



Sen. Don Harmon

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LRB097 08661 CEL 55974 a

1 AMENDMENT TO HOUSE BILL 2023

2 AMENDMENT NO. _____. Amend House Bill 2023 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Private Detective, Private Alarm, Private
5 Security, Fingerprint Vendor, and Locksmith Act of 2004 is
6 amended by changing Section 15-5 and by adding Section 45-65 as
7 follows:

8 (225 ILCS 447/15-5)

9 (Section scheduled to be repealed on January 1, 2014)

10 Sec. 15-5. Exemptions; private detective. The provisions
11 of this Act relating to the licensure of private detectives do
12 not apply to any of the following:

13 (1) An employee of the United States, Illinois, or a
14 political subdivision of either while the employee is
15 engaged in the performance of his or her official duties
16 within the scope of his or her employment. However, any

1 such person who offers his or her services as a private
2 detective or uses a similar title when these services are
3 performed for compensation or other consideration, whether
4 received directly or indirectly, is subject to this Act.

5 (2) A person, firm, or other entity engaged exclusively
6 in tracing and compiling lineage or ancestry who does not
7 hold himself or herself out to be a private detective.

8 (3) A person engaged exclusively in obtaining and
9 furnishing information as to the financial rating or
10 creditworthiness of persons or a person who provides
11 reports in connection with (i) consumer credit
12 transactions, (ii) information for employment purposes, or
13 (iii) information for the underwriting of consumer
14 insurance.

15 (4) Insurance adjusters employed or under contract as
16 adjusters who engage in no other investigative activities
17 other than those directly connected with adjustment of
18 claims against an insurance company or a self-insured
19 entity by which they are employed or with which they have a
20 contract. No insurance adjuster or company may use the term
21 "investigation" or any derivative thereof, in its name or
22 in its advertising.

23 (5) A person, firm, or other entity engaged in
24 providing computer forensics services so long as the
25 person, firm, or other entity does not hold himself or
26 herself out to be a private detective. For the purposes of

1 this subsection, "computer forensics services" means a
2 branch of forensic science pertaining to the recovery and
3 analysis of electronically stored information.

4 (Source: P.A. 93-438, eff. 8-5-03.)

5 (225 ILCS 447/45-65 new)

6 Sec. 45-65. Confidentiality. All information collected by
7 the Department in the course of an examination or investigation
8 of a licensee or applicant, including, but not limited to, any
9 complaint against a licensee filed with the Department and
10 information collected to investigate any such complaint, shall
11 be maintained for the confidential use of the Department and
12 shall not be disclosed. The Department may not disclose the
13 information to anyone other than law enforcement officials,
14 other regulatory agencies that have an appropriate regulatory
15 interest as determined by the Secretary, or to a party
16 presenting a lawful subpoena to the Department. Information and
17 documents disclosed to a federal, State, county, or local law
18 enforcement agency shall not be disclosed by the agency for any
19 purpose to any other agency or person. A formal complaint filed
20 against a licensee by the Department or any order issued by the
21 Department against a licensee or applicant shall be a public
22 record, except as otherwise prohibited by law.

23 Section 10. The Real Estate License Act of 2000 is amended
24 by changing Section 20-20 and by adding Section 20-78 as

1 follows:

2 (225 ILCS 454/20-20)

3 (Section scheduled to be repealed on January 1, 2020)

4 Sec. 20-20. Grounds for discipline.

5 (a) The Department may refuse to issue or renew or a
6 ~~license,~~ may revoke, suspend, place on probation, ~~suspend, or~~
7 ~~revoke any license,~~ reprimand, or take any other disciplinary
8 or non-disciplinary action as the Department may deem
9 appropriate, including imposing fines ~~proper or impose a fine~~
10 not to exceed \$25,000 ~~upon any licensee under this Act or~~
11 ~~against a licensee in handling his or her own property, whether~~
12 ~~held by deed, option, or otherwise,~~ for each violation, with
13 regard to any license, for any one or ~~any~~ combination of the
14 following ~~causes~~:

15 (1) Fraud or misrepresentation in applying for, or
16 procuring, a license under this Act or in connection with
17 applying for renewal of a license under this Act.

