

ASSEMBLY, No. 1849

STATE OF NEW JERSEY 217th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2016 SESSION

Sponsored by:

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Assemblyman PATRICK J. DIEGNAN, JR.

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Assemblywoman ANGELICA M. JIMENEZ

District 32 (Bergen and Hudson)

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District 28 (Essex)

Assemblywoman VALERIE VAINIERI HUTTLE

District 37 (Bergen)

Co-Sponsored by:

**Assemblymen Eustace, Space, Peterson, Assemblywoman Phoebus,
Assemblymen McGuckin, Wolfe, Clifton, Assemblywoman Schepisi and
Assemblyman O'Scanlon**

SYNOPSIS

Revises laws concerning real estate licensees.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



1 AN ACT concerning real estate licensees, supplementing chapter 15
2 of Title 45 of the Revised Statutes, and revising various parts of
3 the statutory law.

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. Section 8 of P.L.1953, c.229 (C.45:15-12.1) is amended to
9 read as follows:

10 8. No license shall be issued by the commission to any person
11 known by it to have been, within five years theretofore, convicted
12 of forgery, burglary, robbery, any theft offense other than
13 shoplifting, criminal conspiracy to defraud, or other like offense or
14 offenses, or to any copartnership of which such person is a member,
15 or to any association or corporation of which said person is an
16 officer, director, or employee, or in which as a stockholder such
17 person has or exercises a controlling interest either directly or
18 indirectly. Except as otherwise provided in section 7 of P.L. ____,
19 c. (C. __) (pending before the Legislature as this bill), no license
20 shall be issued or renewed by the commission to any person known
21 by it to have been convicted of any sex offense that would qualify
22 the person for registration pursuant to section 2 of P.L.1994, c.133
23 (C.2C:7-2) or under an equivalent statute of another state or
24 jurisdiction.

25 (cf: P.L.1993, c.51, s.14)

26

27 2. Section 23 of P.L.2009, c.238 (C.45:15-16.2a) is amended to
28 read as follows:

29 23. a. The New Jersey Real Estate Commission shall require
30 each natural person licensed as a real estate broker, broker-
31 salesperson or salesperson, as a condition of biennial license
32 renewal pursuant to R.S.45:15-10, to complete not more than 16
33 hours of continuing education requirements imposed by the
34 commission pursuant to this section and sections 24 through 28 of
35 this amendatory and supplementary act.

36 b. The commission shall:

37 (1) (a) Approve continuing education courses, course providers,
38 and instructors recommended to the commission by the Volunteer
39 Advisory Committee created pursuant to subparagraph (b) of this
40 paragraph, except for continuing education courses or instructors
41 offered by any real estate organization whose membership consists
42 of over 50 percent of real estate brokers, broker-salespersons or
43 salespersons required to complete continuing education
44 requirements pursuant to R.S.45:15-1 et seq., which shall not

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.

1 require approval by the Volunteer Advisory Committee and will be
2 deemed automatically approved by the commission. Schools
3 licensed by the commission as real estate schools pursuant to
4 section 47 of P.L.1993, c.51 (C.45:15-10.4) shall be deemed
5 approved providers of continuing education courses. Persons
6 licensed by the commission as real estate instructors pursuant to
7 section 48 of P.L.1993, c.51 (C.45:15-10.5) shall be deemed
8 approved instructors of continuing education courses in core topics
9 as set forth in section 27 of P.L.2009, c.238 (C.45:15-16.2e). Real
10 estate trade associations that qualify under the standards to be
11 established by commission rule as approved providers may offer
12 approved continuing education courses. A real estate organization
13 whose membership consists of over 50 percent of real estate
14 brokers, broker-salespersons and salespersons required to complete
15 continuing education requirements pursuant to R.S.45:15-1 et seq.
16 shall not be required to submit continuing education courses and
17 instructors to be offered by that organization for approval to the
18 Volunteer Advisory Committee and shall instead have their
19 continuing education courses and instructors be deemed
20 automatically approved by the commission.

