

MAINE STATE LEGISLATURE

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
107TH LEGISLATURE

COMMITTEE AMENDMENT "A" to H.P. 277, L.D. 424, Bill,
"AN ACT Relating to the Composition and Duties of the Maine
Real Estate Commission."

Amend said Bill by striking out all of the Title and
inserting in place thereof the following: 'AN ACT Changing the
Composition and Duties of the Maine Real Estate Commission and
Establishing the Bureau of Real Estate.'

Amend said Bill by striking everything out after the
enacting clause and inserting in place thereof the following:

'Sec. 1. 5 MRSA §2301, sub-§1, as last amended by PL 1973,
c.788, §24, is further amended by inserting after the 10th
paragraph the following:

Board of Real Estate Brokers and Salesmen;

Sec. 2. 5 MRSA §2301, sub-§1, as last amended by PL 1973,
C. 788, §24, is further amended by inserting after the 17th
paragraph the following:

Bureau of Real Estate;

Sec. 3. 5 MRSA §2301, sub-§1, as last amended by PL 1973,
c. 788, §24, is further amended by striking out the 10th
paragraph from the end as follows:

~~Maine-Real-Estate-Commission-~~

Sec. 4. 10 MRSA §8001, 1st ¶, 2nd sentence, as/last
§43, repealed
and replaced by PL 1973, c. 788, /is amended to read:

The administrative head of said department shall be the Com-
missioner of Business Regulation, who shall be appointed by
the Governor with the advice and consent of the Council to serve
a term coterminous with that of the Governor, subject to removal

for cause by the Governor and Council and said department shall be composed of the following bureaus, commissions and board boards, as heretofore created and established: The Bureau of Banks and Banking, formerly the Department of Banks and Banking; the Bureau of Insurance, formerly the Department of Insurance, except the Fire Prevention Division thereof; ~~the Real Estate Commission~~ the Bureau of Real Estate; the Board of Real Estate Brokers and Salesmen; the Boxing Commission; the Running Horse Racing Commission and the Land Damage Board.

Sec. 5. 20 MRSA §2661, 1st ¶, as last amended by PL 1973, c. 571, §72, is further amended to read:

Any person, partnership or institution or corporation operating or maintaining a private business, trade, vocational or technical school in Maine, except schools of hairdressing and beauty culture required to be approved by the State Board of Cosmetology, schools of barbering required to be approved by the State Board of Barbers, ~~schools-for-real-estate-required-to-be-approved-by-the-Real-Estate-Commission~~, schools offering educational programs to prepare students for the real estate profession and required to be approved by the Board of Real Estate Brokers and Salesmen, and an institution authorized by law to grant a degree, shall register the institution with the Commissioner of Educational and Cultural Services on forms prepared for this purpose, and prior to operation obtain a permit from

the Commissioner of Educational and Cultural Services.

Sec. 6. 32 MRSA §4002, 2nd ¶, is amended to read:

In its discretion the ~~commission~~ bureau may accept, in lieu of the recommendations and statements required under subchapter III, to accompany an application for license, the license issued to a nonresident broker or salesman in another state, upon payment of the license fee and the filing by the applicant with the ~~commission~~ bureau of a certified copy of the applicant's license issued by such other state. A nonresident applicant, if a broker, shall maintain an active place of business in the state in which he is located. Every nonresident applicant shall file an irrevocable consent that actions may be commenced against such applicant in the proper court of any county of this State in which a cause of action may arise or in which the plaintiff may reside, by the service of any process or pleading authorized by the laws of this State on the secretary director of the ~~commission~~ bureau, said consent stipulating and agreeing that such service of such process or pleadings on said secretary director shall be taken and held in all courts to be as valid and binding as if due service had been made upon said applicant personally within this State. Said instrument shall be containing such consent/ authenticated

by the seal thereof, if a corporation, or by the acknowledged signature of a member or officer thereof, if otherwise. All such applications, except from individuals, shall be accompanied by the duly certified copy of the resolution of the proper officers or managing board authorizing the proper officer to execute the same. In case any process or pleadings mentioned in the case are served upon the secretary director of the commission bureau, it shall be by duplicate copies, one of which shall be filed in the office of the commission bureau and the other immediately forwarded by registered mail to the main office of the applicant against which said process or pleadings are directed.

Sec. 7. 32 MRSA §4004-A, 5th and 6th sentences, as last amended by PL 1969, c. 312, §2, are further amended to read:

These accounts and records shall be opened to inspection by the commission bureau and its duly authorized agents at the broker's usual place of business during regular business hours. The broker shall notify the commission bureau within 30 days after opening any such account of the banking institution in which said account is located and shall authorize the commission bureau, in writing, to confirm the balance of the funds held in his trust account with the banking institution in which the trust account is maintained, within one day following an examination of the broker's records by the commission bureau or its duly authorized agents.