18 (2) Conviction by plea of guilty or nolo contendere,
19 finding of guilt, jury verdict, or entry of judgment or by
20 sentencing of any crime, including, but not limited to,
21 convictions, preceding sentences of supervision,
22 conditional discharge, or first offender probation, under
23 the laws of any jurisdiction of the United States: (i) that
24 is a felony; or (ii) that is a misdemeanor, an essential
25 element of which is dishonesty, or that is directly related

1 to the practice of the profession. ~~The conviction of, plea~~
2 ~~of guilty or plea of nolo contendere to a felony or~~
3 ~~misdemeanor, an essential element of which is dishonesty or~~
4 ~~fraud or larceny, embezzlement, or obtaining money,~~
5 ~~property, or credit by false pretenses or by means of a~~
6 ~~confidence game, in this State, or any other jurisdiction.~~

7 (3) Inability to practice the profession with
8 reasonable judgment, skill, or safety as a result of a
9 physical illness, including, but not limited to,
10 deterioration through the aging process or loss of motor
11 skill, or a mental illness or disability.

12 (4) Practice under this Act as a licensee in a retail
13 sales establishment from an office, desk, or space that is
14 not separated from the main retail business by a separate
15 and distinct area within the establishment.

16 (5) Disciplinary action of another state or
17 jurisdiction against the license or other authorization to
18 practice as a managing broker, broker, salesperson, or
19 leasing agent if at least one of the grounds for that
20 discipline is the same as or the equivalent of one of the
21 grounds for discipline set forth in this Act. A certified
22 copy of the record of the action by the other state or
23 jurisdiction shall be prima facie evidence thereof.

24 (6) Engaging in the practice of real estate brokerage
25 without a license or after the licensee's license was
26 expired or while the license was inoperative.

1 (7) Cheating on or attempting to subvert the Real
2 Estate License Exam or continuing education exam.

3 (8) Aiding or abetting an applicant to subvert or cheat
4 on the Real Estate License Exam or continuing education
5 exam administered pursuant to this Act.

6 (9) Advertising that is inaccurate, misleading, or
7 contrary to the provisions of the Act.

8 (10) Making any substantial misrepresentation or
9 untruthful advertising.

10 (11) Making any false promises of a character likely to
11 influence, persuade, or induce.

12 (12) Pursuing a continued and flagrant course of
13 misrepresentation or the making of false promises through
14 licensees, employees, agents, advertising, or otherwise.

15 (13) Any misleading or untruthful advertising, or
16 using any trade name or insignia of membership in any real
17 estate organization of which the licensee is not a member.

18 (14) Acting for more than one party in a transaction
19 without providing written notice to all parties for whom
20 the licensee acts.

21 (15) Representing or attempting to represent a broker
22 other than the sponsoring broker.

23 (16) Failure to account for or to remit any moneys or
24 documents coming into his or her possession that belong to
25 others.

26 (17) Failure to maintain and deposit in a special

1 account, separate and apart from personal and other
2 business accounts, all escrow moneys belonging to others
3 entrusted to a licensee while acting as a real estate
4 broker, escrow agent, or temporary custodian of the funds
5 of others or failure to maintain all escrow moneys on
6 deposit in the account until the transactions are
7 consummated or terminated, except to the extent that the
8 moneys, or any part thereof, shall be:

9 (A) disbursed prior to the consummation or
10 termination (i) in accordance with the written
11 direction of the principals to the transaction or their
12 duly authorized agents, (ii) in accordance with
13 directions providing for the release, payment, or
14 distribution of escrow moneys contained in any written
15 contract signed by the principals to the transaction or
16 their duly authorized agents, or (iii) pursuant to an
17 order of a court of competent jurisdiction; or

18 (B) deemed abandoned and transferred to the Office
19 of the State Treasurer to be handled as unclaimed
20 property pursuant to the Uniform Disposition of
21 Unclaimed Property Act. Escrow moneys may be deemed
22 abandoned under this subparagraph (B) only: (i) in the
23 absence of disbursement under subparagraph (A); (ii)
24 in the absence of notice of the filing of any claim in
25 a court of competent jurisdiction; and (iii) if 6
26 months have elapsed after the receipt of a written

1 demand for the escrow moneys from one of the principals
2 to the transaction or the principal's duly authorized
3 agent.