21 (b) There is hereby created a Volunteer Advisory Committee
22 which shall consist of 14 members to be comprised of real estate
23 licensees and other subject matter experts, whose members shall be
24 appointed by and serve at the pleasure of the Commissioner of
25 Banking and Insurance. One real estate licensee shall be selected
26 upon the recommendation of the President of the Senate and one
27 real estate licensee shall be selected upon the recommendation of
28 the Speaker of the General Assembly. Three members of the
29 advisory committee shall be members of the commission or their
30 designees, and not less than eight of the members, other than the
31 commission members, shall be real estate licensees. Members shall
32 be appointed to effect balanced geographic representation from the
33 central, northern and southern areas of the State, with not less than
34 three members serving from each of these areas at any time on the
35 advisory committee.

36 Members of the Volunteer Advisory Committee shall be
37 appointed by the Commissioner of Banking and Insurance no later
38 than 60 days following the enactment date of this act. Members of
39 a real estate organization committee created pursuant to paragraph
40 (c) of this subsection shall be appointed by a means set forth by that
41 organization no later than 60 days following the enactment date of
42 this act. The first meeting of the advisory committee shall be held
43 no later than 30 days from the date the commission adopts initial
44 regulations for the effectuation of this act.

45 (c) Any real estate organization whose membership consists of
46 over 50 percent of real estate brokers, broker-salespersons or
47 salespersons required to complete continuing education
48 requirements pursuant to R.S.45:15-1 et seq. will be required to

1 create a committee which shall consist of seven members, to be
2 comprised of members of that organization who are real estate
3 licensees or other subject matter experts. No less than four of the
4 members shall be real estate brokers, broker-salespersons or
5 salespersons licensed by the commission who are members of that
6 organization. Members shall be appointed to effect balanced
7 geographic representation from the central, northern and southern
8 areas of the State, with not less than two members serving from
9 each of those areas at any time on the committee. Decisions made
10 by this committee for the approval of continuing education courses
11 or instructors will be considered final. Courses and instructors
12 approved by this committee will be deemed automatically approved
13 by the commission.

14 (2) Confer continuing education credits for courses completed in
15 other states on topics approved by the commission as appropriate
16 for elective courses, provided that such courses have been approved
17 as continuing education courses by the agency exercising regulatory
18 authority over the real estate licensees of another state and that
19 satisfactory evidence of licensees' attendance at and completion of
20 such courses is provided to the commission by the course provider.

21 (3) Confer continuing education credits for courses completed
22 and offered in this State on topics deemed of a timely nature which
23 have not been granted prior approval by the advisory committee,
24 provided that such courses are advertised prior to the time of
25 offering as not having been approved; that the course provider shall
26 submit such course offering for approval and the course is
27 subsequently approved as provided in subparagraph (a) of
28 paragraph (1) of this subsection; and that satisfactory evidence of
29 licensees' attendance at and completion of such courses is provided
30 to the commission by the course provider.

31 (4) Set parameters for the auditing and monitoring of course
32 providers.

33 (5) Establish, by regulation, the amounts of application fees
34 payable by persons seeking approval as continuing education course
35 providers, persons seeking approval of continuing education
36 courses, and persons other than instructors of pre-licensure real
37 estate education courses licensed by the commission pursuant to
38 section 48 of P.L.1993, c.51 (C.45:15-10.5), seeking approval as
39 instructors of continuing education courses. These fees shall be
40 non-refundable and shall be in amounts which do not exceed the
41 costs incurred by the commission to review these applications.

42 (6) Have the authority to waive continuing education
43 requirements, in whole or in part, on the grounds of illness,
44 emergency, hardship or active duty military service.

45 (7) Confer continuing education credits upon a person who is
46 licensed by the commission as a real estate instructor or as a broker,
47 broker-salesperson or salesperson for teaching an approved
48 continuing education course offered by an approved provider.

1 Regardless of the number of times during a biennial license term
2 that the same approved course is taught by that person, the person
3 shall receive credit toward the continuing education requirement for
4 the renewal of the person's broker, broker-salesperson or
5 salesperson license, as applicable, only in the number of credit
6 hours conferred upon licensees who attend and complete that course
7 one time during that biennial license term.