Sec. 8. 32 MRSA §4005, 5th sentence, is amended to read:

All fines and penalties over and above the cost of court proceedings shall inure to the ~~commission~~ bureau.

Sec. 9. 32 MRSA §4051, is repealed and the following enacted in place thereof:

§4051. Declaration of Policy

It is declared to be the policy of the State of Maine that Real Estate Brokers and Salesmen shall be supervised by the Board of Real Estate Brokers and Salesmen and the Bureau of Real Estate in a manner to insure that they meet standards which will promote public understanding and confidence in the business of real estate.

Sec. 10. 32 MRSA §4051-A is enacted to read:

§4051-A. Board of Real Estate Brokers and Salesmen; Bureau of Real Estate; Organization

1. Board of Real Estate Brokers and Salesmen. There is created the Board of Real Estate Brokers and Salesmen, hereinafter referred to as the "board," to consist of the Director of the Bureau of Real Estate and 4 residents of this State appointed by the Governor, (three) of whom shall have been real estate brokers or salesmen by vocation in this State for at least 5 years immediately prior to their appointment and

one of whom shall have no professional or financial connection with the real estate business. Of the members appointed by the Governor, there shall at no time be more than one member from any one county.

A. Terms of the members appointed by the Governor shall be 4 years, except that of those first appointed, ~~one~~ one shall be appointed for a term of one year, one for (two) years, one for 3 years and one for 4 years. A vacancy occurring prior to the expiration of a term shall be filled by an appointment for the unexpired term. The appointed members may be removed by the Governor for cause.

B. ~~One~~ A majority of the members of the board shall constitute a quorum for the transaction of business under this chapter.

C. ~~The~~ The board shall annually elect a chairman, other than the ~~director~~ director from its members.

D. ~~The~~ The board shall establish guidelines, policies, rules and regulations by which the bureau shall carry out ~~this~~ this chapter, in addition to carrying out such duties prescribed to it by this chapter.

2. Bureau of Real Estate. There is ~~created~~ created the Bureau of Real Estate, hereinafter referred to as the "bureau." The director shall be employed by the Commissioner of Business

Regulation, subject to the Personnel Laws. The director shall be responsible for the management of the bureau within the guidelines, policies, rules and regulations established by the board.

A. With the approval of the Commissioner of Business Regulation and subject to the Personnel Law, the director may employ such clerical assistants, technical assistants and investigators as he deems necessary.

Sec. 11. 32 MRSA §4052, as last amended by PL 1973, c. 59, is further amended to read:

§4052. Compensation

Each member of the ~~commission~~ board appointed by the Governor shall receive as full compensation for each day actually spent on the work of said ~~commission~~ board the sum of ~~\$35~~ \$40 and his actual and necessary expenses incurred in the performance of duties pertaining to his office.

Sec. 12. 32 MRSA §4053, as last repealed and replaced by PL 1973, c. 585, §9, is repealed.

Sec. 13. 32 MRSA §4054 is amended to read:

§4054. Seal; evidence; inspection of records

The ~~commission~~ board shall adopt a seal with such design as the ~~commission~~ board may prescribe engraved thereon, by which it shall authenticate its proceedings. Copies of all

records and papers in the office of the commission bureau, duly certified and authenticated by the seal of said commission board, shall be received in evidence in all courts equally and with like effect as the original. All records kept in the office of the commission bureau under authority of this chapter shall be open to public inspection as provided in Title 1, section 405, under such rules and regulations as shall be prescribed by the commission board. Copies of such records shall be made available to the public at cost.

Sec. 14. 32 MRSA, §4055, as amended by PL 1973, c. 585, §10, is further amended to read:

§4055. Disposal of fees; expenses

The fees collected under this chapter shall be paid forthwith by the commission bureau to the Treasurer of State with a detailed statement thereof and shall constitute a fund to be known as the "Real Estate Fund." Said fund shall be kept as a separate account by said Treasurer of State and he shall pay therefrom, upon vouchers signed by the ~~chairman of the~~ commission Commissioner of Business Regulation and approved by the State Controller, the cost and expenses of administering this chapter. All of the costs and expenditures of the commission bureau and board shall be paid only from said fund and in no event shall any payments for the

expenses of the ~~commission~~ bureau or board exceed the amount received by said treasurer from said ~~commission-bureau~~. Any moneys remaining in the ~~Real Estate Fund~~ at the end of the fiscal year shall be carried forward to the credit of the said fund for the succeeding year. The ~~commission~~ board may, within the moneys available in the "Real Estate Fund," defray the cost of an educational program for real estate brokers and salesmen. Such program may entail the dissemination of information pertinent to the real estate business and material for school curricula. Such program shall be under the direction and supervision of the ~~Commissioner-of-the-Department-of-Business Regulation~~ board.