4 The account shall be noninterest bearing, unless the
5 character of the deposit is such that payment of interest
6 thereon is otherwise required by law or unless the
7 principals to the transaction specifically require, in
8 writing, that the deposit be placed in an interest bearing
9 account.

10 (18) Failure to make available to the Department all
11 escrow records and related documents maintained in
12 connection with the practice of real estate within 24 hours
13 of a request for those documents by Department personnel.

14 (19) Failing to furnish copies upon request of
15 documents relating to a real estate transaction to a party
16 who has executed that document.

17 (20) Failure of a sponsoring broker to timely provide
18 information, sponsor cards, or termination of licenses to
19 the Department.

20 (21) Engaging in dishonorable, unethical, or
21 unprofessional conduct of a character likely to deceive,
22 defraud, or harm the public.

23 (22) Commingling the money or property of others with
24 his or her own money or property.

25 (23) Employing any person on a purely temporary or
26 single deal basis as a means of evading the law regarding

1 payment of commission to nonlicensees on some contemplated
2 transactions.

3 (24) Permitting the use of his or her license as a
4 broker to enable a salesperson or unlicensed person to
5 operate a real estate business without actual
6 participation therein and control thereof by the broker.

7 (25) Any other conduct, whether of the same or a
8 different character from that specified in this Section,
9 that constitutes dishonest dealing.

10 (26) Displaying a "for rent" or "for sale" sign on any
11 property without the written consent of an owner or his or
12 her duly authorized agent or advertising by any means that
13 any property is for sale or for rent without the written
14 consent of the owner or his or her authorized agent.

15 (27) Failing to provide information requested by the
16 Department, or otherwise respond to that request, within 30
17 days of the request.

18 (28) Advertising by means of a blind advertisement,
19 except as otherwise permitted in Section 10-30 of this Act.

20 (29) Offering guaranteed sales plans, as defined in
21 clause (A) of this subdivision (29), except to the extent
22 hereinafter set forth:

23 (A) A "guaranteed sales plan" is any real estate
24 purchase or sales plan whereby a licensee enters into a
25 conditional or unconditional written contract with a
26 seller, prior to entering into a brokerage agreement

1 with the seller, by the terms of which a licensee
2 agrees to purchase a property of the seller within a
3 specified period of time at a specific price in the
4 event the property is not sold in accordance with the
5 terms of a brokerage agreement to be entered into
6 between the sponsoring broker and the seller.

7 (B) A licensee offering a guaranteed sales plan
8 shall provide the details and conditions of the plan in
9 writing to the party to whom the plan is offered.

10 (C) A licensee offering a guaranteed sales plan
11 shall provide to the party to whom the plan is offered
12 evidence of sufficient financial resources to satisfy
13 the commitment to purchase undertaken by the broker in
14 the plan.

15 (D) Any licensee offering a guaranteed sales plan
16 shall undertake to market the property of the seller
17 subject to the plan in the same manner in which the
18 broker would market any other property, unless the
19 agreement with the seller provides otherwise.

20 (E) The licensee cannot purchase seller's property
21 until the brokerage agreement has ended according to
22 its terms or is otherwise terminated.

23 (F) Any licensee who fails to perform on a
24 guaranteed sales plan in strict accordance with its
25 terms shall be subject to all the penalties provided in
26 this Act for violations thereof and, in addition, shall

1 be subject to a civil fine payable to the party injured
2 by the default in an amount of up to \$25,000.