8 (8) Have the authority to audit the records and approval process
9 of any committee of a real estate organization whose membership
10 consists of over 50 percent of real estate brokers, broker-
11 salespersons or salespersons licensed pursuant to R.S.45:15-1 et
12 seq.

13 (cf: P.L.2009, c.238, s.23)

14

15 3. Section 24 of P.L.2009, c.238 (C.45:15-16.2b) is amended to
16 read as follows:

17 24. Continuing education courses may be delivered in a
18 classroom setting or via the Internet, distance learning,
19 **【correspondence】** or video modalities, subject to the approval by
20 the New Jersey Real Estate Commission of the providers and the
21 content of such courses and of the measures utilized to ensure the
22 security and integrity of the course delivery process. The
23 commission may approve continuing education courses which
24 include periodic progress assessments and the achievement of a
25 satisfactory level of performance by the licensee on such progress
26 assessments as a condition to continuing to a succeeding segment of
27 the course. The commission shall not require, as a condition of the
28 receipt of credit for attendance at any continuing education course
29 that a licensee pass a comprehensive examination testing the
30 licensee's knowledge of the entire course content.

31 (cf: P.L.2009, c.238, s.24)

32

33 4. Section 27 of P.L.2009, c.238 (C.45:15-16.2e) is amended to
34 read as follows:

35 27. a. Not less than 50 percent of the continuing education
36 courses of study that a broker, broker-salesperson or salesperson are
37 required to complete as a condition for license renewal shall be
38 comprised of one or more of the following core topics, including
39 two hours on the topic of ethics:

40 (1) Agency;

41 (2) Disclosure;

42 (3) Legal issues;

43 (4) Ethics;

44 (5) Fair housing;

45 (6) Rules and regulations; **【and】**

46 (7) Real estate licensee safety; and

47 (8) Any other core topics that the New Jersey Real Estate
48 Commission may prescribe by rule.

1 In no event shall the commission require that courses in these
2 core topics comprise more than 60 percent of the total continuing
3 education hours required for the renewal of any license.

4 b. In the case of continuing education courses and programs,
5 each hour of instruction shall be equivalent to one credit.
6 (cf: P.L.2009, c.238, s.27)

7
8 5. R.S.45:15-17 is amended to read as follows:

9 45:15-17. The commission may, upon its own motion, and shall,
10 upon the verified complaint in writing of any person, investigate the
11 actions of any real estate broker, broker-salesperson, salesperson,
12 referral agent, or any person who assumes, advertises or represents
13 himself as being authorized to act as a real estate broker, broker-
14 salesperson, salesperson or referral agent or engages in any of the
15 activities described in R.S.45:15-3 without being licensed so to do.
16 The lapse or suspension of a license by operation of law or the
17 voluntary surrender of a license by a licensee shall not deprive the
18 commission of jurisdiction to proceed with any investigation as
19 herein provided or prevent the commission from taking any
20 regulatory action against such licensee, provided, however, that the
21 alleged charges arose while said licensee was duly licensed. Each
22 transaction shall be construed as a separate offense.

23 In conducting investigations, the commission may take testimony
24 by deposition as provided in R.S.45:15-18, require or permit any
25 person to file a statement in writing, under oath or otherwise as the
26 commission determines, as to all the facts and circumstances
27 concerning the matter under investigation, and, upon its own motion
28 or upon the request of any party, subpoena witnesses, compel their
29 attendance, take evidence, and require the production of any
30 material which is relevant to the investigation, including any and all
31 records of a licensee pertaining to his activities as a real estate
32 broker, broker-salesperson, salesperson or referral agent. The
33 commission may also require the provision of any information
34 concerning the existence, description, nature, custody, condition
35 and location of any books, documents, or other tangible material
36 and the identity and location of persons having knowledge of
37 relevant facts of any other matter reasonably calculated to lead to
38 the discovery of material evidence. Upon failure to obey a
39 subpoena or to answer questions posed by an investigator or legal
40 representative of the commission and upon reasonable notice to all
41 affected persons, the commission may commence an administrative
42 action as provided below or apply to the Superior Court for an order
43 compelling compliance.

