

Senate Bill No. 2104

CHAPTER 445

An act to amend Sections 701, 719, 721, 730, 731, and 736 of the Harbors and Navigation Code, relating to yacht and ship brokers.

[Approved by Governor September 11, 1996. Filed
with Secretary of State September 12, 1996.]

LEGISLATIVE COUNSEL'S DIGEST

SB 2104, Mountjoy. Yacht and ship broker licensing.

(1) Existing law provides for the licensing of yacht and ship brokers. For purposes of that law, "broker" is defined to include a person who leases or rents, offers to lease or rent, places for rent, solicits listings of yachts for rent, or negotiates the sale, purchase, or exchange of leases on yachts, for a period of more than 90 days during any 12-month period, and who does not own those yachts.

This bill would, instead, require the rental or lease to be for a period of more than 90 consecutive days to any one person or business during any 12-month period, and would make other technical changes to that definition.

(2) Existing law also specifies that a person shall be deemed qualified to submit an application for a broker's license if, as shown on the Department of Boating and Waterways' records, the person has been employed, within 5 years preceding his or her application, as a licensed salesperson for at least one year, or has been licensed as a broker within 5 years preceding his or her application.

This bill, in addition, would provide that a person shall be deemed qualified to submit an application for a broker's license if the person has been employed as a broker or a yacht salesperson in another state as a primary occupation for at least 3 continuous years immediately preceding his or her application. The bill would specify the form of proof of employment as a broker in another state.

(3) Existing law requires the department to notify an applicant in the event of his or her failure to pass the required examination, authorizes the department to suggest further study, and, upon payment of the required fee, requires the department to schedule a reexamination.

This bill would prohibit an applicant, who fails to pass the written examination upon his or her 3rd attempt to do so, from retaking the examination for 6 months from the date of taking the 3rd examination.

(4) Existing law requires an applicant to procure, file, and maintain with the department a bond in the amount of \$10,000 before any broker's license may be issued or renewed by the department.

This bill would increase the amount of that bond to \$15,000.

(5) Existing law requires the department to hold a deposit given instead of the bond required in (4) above for a period of 4 years after the expiration of the license.

This bill, in addition, would authorize the department to require the filing of an additional cash deposit if an action is commenced on the cash deposit of a licensed broker, and, upon the recovery in any action on the deposit, would require the broker to immediately file a new bond, equal to the amount specified in the action or recovery, but no greater than the amount specified in (4) above, whichever is less. The bill also would specify that failure to file an additional cash deposit within 30 days after notification that such an additional cash deposit is required, or after the recovery on a cash deposit, constitutes a failure to comply with the provisions of law governing the licensing of yacht and ship brokers, in which case that broker's license may be suspended.

(6) Existing law authorizes the department to charge and collect fees for the licensing of yacht and ship brokers in accordance with a certain schedule, and to collect a criminal records investigation fee for both a salesperson's and broker's license, in an amount determined by the Department of Justice, not to exceed the amount needed to reimburse the department for conducting the criminal investigation.

This bill, in addition, would authorize the department to charge and collect a criminal records investigation fee for both a salesperson's and broker's license, in an amount determined by any other state or federal custodian of criminal records from which the department has requested information concerning an applicant's criminal record.

The people of the State of California do enact as follows:

SECTION 1. Section 701 of the Harbors and Navigation Code is amended to read:

701. Unless the context otherwise requires, the following definitions shall govern the construction of this article:

(a) "Broker" means a person who, except as otherwise excluded by Section 710, for compensation or in expectation of compensation, does, or negotiates to do, one or more of the following acts for another or others:

(1) Sells or offers to sell, buys or offers to buy, solicits or obtains listings of, or negotiates the purchase, sale, or exchange of yachts, and who does not own those yachts.

(2) Leases or rents, offers to lease or rent, places for rent, solicits a listing of a yacht for rent, or negotiates the sale, purchase, or exchange of a lease on a yacht, for a rental or lease period of more



than 90 consecutive days to any one person or business during any 12-month period, and who does not own that yacht.