Sec. 15. 32 MRSA, §4056, sub-§1, first sentence, is amended to read:

The ~~commission-may-upon-its-own-motion~~ board may in its discretion, and shall, upon the verified complaint in writing of any person, provided such complaint or such complaint together with evidence, documentary or otherwise, presented in connection therewith shall make out a prima facie case, investigate the actions of any real estate broker or real estate salesman, or any person who shall assume to act in either such capacity within this State.

Sec. 16. 32 MRSA, §4056, sub-§§2 and 3, as amended by PL 1973, c. 303, §3, are further amended to read:

2. Acts of licensee for which applicant would be refused license. The Administrative Court Judge shall, in addition, have power, after hearing, to revoke or suspend any license issued under this chapter, at any time, where the licensee performs any act or acts, or offers or attempts or agrees to do any act or acts, for which the commission board may lawfully refuse to issue a license to any applicant.

3. Knowledge of violation. Any unlawful act or violation of any of the provisions of this chapter by any real estate salesman, employee or partner or associate of a licensed real estate broker shall not be cause for the revocation of a license of such real estate broker, partial or otherwise, unless it shall appear to the satisfaction of the commission board that said employer, partner or associate had guilty knowledge thereof.

Sec. 17. 32 MRSA §4056, sub-§4, is repealed and the following is enacted in place thereof:

4. Investigations. The board shall investigate any possible or alleged violations of this chapter and report its findings to all the parties involved. The board shall report violations to the office of the Attorney General or the appropriate district attorney for prosecution.

Sec. 18. 32 MRSA §4056, sub-§5, as enacted by PL 1975, c. 160, is amended to read:

5. Hearings. The commission board, at its hearings required by law, shall have authority to administer oaths and affirmations. Such hearings may be held for purposes of denial of a license or revocation or suspension of a real estate school certificate of approval.

Sec. 19. 32 MRSA §4057 is amended to read:

§4057. Publication of list of licensees.

The commission board shall annually publish a list of the names and addresses of all licensees licensed by it under this chapter and of all persons whose licenses have been suspended or revoked within one year, together with such other information relative to the enforcement of this chapter as it may deem of interest to the public. Such lists shall be mailed by the commission bureau to any person-in-this-State-upon-request licensee and to those whose licenses have been suspended or revoked within one year. Such lists shall be made available to the public at cost.

Sec. 20. 32 MRSA, §4058, as amended by PL 1973, c. 303, §3, is further amended to read:

§4058. Denial of license; violations

If the commission board shall determine that any applicant is not qualified to receive a license, a license shall not be granted to such applicant, and if the Administrative Court Judge shall determine that any licensee is guilty of a violation of any of the provisions of this chapter, the license shall be suspended or revoked.

Sec. 21. 32 MRSA §4101 is amended to read:

§4101. Rules and regulations

The commission board shall make and enforce rules and regulations connected with the application for any license as shall be deemed necessary to administer and enforce this chapter, subject to the provisions of the Administrative Code, Title 5, Part 6.

Sec. 22. 32 MRSA §4101-A, as enacted by PL 1973, c. 448, §2, is repealed and replaced to read:

§4101-A. Schools

The board shall prescribe curricula and standards for educational programs to prepare students for the real estate profession, and shall issue a certificate of approval to such educational programs within the State of Maine as meet the requirements of this chapter and of the board. At least every 2 years, the board shall thoroughly review each approved educational program prior to reissuing a certificate of approval

for such program. Nothing in this section shall be construed to grant the board any authority over any such programs conducted by the University of Maine, any other public higher educational institution or any institution authorized by law to grant a degree.

1. Certificates of approval. Any educational program to prepare students for the real estate profession shall first obtain a certificate of approval from and thereafter adhere to the prescribed curricula and standards of the board.

2. Suspension or revocation. The board shall have authority to suspend or revoke the certificate of approval of such a program for violation of this section or for failing to adhere to the prescribed curricula and standards of the board.

3. Prohibitions. It shall be unlawful for such a program to be offered without first procuring a certificate of approval for the program; or, having obtained a certificate of approval, it shall be unlawful to represent that enrolling in such a program provides any assurance of passing examinations given by the board. It shall also be unlawful to represent that the issuance of a certificate of approval is a recommendation or endorsement of the educational program.