44 The commission may place on probation, suspend for a period
45 less than the unexpired portion of the license period, or may revoke
46 any license issued under the provisions of R.S.45:15-1 et seq., or
47 the right of licensure when such person is no longer the holder of a
48 license at the time of hearing, or may impose, in addition or as an

1 alternative to such probation, revocation or suspension, a penalty of
2 not more than \$5,000 for the first violation, and a penalty of not
3 more than \$10,000 for any subsequent violation, which penalty
4 shall be sued for and recovered by and in the name of the
5 commission and shall be collected and enforced by summary
6 proceedings pursuant to the "Penalty Enforcement Law of 1999,"
7 P.L.1999, c.274 (C.2A:58-10 et seq.), where the licensee or any
8 person, in performing or attempting to perform any of the acts
9 mentioned herein, is deemed to be guilty of:

10 a. Making any false promises or any substantial
11 misrepresentation; or

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

14 c. Pursuing a flagrant and continued course of
15 misrepresentation or making of false promises through agents,
16 broker-salespersons, salespersons or referral agents, advertisements
17 or otherwise; or

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

20 e. Any conduct which demonstrates unworthiness,
21 incompetency, bad faith or dishonesty. The failure of any person to
22 cooperate with the commission in the performance of its duties or to
23 comply with a subpoena issued by the commission compelling the
24 production of materials in the course of an investigation, or the
25 failure to give a verbal or written statement concerning a matter
26 under investigation may be construed as conduct demonstrating
27 unworthiness; or

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

33 g. Using any plan, scheme or method for the sale or promotion
34 of the sale of real estate which involves a lottery, a contest, a game,
35 a prize, a drawing, or the offering of a lot or parcel or lots or parcels
36 for advertising purposes, provided, however, that a promotion or
37 offer of free, discounted or other services or products which does
38 not require that the recipient of any free, discounted or other
39 services or products enter into a sale, listing or other real estate
40 contract as a condition of the promotion or offer shall not constitute
41 a violation of this subsection if that promotion or offering does not
42 involve a lottery, a contest, a game, a drawing or the offering of a
43 lot or parcel or lots or parcels for advertising purposes. A broker
44 shall disclose in writing any compensation received for such
45 promotion or offer in the form and substance as required by the
46 federal "Real Estate Settlement Procedures Act of 1974," 12 U.S.C.
47 ss.2601 et seq., except that, notwithstanding the provisions of that

- 1 federal act, written disclosure shall be provided no later than when
2 the promotion or offer is extended by the broker to the consumer; or
- 3 h. Being convicted of a crime, knowledge of which the
4 commission did not have at the time of last issuing a real estate
5 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 a
8 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, except that: (1) free,
13 discounted or other services or products provided for in subsection
14 g. of this section shall not constitute a violation of this subsection;
15 and (2) a real estate broker may provide a purchaser of residential
16 real property, but no other third party a rebate of a portion of the
17 commission paid to the broker in a transaction, so long as: the
18 broker and the purchaser contract for such a rebate at the onset of
19 the broker relationship in a written document, electronic document
20 or a buyer agency agreement; the broker complies with any State or
21 federal requirements with respect to the disclosure of the payment
22 of the rebate; and the broker recommends to the purchaser that the
23 purchaser contact a tax professional concerning the tax implications
24 of receiving that rebate. The rebate paid to the purchaser shall be in
25 the form of a credit, reducing the amount of the commission
26 payable to the broker, or a check paid by the closing agent and shall
27 be made at the time of closing; or
- 28 l. Any other conduct, whether of the same or a different
29 character than specified in this section, which constitutes fraud or
30 dishonest dealing; or
- 31 m. Accepting a commission or valuable consideration as a real
32 estate broker-salesperson, salesperson or referral agent for the
33 performance of any of the acts specified in this act, from any
34 person, except his employing broker, who must be a licensed
35 broker; or
- 36 n. Procuring a real estate license, for himself or anyone else, by
37 fraud, misrepresentation or deceit; or
- 38 o. Commingling the money or other property of his principals
39 with his own or failure to maintain and deposit in a special account,
40 separate and apart from personal or other business accounts, all
41 moneys received by a real estate broker, acting in said capacity, or
42 as escrow agent, or the temporary custodian of the funds of others,
43 in a real estate transaction; or
- 44 p. Selling property in the ownership of which he is interested in
45 any manner whatsoever, unless he first discloses to the purchaser in
46 the contract of sale his interest therein and his status as a real estate
47 broker, broker-salesperson, salesperson or referral agent; or

