
2 consecutive years or more after the expiration of the last
3 license, the commission shall require such person to attend an
4 approved school and pass the State examination prior to issuance
5 of a further license. This paragraph shall not apply to a person
6 reapplying for a salesperson's license who was a licensed
7 salesperson and who allowed his license to expire due to
8 subsequent employment in a public agency in this state with
9 responsibility for dealing with matters relating to real estate if
10 the person reapplying does so within one year of termination of
11 that employment.

(cf: P.L.1983, c.456, s.1)

13 2. Section 1 of P.L.1986, c.227 (C.45:15-10.1) is amended to
14 read as follows:

15 1. a. As a prerequisite to admission to an examination, every
16 individual applicant for license as a real estate [salesman]
17 salesperson shall give evidence of 75 hours satisfactory
18 completion in the aggregate of such courses of education in real
19 estate subjects at a school approved by the commission as the
20 commission shall by regulation prescribe. At least three hours
21 of that course of study shall be on the subject of ethics and
22 ethical conduct in the profession of a real estate salesperson.

23 b. As a prerequisite to admission to an examination, every
24 individual applicant for license as a real estate broker shall give
25 evidence of 90 hours satisfactory completion in the aggregate of
26 such courses of education in real estate and related subjects at a
27 school approved by the commission as the commission shall by
28 regulation prescribe. At least three hours of that course of
29 study shall be on the subject of ethics and ethical conduct in the
30 profession of a real estate broker.

31 (cf: P.L.1983, c.456, s.2)

32 3. R.S.45:15-17 is amended to read as follows:

33 45:15-17. The commission may, upon its own motion, and
34 shall, upon the verified complaint in writing of any person,
35 investigate the actions of any real estate broker or real estate
36 [salesman] salesperson, or any person who assumes, advertises or
37 represents himself as being authorized to act as a real estate
38 broker or [salesman] salesperson or engages in any of the
39 activities described in [section 45:15-3 or] R.S.45:15-3 of this

1 article without being licensed so to do. The lapse or suspension
of a license by operation of law or the voluntary surrender of a
3 license by a licensee shall not deprive the commission of
jurisdiction to proceed with any investigation as herein provided
5 or prevent the commission from taking any regulatory action
against such licensee, provided, however, that alleged charges
7 arose while said licensee was duly licensed. Each transaction
shall be construed as a separate offense.

9 The commission may place on probation, suspend for a period
less than the unexpired portion of the license period, or may
11 revoke any license issued under the provisions of this article, or
the right of licensure when such person is no longer the holder of
13 a license at the time of hearing, or may impose, in addition or as
an alternative to such probation, revocation or suspension, a
15 penalty of not more than [~~\$1,000.00~~] \$5,000.00 for the first
violation, and a penalty of not more than [~~\$2,000.00~~] \$10,000.00
17 for any subsequent violation, which penalty shall be sued for and
recovered by and in the name of the commission and shall be
19 collected and enforced by summary proceedings pursuant to the
penalty enforcement law (N.J.S.2A:58-1 et seq.), where the
21 licensee or any person, in performing or attempting to perform
any of the acts mentioned herein, is deemed to be guilty of:

23 a. Making any false promises or any substantial
misrepresentation; or

25 b. Acting for more than one party in a transaction without
the knowledge of all parties thereto; or

27 c. Pursuing a flagrant and continued course of
misrepresentation or making of false promises through agents,
29 [salesmen] salespersons, advertisements or otherwise; or

d. Failure to account for or to pay over any moneys belonging
31 to others, coming into the possession of the licensee; or

33 e. Any conduct which demonstrates unworthiness,
incompetency, bad faith or dishonesty; or

f. Failure to provide his client with a fully executed copy of
35 any sale or exclusive sales or rental listing contract at the time
of execution thereof, and failure to specify therein a definite
37 terminal date which terminal date shall not be subject to any
qualifying terms or conditions; or

39 g. Using any plan, scheme or method for the sale or

1 promotion of the sale of real estate which involves a lottery, a
2 contest, a game, a prize, a drawing, or the offering of a lot or
3 parcel or lots or parcels for advertising purposes; or