3 (30) Influencing or attempting to influence, by any
4 words or acts, a prospective seller, purchaser, occupant,
5 landlord, or tenant of real estate, in connection with
6 viewing, buying, or leasing real estate, so as to promote
7 or tend to promote the continuance or maintenance of
8 racially and religiously segregated housing or so as to
9 retard, obstruct, or discourage racially integrated
10 housing on or in any street, block, neighborhood, or
11 community.

12 (31) Engaging in any act that constitutes a violation
13 of any provision of Article 3 of the Illinois Human Rights
14 Act, whether or not a complaint has been filed with or
15 adjudicated by the Human Rights Commission.

16 (32) Inducing any party to a contract of sale or lease
17 or brokerage agreement to break the contract of sale or
18 lease or brokerage agreement for the purpose of
19 substituting, in lieu thereof, a new contract for sale or
20 lease or brokerage agreement with a third party.

21 (33) Negotiating a sale, exchange, or lease of real
22 estate directly with any person if the licensee knows that
23 the person has an exclusive brokerage agreement with
24 another broker, unless specifically authorized by that
25 broker.

26 (34) When a licensee is also an attorney, acting as the

1 attorney for either the buyer or the seller in the same
2 transaction in which the licensee is acting or has acted as
3 a broker or salesperson.

4 (35) Advertising or offering merchandise or services
5 as free if any conditions or obligations necessary for
6 receiving the merchandise or services are not disclosed in
7 the same advertisement or offer. These conditions or
8 obligations include without limitation the requirement
9 that the recipient attend a promotional activity or visit a
10 real estate site. As used in this subdivision (35), "free"
11 includes terms such as "award", "prize", "no charge", "free
12 of charge", "without charge", and similar words or phrases
13 that reasonably lead a person to believe that he or she may
14 receive or has been selected to receive something of value,
15 without any conditions or obligations on the part of the
16 recipient.

17 (36) Disregarding or violating any provision of the
18 Land Sales Registration Act of 1989, the Illinois Real
19 Estate Time-Share Act, or the published rules promulgated
20 by the Department to enforce those Acts.

21 (37) Violating the terms of a disciplinary order issued
22 by the Department.

23 (38) Paying or failing to disclose compensation in
24 violation of Article 10 of this Act.

25 (39) Requiring a party to a transaction who is not a
26 client of the licensee to allow the licensee to retain a

1 portion of the escrow moneys for payment of the licensee's
2 commission or expenses as a condition for release of the
3 escrow moneys to that party.

4 (40) Disregarding or violating any provision of this
5 Act or the published rules promulgated by the Department to
6 enforce this Act or aiding or abetting any individual,
7 partnership, registered limited liability partnership,
8 limited liability company, or corporation in disregarding
9 any provision of this Act or the published rules
10 promulgated by the Department to enforce this Act.

11 (41) Failing to provide the minimum services required
12 by Section 15-75 of this Act when acting under an exclusive
13 brokerage agreement.

14 (42) Habitual or excessive use or addiction to alcohol,
15 narcotics, stimulants, or any other chemical agent or drug
16 that results in a managing broker, broker, salesperson, or
17 leasing agent's inability to practice with reasonable
18 skill or safety.

19 (b) The Department may refuse to issue or renew or may
20 suspend the license of any person who fails to file a return,
21 pay the tax, penalty or interest shown in a filed return, or
22 pay any final assessment of tax, penalty, or interest, as
23 required by any tax Act administered by the Department of
24 Revenue, until such time as the requirements of that tax Act
25 are satisfied in accordance with subsection (g) of Section
26 2105-15 of the Civil Administrative Code of Illinois.

1 (c) The Department shall deny a license or renewal
2 authorized by this Act to a person who has defaulted on an
3 educational loan or scholarship provided or guaranteed by the
4 Illinois Student Assistance Commission or any governmental
5 agency of this State in accordance with item (5) of subsection
6 (g) of Section 2105-15 of the Civil Administrative Code of
7 Illinois.