- 1 q. Purchasing any property unless he first discloses to the seller
2 in the contract of sale his status as a real estate broker, broker-
3 salesperson, salesperson or referral agent; or
- 4 r. Charging or accepting any fee, commission or compensation
5 in exchange for providing information on purportedly available
6 rental housing, including lists of such units supplied verbally or in
7 written form, before a lease has been executed or, where no lease is
8 drawn, before the tenant has taken possession of the premises
9 without complying with all applicable rules promulgated by the
10 commission regulating these practices; or
- 11 s. Failing to notify the commission within 30 days of having
12 been convicted of any crime, misdemeanor or disorderly persons
13 offense, or of having been indicted, or of the filing of any formal
14 criminal charges, or of the suspension or revocation of any real
15 estate license issued by another state, or of the initiation of formal
16 disciplinary proceedings in another state affecting any real estate
17 license held, or failing to supply any documentation available to the
18 licensee that the commission may request in connection with such
19 matter; or
- 20 t. The violation of any of the provisions of R.S.45:15-1 et seq.
21 or of the administrative rules adopted by the commission pursuant
22 to the provisions of R.S.45:15-1 et seq. The commission is
23 expressly vested with the power and authority to make, prescribe
24 and enforce any and all rules and regulations for the conduct of the
25 real estate brokerage business consistent with the provisions of
26 chapter 15 of Title 45 of the Revised Statutes; or
- 27 u. Failing to notify the commission of having been convicted of
28 any sex offense that would qualify the person for registration
29 pursuant to section 2 of P.L.1994, c.133 (C.2C:7-2) or under an
30 equivalent statute of another state or jurisdiction, regardless of the
31 date of the conviction.

32 If a licensee is deemed to be guilty of a third violation of any of
33 the provisions of this section, whether of the same provision or of
34 separate provisions, the commission may deem that person a repeat
35 offender, in which event the commission may direct that no license
36 as a real estate broker, broker-salesperson, salesperson or referral
37 agent shall henceforth be issued to that person.

38 (cf: P.L.2009, c.273, s.1)

39

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

42 6. When, during the term of any license issued by the
43 commission, the licensee shall be convicted in a court of competent
44 jurisdiction in the State of New Jersey or any state (including
45 federal courts) of forgery, burglary, robbery, any theft or related
46 offense with the exception of shoplifting, criminal conspiracy to
47 defraud, or other like offense or offenses, or any crime involving,
48 related to or arising out of the licensee's activities as a real estate

1 broker, broker-salesperson, salesperson or referral agent, and a duly
2 certified or exemplified copy of the judgment of conviction shall be
3 obtained by the commission, the commission shall revoke forthwith
4 the license by it theretofore issued to the licensee so convicted. The
5 commission shall revoke the license of any licensee convicted of
6 any sex offense that would qualify the licensee for registration
7 pursuant to section 2 of P.L.1994, c.133 (C.2C:7-2) or under an
8 equivalent statute of another state or jurisdiction.
9 (cf: P.L.2009, c.238, s.14)

10

11 7. (New section) No person shall be disqualified from licensure
12 on the basis of conviction for any sex offense that would qualify the
13 licensee for registration pursuant to section 2 of P.L.1994, c.133
14 (C.2C:7-2) or under an equivalent statute of another state or
15 jurisdiction if the person has affirmatively demonstrated to the
16 commission clear and convincing evidence of the person's
17 rehabilitation. In determining whether the person has affirmatively
18 demonstrated rehabilitation, the commission shall consider the
19 follow factors:

- 20 a. the nature and responsibility of the position which the
21 convicted person would hold;
- 22 b. the nature and seriousness of the offense;
- 23 c. the circumstances under which the offense occurred;
- 24 d. the date of the offense
- 25 e. the age of the person when the offense was committed;
- 26 f. whether the offense was an isolated or repeated incident;
- 27 g. any social conditions which may have contributed to the
28 offense; and
- 29 h. any evidence of rehabilitation, including good conduct in
30 prison or in the community, counseling or psychiatric treatment
31 received, acquisition of additional academic or vocational
32 schooling, successful participation in correctional work-release
33 programs, or the recommendation of persons who have had the
34 person under their supervision.

35 If the commission determines that the person has affirmatively
36 demonstrated rehabilitation, the commission at its discretion may
37 condition licensure or renewal upon compliance with any conditions
38 the commission shall deem appropriate for the enhancement of
39 public safety.

40

41 8. This act shall take effect immediately.

42

43

STATEMENT

44

45 This bill makes various revisions to the laws concerning real
46 estate licensees.

47 This bill predicates the disqualification of real estate licenses
48 issued to certain individuals based upon the conviction of any sex

1 offense that would qualify the person for registration under
2 “Megan’s Law,” or an equivalent statute of another state or
3 jurisdiction. The bill permits the New Jersey Real Estate
4 Commission to place licensees on probation, suspend or revoke any
5 real estate license, or impose penalties on a real estate licensee, for
6 failure to notify the commission of the licensee having been
7 convicted of any sex offense that would qualify the person for
8 registration under “Megan’s Law,” or an equivalent statute of
9 another state or jurisdiction, regardless of the date of the conviction.
10 Furthermore, the bill stipulates that the commission will not
11 disqualify a person from licensure on the basis of a conviction for
12 any sex offense that would qualify the person for registration under
13 “Megan’s Law,” or an equivalent statute of another state or
14 jurisdiction, if the person has affirmatively demonstrated to the
15 commission clear and convincing evidence of the person’s
16 rehabilitation. If the commission determines that the person has
17 affirmatively demonstrated rehabilitation, the commission at its
18 discretion may condition licensure or renewal upon compliance
19 with any conditions the commission deems appropriate for the
20 enhancement of public safety.

21 Under current law, the New Jersey Real Estate Commission is
22 required to approve continuing education courses, course providers,
23 and instructors recommended to the commission by a Volunteer
24 Advisory Committee. This bill provides that a real estate
25 organization whose membership consists of over 50 percent of real
26 estate brokers, broker-salespersons and salespersons required to
27 complete continuing education requirements shall not be required to
28 submit continuing education courses and instructors to be offered
29 by that organization for approval to the Volunteer Advisory
30 Committee and will instead have their continuing education courses
31 and instructors be deemed automatically approved by the
32 commission.

33 Any real estate organization whose membership consists of over
34 50 percent of real estate brokers, broker-salespersons or
35 salespersons required to complete continuing education
36 requirements pursuant to R.S.45:15-1 et seq. that makes continuing
37 education instructor and course recommendations to the
38 commission will be required to create a committee which shall
39 consist of seven members, to be comprised of members of that
40 organization who are real estate licensees or other subject matter
41 experts. No less than four of the members shall be real estate
42 brokers, broker-salespersons or salespersons licensed by the
43 commission who are members of that organization. Members shall
44 be appointed to effect balanced geographic representation from the
45 central, northern and southern areas of the State, with not less than
46 two members serving from each of those areas at any time on the
47 committee. Decisions made by this committee for the approval of
48 continuing education courses or instructors will be considered final.

1 Courses and instructors approved by this committee will be deemed
2 automatically approved by the commission.

3 Furthermore, the bill revises current law so that continuing
4 education courses would be prohibited from being delivered
5 through a correspondence course. The bill also establishes a new
6 core continuing education category for real estate licensee safety
7 and codifies in the bill existing New Jersey Real Estate Commission
8 regulations mandating that two hours of continuing education
9 courses be taken in the topic of ethics.