4 h. Being convicted of a crime, knowledge of which the
5 commission did not have at the time of last issuing a real estate
license to the licensee; or

6 i. Collecting a commission as a real estate broker in a
7 transaction, when at the same time representing either party in
8 a transaction in a different capacity for a consideration; or

9 j. Using any trade name or insignia of membership in any real
10 estate organization of which the licensee is not a member; or

11 k. Paying any rebate, profit, compensation or commission to
12 anyone not possessed of a real estate license; or

13 l. Any other conduct, whether of the same or a different
14 character than specified in this section, which constitutes fraud
or dishonest dealing; or

15 m. Accepting a commission or valuable consideration as a
16 real estate [salesman] salesperson for the performance of any of
17 the acts specified in this act, from any person, except his
18 employing broker, who must be a licensed broker; or

19 n. Procuring a real estate license, for himself or anyone else,
20 by fraud, misrepresentation or deceit; or

21 o. Comingling the money or other property of his principals,
22 with his own or failure to maintain and deposit in a special
23 account, separate and apart from personal or other business
24 accounts, all moneys received by a real estate broker, acting in
25 said capacity, or as escrow agent, or the temporary custodian of
26 the funds of others, in a real estate transaction; or

27 p. Selling property in the ownership of which he is interested
28 in any manner whatsoever, unless he first discloses to the
29 purchaser ²in the contract of sale his interest therein ²and his
30 status as a real estate broker or real estate salesperson²; or

31 ¹q. Purchasing any property unless he discloses to the seller
32 in the contract of sale his status as a real estate broker or real
33 estate salesperson; or¹

34 ¹[q.] r.¹ For the violation of any of the provisions of this
35 article ²or of the administrative rules adopted by the
36 commissioner pursuant to the provisions of this article². The
37 commission is expressly vested with the power and authority to
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1 make, prescribe and enforce any and all rules and regulations for
 the conduct of the real estate brokerage business consistent
 3 with the provisions of this act.

5 If a licensee is deemed to be guilty of a third violation of any
of the provisions of this section, whether of the same provision
or of separate provisions, the commission may deem that person
 7 a repeat offender, in which event the commission may direct
that no license as a real estate salesperson or real estate broker
 9 shall henceforth be issued to that person.

(cf: P.L.1977, c.331, s.5)

11 4. Section 6 of P.L.1953, c.229 (C.45:15-19.1) is amended to
 read as follows:

13 6. When, during the term of any license issued by the
 commission, the licensee shall be convicted in a court of
 15 competent jurisdiction in the State of New Jersey or any state
 (including federal courts) of forgery, ²[embezzlement, obtaining
 17 money under false pretenses, extortion] burglary, robbery, any
theft and related offense with the exception of shoplifting²,
 19 criminal conspiracy to defraud, or other like offense or offenses,
or any crime involving, related to or arising out of the
 21 licensee's activities as a real estate broker or real estate
salesperson, and a duly certified or exemplified copy of the
 23 ²[record in such proceedings] judgment of conviction² shall be
²[filed with] obtained by² the commission, the commission shall
 25 revoke forthwith the license by it theretofore issued to the
licensee so convicted.

27 (cf: P.L.1953, c.229, s.6)

29 5. Section 7 of P.L.1953, c.229 (C.45:15-19.2) is amended to
 read as follows:

31 7. In the event that any licensee shall be indicted in the State
 of New Jersey or any state or territory (including federal courts)
 for murder, kidnapping, aggravated sexual assault, robbery,
 33 burglary, arson, ²any² theft ²offense², bribery, racketeering,
distribution of a controlled dangerous substance or conspiracy to
 35 distribute a controlled dangerous substance, forgery,
²[embezzlement, obtaining money under false pretenses,
 37 extortion,]² criminal conspiracy to defraud, or like offense or
offenses, or any crime involving, related to or arising out of the
 -39 licensee's activities as a real estate broker or salesperson, and a

1 certified copy of the indictment ²[be filed with] is obtained by²
2 the commission, or other proper evidence thereof be to it given,
3 the commission shall have authority, in its discretion, to suspend
4 the license issued to such licensee pending trial upon such
5 indictment.