(b) “Salesman” refers to a natural person who, except as otherwise excluded by Section 710, for compensation or in expectation of compensation, is employed by a licensed broker to do one or more of the acts set forth in subdivision (a). The term includes “saleswoman” and “salesperson.”

(c) “Yacht” or “ship” refers to any vessel 16 feet or more in length and under 300 gross tons used for navigating in water and designed to be propelled by machinery or sail.

SEC. 2. Section 719 of the Harbors and Navigation Code is amended to read:

719. (a) A person shall be deemed qualified to submit an application for a broker’s license if, as shown on the department’s records, the person has been employed, within five years preceding his or her application, as a licensed salesperson for at least one year, has been licensed as a broker within five years preceding his or her application, or has been employed as a broker or a yacht salesperson in another state when that employment was a primary occupation for a minimum of three continuous years immediately preceding application for a broker’s license in California. Proof of employment as a broker in another state shall be in the form of all of the following:

(1) State, if applicable, and federal income tax returns, or a proof of earning statement made by the applicant under penalty of perjury, for the three-year period preceding application in California.

(2) If bonded, a statement issued by the applicant’s bonding company that no action has been taken against the bond for fraud or gross misrepresentation for the period for which the bond has been issued.

(3) A copy of all business permits, issued by any state, county, or city agency, which, if applicable, includes the fictitious business name (“dba” or “doing business as”) under which the applicant conducted a yacht or ship brokerage business for the three year period preceding application for a California broker’s license.

(4) If the applicant conducts a yacht or ship brokerage business in another state that requires broker or salesperson licensing, evidence of a current license in that state.

(b) If the applicant is a partnership, then one of the partners of the applicant shall have the foregoing qualifications.

(c) If the applicant is a corporation, then the officer or officers of the corporation to be designated for a license as provided in this article shall have the foregoing qualifications.

(d) If the applicant is an individual, the applicant shall be at least 18 years of age.

SEC. 3. Section 721 of the Harbors and Navigation Code is amended to read:



721. (a) In addition to any proof of honesty, truthfulness, and good reputation required of any applicant for a broker's license, the department shall ascertain by written examination that the applicant, and in case of a partnership or corporation applicant for a broker's license that an officer or partner thereof through whom it proposes to act as a yacht broker, has all of the following:

(1) Appropriate knowledge of the English language, including reading, writing, and spelling, and of arithmetical computations common to the yacht brokerage business.

(2) An understanding of the principles of the yacht brokerage business and profession, including an understanding of a certificate of ownership, certificate of number, security agreement, bill of sale, and other documents required to register and number, and to transfer title of an undocumented vessel pursuant to the Vehicle Code.

(3) An understanding that transfer of title of a documented vessel shall be performed in accordance with federal law as administered by the United States Coast Guard.

(4) An understanding of maritime and admiralty liens with respect to vessels and the requirements of the Department of Transportation or other federal agency and the United States Coast Guard with respect to documentation, mortgaging, and transferring of title of documented vessels.

(5) An understanding of agency contracts and of types and kinds of listings and deposit receipts with respect to vessels.

(6) A general knowledge of equipment legally required on a yacht.

(7) A general understanding of the obligations between principal and agent, and of the fiduciary relationship between them, and of business ethics pertaining to the business and profession of yacht brokers and yacht salespersons.

(8) A general knowledge of yachts.

(b) (1) If an applicant fails to pass the required examination, the department shall so notify the applicant, may suggest further study, and, upon payment of the required fee, shall schedule a reexamination.

(2) Notwithstanding paragraph (1), whenever an applicant fails to pass the written examination on the third attempt to do so, he or she shall be prohibited from retaking the examination for a period of six months from the date of taking the third examination.