8 (d) In cases where the Department of Healthcare and Family
9 Services (formerly Department of Public Aid) has previously
10 determined that a licensee or a potential licensee is more than
11 30 days delinquent in the payment of child support and has
12 subsequently certified the delinquency to the Department may
13 refuse to issue or renew or may revoke or suspend that person's
14 license or may take other disciplinary action against that
15 person based solely upon the certification of delinquency made
16 by the Department of Healthcare and Family Services in
17 accordance with item (5) of subsection (g) of Section 2105-15
18 of the Civil Administrative Code of Illinois.

19 (e) In enforcing this Section, the Department or Board upon
20 a showing of a possible violation may compel an individual
21 licensed to practice under this Act, or who has applied for
22 licensure under this Act, to submit to a mental or physical
23 examination, or both, as required by and at the expense of the
24 Department. The Department or Board may order the examining
25 physician to present testimony concerning the mental or
26 physical examination of the licensee or applicant. No

1 information shall be excluded by reason of any common law or
2 statutory privilege relating to communications between the
3 licensee or applicant and the examining physician. The
4 examining physicians shall be specifically designated by the
5 Board or Department. The individual to be examined may have, at
6 his or her own expense, another physician of his or her choice
7 present during all aspects of this examination. Failure of an
8 individual to submit to a mental or physical examination, when
9 directed, shall be grounds for suspension of his or her license
10 until the individual submits to the examination if the
11 Department finds, after notice and hearing, that the refusal to
12 submit to the examination was without reasonable cause.

13 If the Department or Board finds an individual unable to
14 practice because of the reasons set forth in this Section, the
15 Department or Board may require that individual to submit to
16 care, counseling, or treatment by physicians approved or
17 designated by the Department or Board, as a condition, term, or
18 restriction for continued, reinstated, or renewed licensure to
19 practice; or, in lieu of care, counseling, or treatment, the
20 Department may file, or the Board may recommend to the
21 Department to file, a complaint to immediately suspend, revoke,
22 or otherwise discipline the license of the individual. An
23 individual whose license was granted, continued, reinstated,
24 renewed, disciplined or supervised subject to such terms,
25 conditions, or restrictions, and who fails to comply with such
26 terms, conditions, or restrictions, shall be referred to the

1 Secretary for a determination as to whether the individual
2 shall have his or her license suspended immediately, pending a
3 hearing by the Department.

4 In instances in which the Secretary immediately suspends a
5 person's license under this Section, a hearing on that person's
6 license must be convened by the Department within 30 days after
7 the suspension and completed without appreciable delay. The
8 Department and Board shall have the authority to review the
9 subject individual's record of treatment and counseling
10 regarding the impairment to the extent permitted by applicable
11 federal statutes and regulations safeguarding the
12 confidentiality of medical records.

13 An individual licensed under this Act and affected under
14 this Section shall be afforded an opportunity to demonstrate to
15 the Department or Board that he or she can resume practice in
16 compliance with acceptable and prevailing standards under the
17 provisions of his or her license.

18 (Source: P.A. 95-851, eff. 1-1-09; 96-856, eff. 12-31-09.)

19 (225 ILCS 454/20-78 new)

20 Sec. 20-78. Confidentiality. All information collected by
21 the Department in the course of an examination or investigation
22 of a licensee or applicant, including, but not limited to, any
23 complaint against a licensee filed with the Department and
24 information collected to investigate any such complaint, shall
25 be maintained for the confidential use of the Department and

1 shall not be disclosed. The Department may not disclose the
2 information to anyone other than law enforcement officials,
3 other regulatory agencies that have an appropriate regulatory
4 interest as determined by the Secretary, or to a party
5 presenting a lawful subpoena to the Department. Information and
6 documents disclosed to a federal, State, county, or local law
7 enforcement agency shall not be disclosed by the agency for any
8 purpose to any other agency or person. A formal complaint filed
9 against a licensee by the Department or any order issued by the
10 Department against a licensee or applicant shall be a public
11 record, except as otherwise prohibited by law.

12 Section 99. Effective date. This Act takes effect upon
13 becoming law.".