(cf: P.L.1953, c.229, s.7)

7 ²[16. R.S.45:15-23 is amended to read as follows:

8 45:15-23. Any person who violates any of the provisions of
9 this article or the administrative rules adopted by the
10 commission pursuant to the provisions of this article, shall be
11 liable for the first violation to a penalty of not more than [two
12 hundred dollars (\$200.00)] \$1,000.00; for a second violation to a
13 penalty of not more than [five hundred dollars (\$500.00)]
14 \$2,000.00, and for any subsequent violation to a penalty of [five
15 hundred dollars (\$500.00)] \$2,000.00. The penalty shall be sued
16 for and recovered by and in the name of the commission and
17 shall be collected and enforced by summary proceedings
18 pursuant to the Penalty Enforcement Law (N.J.S.2A:68-1 et
19 seq.). Process shall issue at the suit of the board, as plaintiff,
20 and shall be either in the nature of a summons or warrant.

21 (cf: P.L.1953, c.43, s.74)¹²

22 ²[16.] 7.1 (New section) a. Notwithstanding the provisions of
23 section 8 of P.L.1953, c.222 (C.45:15-12.1) and the requirement
24 that all applicants furnish evidence of their good moral
25 character, honesty, integrity and trustworthiness, no applicant
26 shall be denied a real estate broker or real estate salesperson
27 license on the basis of a conviction of any offense or offenses
28 provided that the applicant has affirmatively demonstrated his
29 rehabilitation. In determining whether the applicant has
30 affirmatively demonstrated his rehabilitation the commission
31 shall consider the following factors:

- 32 (1) The nature and duties of the position applied for;
- 33 (2) The nature and seriousness of the offense;
- 34 (3) The circumstances under which the offense occurred;
- 35 (4) The date of the offense;
- 36 (5) The age of the applicant when the offense was committed;
- 37 (6) Whether the offense was an isolated or repeated incident;
- 38 (7) Any social conditions which may have contributed to the
39 offense:

1 (8) Any evidence of rehabilitation, including good conduct in
2 prison or psychiatric treatment received, acquisition of
3 additional academic or vocational schooling, successful
4 participation in correctional work-release programs, or the
5 recommendations of persons who have or have had the
6 applicant under their supervision.

7 b. The provisions of sections 2 and 3 of the "Rehabilitated
8 Convicted Offenders Act," P.L.1968, c.282 (C.2A:168A-2) and
9 (C.2A:168A-3) are hereby preempted by this amendatory and
10 supplementary act, insofar as those provisions may apply to the
11 proceedings of the New Jersey Real Estate Commission when
12 acting upon applications for real estate salesperson or real
13 estate broker licenses.]²

14 ²⁶ Section 8 of P.L.1953, c.229 (C.45:15-12.1) is amended to
15 read as follows:

16 8. No license shall be issued by the commission to any person
17 known by it to have been, within five years theretofore,
18 convicted of forgery, [embezzlement, obtaining money under
19 false pretenses, extortion,] burglary, robbery, any theft offense
20 other than shoplifting, criminal conspiracy to defraud, or other
21 like offense or offenses, or to any copartnership of which such
22 person is a member, or to any association or corporation of
23 which said person is an officer, director, or employee, or in
24 which as a stockholder such person has or exercises a controlling
25 interest either directly or indirectly. In the event of the
26 revocation or suspension of the license issued to any member of
27 a copartnership, or to any officer of an association or
28 corporation, the license issued to such copartnership,
29 association, or corporation, shall be revoked by the commission,
30 unless, within a time fixed by the commission, where a
31 copartnership, the connection therewith of the member whose
32 license has been revoked shall be severed and his interest in the
33 copartnership and his share in its activities brought to an end, or
34 where an association or corporation, the offending officer shall
35 be discharged and shall have no further participation in its
36 activity.²

37 (cf: P.L.1953, c.229, s.8)

²⁷ R.S.45:15-23 is repealed.²

38 ¹[7.] s.¹ This act shall take effect immediately.

REGULATED PROFESSIONS

Consumer Affairs

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Increases penalty for misconduct by real estate brokers or salespersons, requires a three hour course in ethics for a real estate license and makes various other changes in real estate licensing law.