SEC. 4. Section 730 of the Harbors and Navigation Code is amended to read:

730. (a) Before any broker's license shall be issued or renewed by the department for any applicant, the applicant shall procure, file, and maintain with the department a good and sufficient bond in the amount of fifteen thousand dollars (\$15,000) with a corporate surety duly licensed to do business within the State of California, and



conditioned that the applicant shall not practice any fraud or deceit or make any fraudulent or grossly negligent representations that will cause a monetary loss to any person for whom the broker acts under this article.

(b) If any person suffers any loss or damage by reason of any fraud or deceit practiced on that person or any fraudulent or grossly negligent representation made to that person by a licensed broker or the broker's sales personnel acting for the broker on the broker's behalf or within the scope of the employment of the sales personnel, which fraud, deceit, or fraudulent or grossly negligent representation is practiced or made with respect to any act of the broker or the sales personnel for which a license is required under this article, that person has a right of action against the broker, the sales personnel, the surety upon the broker's bond, or the deposit held by the department in accordance with Section 731. If any action is commenced upon the bond, the surety thereunder and the licensed yacht broker with respect to whom the bond has been issued shall immediately notify the department of the action.

(c) If an action is commenced on the bond of a licensed broker, the department may require the filing of an additional bond, and immediately upon the recovery in any action on the bond, the broker described therein shall file a new bond. Failure to file an additional bond within 15 days after notification that an additional bond is required by reason of action against the bond or after recovery on a bond constitutes a failure to comply with this article, in which case the license of the licensed broker whose bond has been canceled or on whose bond recovery has been made may be suspended.

(d) If a broker's bond is canceled for a reason other than an action being commenced upon it, a new bond shall be filed by the broker. Failure to file a new bond within 30 days after notification that a new bond is required because a previous bond has been canceled constitutes a failure to comply with this article, in which case the license of the licensed broker whose bond has been canceled may be suspended.

SEC. 5. Section 731 of the Harbors and Navigation Code is amended to read:

731. (a) A cash deposit given instead of the bond required by Section 730 shall be held by the department during the life of the license and for a period of four years after the expiration of the license.

(b) If an action is commenced on the cash deposit of a licensed broker pursuant to subdivision (a), the department may require the filing of an additional cash deposit, and immediately, upon the recovery in any action on the deposit, the broker described therein shall file a new bond, equal to the amount specified in the action or recovery, but no greater than the amount specified in subdivision (a) of Section 730, whichever is less. Failure to file an additional cash



deposit within 30 days after notification that an additional cash deposit is required by reason of an action filed against the cash deposit, or after the recovery on a cash deposit, shall constitute a failure to comply with this article, in which case the department may suspend the license of the licensed broker whose cash deposit has been acted on, or where a cash deposit recovery has been made.

SEC. 6. Section 736 of the Harbors and Navigation Code is amended to read:

736. The department shall charge and collect the fees prescribed by this article in accordance with the following schedule:

- (a) Two hundred dollars (\$200) for each original broker's license.
- (b) Seventy-five dollars (\$75) per year for the renewal of an original broker's license.
- (c) One hundred dollars (\$100) for each original salesperson's license.
- (d) Fifty dollars (\$50) per year for the renewal of an original salesperson's license.
- (e) Twenty-five dollars (\$25) for a salesperson's temporary license.
- (f) Twenty-five dollars (\$25) for each license obtained by a broker for a branch office and for each renewal thereof.
- (g) Ten dollars (\$10) for each transfer of a salesperson's license for each change of employment.
- (h) Ten dollars (\$10) for each duplicate license.
- (i) Ten dollars (\$10) for each substitution of a name in the license of a corporation or a partnership.
- (j) Ten dollars (\$10) for the granting of each certificate of convenience under Section 727.
- (k) Twenty-five dollars (\$25) for each examination.
- (l) A criminal records investigation fee, collected for both a salesperson's and broker's license, in an amount determined by the Department of Justice, or by any other state or federal custodian of criminal records from which the department has requested information concerning an applicant's criminal record, not to exceed the amount needed to reimburse the department for conducting the criminal records investigation.