1 1. Require that the real estate education necessary for
licensure as a real estate broker or salesperson include at least
3 three hours of instruction on the subject of ethics and ethical
conduct in the real estate profession;

5 2. Increase the penalty for professional misconduct from
\$1,000.00 to \$5,000.00 for a first offense and from \$2,000.00 to
7 \$10,000.00 for any subsequent offense;

9 3. Provide that if a licensed broker or salesperson is guilty of
a third violation of the statute, the Real Estate Commission
may consider him a repeat offender and direct that no license as
11 a broker or salesperson shall thereafter be issued to him;

13 4. Direct the Real Estate Commission to revoke the license
of any broker or salesperson who is convicted of any crime
involving his activities as a broker or salesperson. Currently,
15 the commission is to revoke the license of any person convicted
of forgery, embezzlement, obtaining money under false
17 pretenses, extortion, criminal conspiracy to defraud or a similar
offense. The commission is also authorized to revoke the
19 license of a person convicted of any crime of which the
commission did not have knowledge at the time of licensure;

21 5. Allow the Real Estate Commission to suspend the license
of any broker or salesperson indicted for murder, kidnapping,
23 aggravated sexual assault, robbery, arson theft, bribery,
racketeering, burglary, distribution of a controlled dangerous
25 substance or conspiracy to distribute a controlled dangerous
substance, or any crime involving his activities as a broker or
27 salesperson. Currently, the commission may suspend the license
of any person indicted on charges of forgery, embezzlement,
29 obtaining money under false pretenses or any similar offense;

31 6. Provide for the reinstatement of a real estate
salesperson's license which has lapsed as a result of the
salesperson accepting real estate related public employment.
33 The law currently contains such a provision in regard to real
estate brokers; and

35 7. Provide that in order to be licensed as a real estate broker
or salesperson, an applicant who has been convicted of a crime
37 must affirmatively demonstrate his rehabilitation to the Real

1 **Estate Commission. The bill outlines the information which the**
2 **Real Estate Commission is to consider in determining the**
3 **applicant's rehabilitation and exempts the proceedings of the**
4 **commission in regard to the licensing of brokers and**
5 **salespersons from the provisions of sections 2 and 3 the**
6 **"Rehabilitated Convicted Offenders Act" (P.L. 1968, c. 282).**

7 **Section 2 of the "Rehabilitated Convicted Offenders Act"**
8 **provides that a State, county or municipal department, board,**
9 **officer or agency may not disqualify any person for a license or**
10 **certificate on the grounds that the applicant has been convicted**
11 **of a crime unless the crime relates adversely to the occupation**
12 **or profession for which licensure is sought. This bill will provide**
13 **that the commission may not disqualify a person provided that**
14 **he can affirmatively demonstrate his rehabilitation.**

15 **Section 3 of the "Rehabilitated Convicted Offenders Act"**
16 **provides that the presentation by an applicant of a certificate**
17 **from his parole or probation officer attesting to the applicant's**
18 **rehabilitation precludes a licensing authority from disqualifying**
19 **that applicant. This bill will exempt the Real Estate**
20 **Commission from the requirement that it automatically accept**
21 **such a certificate.**

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REGULATED PROFESSIONS

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Consumer Affairs

27 **Increases penalty for misconduct by real estate brokers or**
28 **salespersons, requires a three hour course in ethics for a real**
29 **estate license and makes various other changes in real estate**
30 **licensing law.**

**ASSEMBLY HIGHER EDUCATION AND REGULATED
PROFESSIONS COMMITTEE**

STATEMENT TO

ASSEMBLY, No. 616

with Assembly committee amendments

STATE OF NEW JERSEY

DATED: JANUARY 28, 1988

The Assembly Higher Education and Regulated Professions Committee favorably reports Assembly Bill No. 616 with committee amendments.

As amended by committee, this bill amends and supplements current law regarding the licensing of real estate brokers and salespersons to do the following:

1. Require that the real estate education necessary for licensure as a real estate broker or salesperson include at least three hours of instruction on the subject of ethics and ethical conduct in the real estate profession;

2. Increase the penalty for professional misconduct from \$1,000.00 to \$5,000.00 for a first offense and from \$2,000.00 to \$10,000.00 for any subsequent offense, and for any violation of the provisions of chapter 15 of Title 45 from \$200.00 to \$1,000.00 for a first offense and from \$500.00 to \$2,000.00 for any subsequent offense;

3. Provide that if a licensed broker or salesperson is guilty of a third violation of the statute, the Real Estate Commission may consider him a repeat offender and direct that no license as a broker or salesperson shall thereafter be issued to him;

4. Direct the Real Estate Commission to revoke the license of any broker or salesperson who is convicted of any crime involving his activities as a broker or salesperson. Currently, the commission is to revoke the license of any person convicted of forgery, embezzlement, obtaining money under false pretenses, extortion, criminal conspiracy to defraud or a similar offense. The commission is also authorized to revoke the license of a person convicted of any crime of which the commission did not have knowledge at the time of licensure;

5. Allow the Real Estate Commission to suspend the license of any broker or salesperson indicted for murder, kidnapping, aggravated sexual assault, robbery, arson, theft, bribery,

racketeering, burglary, distribution of a controlled dangerous substance or conspiracy to distribute a controlled dangerous substance, or any crime involving his activities as a broker or salesperson. Currently, the commission may suspend the license of any person indicted on charges of forgery, embezzlement, obtaining money under false pretenses or any similar offense;

6. Provide for the reinstatement of a real estate salesperson's license which has lapsed as a result of the salesperson accepting real estate related public employment. The law currently contains such a provision in regard to real estate brokers; and.

7. Provide that in order to be licensed as a real estate broker or salesperson an applicant who has been convicted of a crime must affirmatively demonstrate his rehabilitation to the Real Estate Commission. The bill outlines the information which the Real Estate Commission is to consider in determining the applicant's rehabilitation and exempts the proceedings of the commission in regard to the licensing of brokers and salespersons from the provisions of sections 2 and 3 of the "Rehabilitated Convicted Offenders Act" (P.L. 1988, c. 282).

Section 2 of the "Rehabilitated Convicted Offenders Act" provides that a State, county or municipal department, board, officer or agency may not disqualify any person for a license or certificate on the grounds that the applicant has been convicted of a crime unless the crime relates adversely to the occupation or profession for which licensure is sought. This bill will provide that the commission may not disqualify a person provided that he can affirmatively demonstrate his rehabilitation.

Section 3 of the "Rehabilitated Convicted Offenders Act" provides that the presentation by an applicant of a certificate from his parole or probation officer attesting to the applicant's rehabilitation precludes a licensing authority from disqualifying that applicant. This bill will exempt the Real Estate Commission from the requirement that it automatically accept such a certificate.

The committee amended the bill to increase the civil penalties for any violation of the real estate licensing laws, and to require a real estate broker or salesperson to disclose his status as a licensee when he purchases any property.

This bill was pre-filed for introduction in the 1988 session pending technical review. As reported the bill includes the changes required by technical review which has been performed.

**SENATE LABOR, INDUSTRY AND PROFESSIONS
COMMITTEE**

STATEMENT TO

[FIRST REPRINT]

ASSEMBLY, No. 616

STATE OF NEW JERSEY

DATED: SEPTEMBER 19, 1988

The Senate Labor, Industry and Professions Committee reports favorably Assembly Bill No. 616 [1R].

This bill amends and supplements current law regarding the licensing of real estate brokers and salespersons.

The monetary penalties for professional misconduct are increased from not more than \$1,000 to not more than \$8,000 for a first violation and from not more than \$2,000 to not more than \$10,000 for any subsequent violation, and are increased for any violation of the provisions of chapter 15 of Title 45 from not more than \$200 to not more than \$1,000 for a first violation, from not more than \$500 to not more than \$2,000 for a second violation and from \$500 to \$2,000 for any subsequent violation.

If a licensed broker or salesperson is guilty of a third violation of the professional conduct standards of the statute, the Real Estate Commission may consider him a repeat offender and direct that no license as a broker or salesperson shall thereafter be issued to him. This provision was inadvertently omitted when Assembly Bill No. 616 [1R] was reprinted and has been included in a "Corrected Copy" of that bill.

The professional conduct standards are expanded to prohibit a real estate broker or salesperson from purchasing any property without disclosing to the seller in the contract of sale his professional status. Currently, a real estate broker or salesperson must disclose to the purchaser any ownership interest he has in the property he is selling.

The bill requires the Real Estate Commission to revoke the license of any broker or salesperson who is convicted of any crime involving his activities as a broker or salesperson. Currently, the commission is required to revoke the license of any person convicted of forgery, embezzlement, obtaining money under false pretenses,

extortion, criminal conspiracy to defraud or a similar offense. The commission is also authorized to revoke the license of a person convicted of any crime of which the commission did not have knowledge at the time of licensure.

The bill also provides that the Real Estate Commission may suspend the license of any broker or salesperson indicted for murder, kidnapping, aggravated sexual assault, robbery, burglary, arson, theft, bribery, racketeering, distribution of a controlled dangerous substance or conspiracy to distribute a controlled dangerous substance, or any crime involving his activities as a broker or salesperson. Currently, the commission may suspend the license of any person indicted on charges of forgery, embezzlement, obtaining money under false pretenses, extortion, criminal conspiracy to defraud, or any similar offense.

Section 7 of the bill provides that no applicant shall be denied a real estate broker's or salesperson's license on the basis of a conviction of a crime if that applicant has affirmatively demonstrated his rehabilitation. That section outlines the criteria by which the commission is to determine the applicant's rehabilitation and exempts the proceedings of the commission in regard to the licensing of brokers and salespersons from the provisions of sections 2 and 3 of the Rehabilitated Convicted Offenders Act (P.L.1988, c.247; C.2A:168A-2 and C.2A:168A-3).

The bill modifies the real estate education necessary for licensure as a real estate broker or salesperson to include at least three hours of instruction on the subject of ethics and ethical conduct in the profession of a real estate broker or salesperson, as the case may be. Finally, it provides for the reinstatement of a real estate salesperson's license which has lapsed as a result of the salesperson accepting real estate related public employment. The law currently contains a similar provision in regard to real estate brokers.

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

March 20, 1969

ASSEMBLY BILL NO. 616

(CORRECTED COPY)

(FIRST REPRINT)

To the General Assembly:

Pursuant to Article V, Section I, Paragraph 14 of the Constitution, I am returning Assembly Bill No. 616 (Corrected Copy) (First Reprint) with my objections for reconsideration.

Assembly Bill No. 616 (Corrected Copy) (First Reprint) amends various provisions of the current law regarding the licensure of real estate brokers and salespersons. The bill contains many salutary provisions such as increasing the penalties for misconduct by real estate licensees and mandating that potential licensees receive instruction on the subject of ethics and ethical conduct with regard to the real estate profession.

However, the bill contains a number of problems which require a conditional vote. The bill cites various criminal offenses which no longer exist due to the adoption of the new criminal code. My proposed amendments incorporate the new code into this bill.

Additionally, I recommend the elimination of one of two penalty sections in the present law. When the law was originally adopted, there were two penalty sections included, one for violations of the statute and the other for violations of rules and regulations. This has caused confusion to at least one Appellate Court in an unreported decision, and, thus, I recommend that there be only one penalty section applicable to violations of both statutory and regulatory law. Further, the bill supplements the list of offenses for which the Real Estate Commission may discipline a real estate broker or salesperson. The new section subjects a licensee to discipline for purchasing property without disclosing his status as a real estate broker or salesperson to the seller in the contract of sale. Similarly, my recommendation would make it an offense for a real estate broker or salesperson to sell property without disclosing his status as a broker or salesperson to the purchaser in the contract of sale.

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The major change that I am recommending is the elimination of new language regarding the Rehabilitated Convicted Offenders Act. N.J.S.A. 2A:168A-1 et seq. Under that law, licensing authorities may not automatically deny a license to a applicant who has previously been convicted of a crime. The licensing authority must look at the nature of the crime and its relation to the license sought, the remoteness in time of the conviction and various other matters relating to the offense itself, the applicant and the license requested. Although, as noted below, the Appellate Division of the Superior Court has clarified the issue, the current statute appears to indicate that a certificate of a probation or parole officer attesting that the license applicant "has achieved a degree of rehabilitation indicating that his engaging in the proposed employment would not be incompatible with the welfare of society" precludes the licensing authority from disqualifying the applicant. N.J.S.A. 2A:168A-3. This bill would restrict the impact of the Rehabilitated Convicted Offenders Act on the Real Estate Commission's licensing authority by removing the applicability of N.J.S.A. 2A:168A-3 as that statute applies to the Commission. In other words, the Commission could disqualify an applicant despite the applicant's presentation of evidence of rehabilitation. Although a legitimate concern was raised due to the fact that real estate agents often hold large sums of money in trust, I cannot approve an amendment of this nature in this bill.

The Appellate Division of the Superior Court has assessed the significance of evidence of rehabilitation under the Rehabilitated Convicted Offenders Act in two cases: Hyland v. Kahayas 157 N.J. Super. 258 (App. Div. 1978) and Bevacqua v. Renna 213 N.J. Super. 554 (App. Div. 1986). In both cases, the Appellate Division has, in essence, held that the statute in question has limited effect. The court has held that if a licensing authority is presented with evidence of rehabilitation, the licensing authority does not become bound to award the license. The court has held in both cases that the licensing authority may review the underlying conduct behind the conviction, and based upon that conduct may deny the license if it is determined that the applicant is unfit for the license. The criminal conviction itself may not be the bar to licensure, but the actions leading up to the conviction may be used by the licensing authority in full. As such, N.J.S.A. 2A:168A-3 does not have the effect of

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granting licenses to persons convicted of a crime based solely upon the presentation of evidence of rehabilitation. In fact, in the only two cases reported by the Appellate Division, the licenses in question were denied despite the presentation of evidence of rehabilitation. As such, the Commission's interests are adequately protected by the two Appellate Division cases. If, in the Commission's opinion, a certain individual should not be licensed based upon previous bad conduct, it can use that bad conduct to deny a license in any event.

A more important reason for conditionally vetoing this aspect of the bill is the fact that the Rehabilitated Convicted Offenders Act is a statutory scheme applicable to all licensing authorities in the State. There are a host of licensing agencies with a strong interest in the persons that they license who would not be able to ignore this provision unless each and every one of those licensing authorities' statutes were similarly amended. There is no good reason to single out the Real Estate Commission for an exemption from the Rehabilitated Convicted Offenders Act.

Therefore, I herewith return Assembly Bill No. 616 (Corrected Copy) (First Reprint) and recommend that it be amended as follows:

Page 1, Title, Lines 2 & 3: After "salespersons" omit rest of line 2; on line 3 omit "and revising" insert "amending various"; after "law" insert "and repealing R.S. 45:15-23."

Page 5, Section 3, Line 31: After "purchaser" insert "in the contract of sale" and after "therein" insert "and his status as a real estate broker or real estate salesperson"

Page 5, Section 3, Line 36: After "article" insert "or of the administrative rules adopted by the commissioner pursuant to the provisions of this article"

Page 6, Section 4, Line 13: After "forgery," delete "embellishment, obtaining money under false pretenses, extortion" and insert "burglary, robbery,



A616

OFFICE OF THE GOVERNOR
NEWS RELEASE

Governor Thomas H. Kean
TRENTON, N.J. 08628
Release: MON., 7/3/89

CN-001

Contact: **CARL GOLDEN**
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Governor Thomas H. Kean today signed legislation to provide that juveniles sentenced to a prison term for motor vehicle offenses serve the sentence in a suitable juvenile institution, rather than an adult facility.

The legislation, S-1101, had been conditionally vetoed by the Governor on January 10. The bill was sponsored by Senator Gerald Cardinale, R-Bergen.

Kean also signed two other bills on which he had earlier exercised his conditional veto power.

They are:

A-616, sponsored by Assemblyman Thomas Foy, D-Burlington, to increase the penalty for misconduct by real estate brokers or salespersons and to require an ethics course as a prerequisite for obtaining a real estate license. The bill was conditionally vetoed on March 20.

A-1779, sponsored by Assemblymen Joseph Charles, D-Hudson, and Robert Singer, R-Ocean, to permit the coverage of certain employees in the State Health Benefits program while on approved leaves of absence. This bill had been conditionally vetoed last August 12.

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