Sec. 23. 32 MRSA §4102 is amended to read:

§4102. License required

It shall be unlawful for any person, partnership, association or corporation to act as a real estate broker or real estate salesman, or to advertise or assume to act as such real estate broker or real estate salesman, without a license issued by the commission bureau.

Sec. 24. 32 MRSA §4102-A, as last amended by PL 1969, c. 590, §63, is further amended to read:

§4102-A. Temporary license in case of death

In the event of the death of a licensed broker, who is the sole proprietor of a real estate business, the commission bureau shall, upon application by his legal representative, issue, without examination, a temporary license to such legal representative, or to an individual designated by him and approved by the commission bureau and the payment of the prescribed fee of \$15, which shall authorize such temporary licensee to continue to transact said business for a period not to exceed one year from the date of death subject to all other provisions of sections 4001 to 4119, except that such temporary license shall not be renewed.

Sec. 25. 32 MRSA §4103, sub-§1, first sentence is amended to read:

An applicant for a real estate broker's or salesman's license shall submit to the commission bureau written evidence, verified

by oath, that the applicant:

Sec. 26. 32 MRSA §4103, sub-§1, ¶E, as amended by PL 1965, c. 223, §1, is further amended to read:

E. Has a high school education or its equivalent approved by the ~~commission~~ bureau. If the applicant is applying for a real estate broker's license, he must in addition have satisfactorily completed an educational course in the field of real estate approved by the ~~commission~~ board or been employed as a licensed salesman full time for at least a year. The conditions of this paragraph shall not be applicable to persons who have held any license from the ~~commission~~ Maine Real Estate Commission prior to December 31, 1963;

Sec. 27. 32 MRSA §4103, sub-§2, as repealed and replaced by PL 1971, c. 468, §8, is amended to read:

2. Licenses granted. Licenses shall be granted only to persons who are trustworthy and competent to transact the business of real estate broker or salesman in such manner as to safeguard the interests of the public, and only after satisfactory proof has been presented to the ~~commission~~ board. Licenses shall be granted to a partnership, association or corporation only if:

A. Every employee, member or officer of such partnership, association or corporation, who acts as a real estate broker or salesman, is licensed by the ~~commission~~ board as a real estate broker or salesman, and

B. The partnership, association or corporation designates one of its officers as its designated broker. The person so designated shall be licensed by the ~~commission~~ board as a real estate broker.

Sec. 28. 32 MRSA §4104 is amended to read:

§4104. Application

Every applicant for a real estate broker's or salesman's license shall apply therefor in writing upon blanks prepared or furnished by the ~~commission~~ bureau.

Sec. 29. 32 MRSA §4106, 3rd sentence is amended to read:

The ~~commission~~ bureau, with due regard to the paramount interests of the public, may require such other proof as shall be deemed desirable as to the honesty, truthfulness, integrity, reputation and competency of the applicant.

Sec. 30. 32 MRSA §4110, first sentence, as last amended by PL 1967, c. 359, §7, is further amended to read:

The ~~commission~~ bureau ~~is authorized to~~ shall require each applicant

for a first-time broker's license or a first-time salesman's license or any applicant for a renewal of his broker's or salesman's license who has permitted his license to lapse for more than 2 years since the expiration of the last previous license issued to him to appear in person at such time and place as the commission bureau shall designate for that purpose for a written examination as to his qualifications to act as a broker or salesman and the commission bureau shall collect a fee of \$40 in the case of a broker and \$35 in the case of a salesman.

Sec. 31. 32 MRSA §4110, 4th sentence is amended to read:

Such fee shall entitle any applicant for a license to take the examination which is next given by the commission bureau without additional charge should the applicant fail to pass the first examination.

Sec. 32. 32 MRSA §4110, 5th sentence, as last amended by PL 1965, c. 223, §4, is further amended to read:

The commission bureau shall retain the fee irrespective of whether or not the examination is taken or passed.

Sec. 33. 32 MRSA §4111, 2nd sentence is amended to read:

Before refusing to issue any license, the commission bureau shall set the application down for a hearing and determination by the board.

Sec. 34. 32 MRSA §4112, first and 2nd sentences are amended to read:

The commission bureau shall issue to each licensee a license in such form and size as shall be prescribed by the commission board.

Each license shall have imprinted thereon the seal of the commission board and in addition shall contain such matter as shall be prescribed by the commission board.

Sec. 35. 32 MRSA §4113 is amended to read:

§4113. Pocket cards

The commission bureau shall prepare and deliver to each licensee a pocket card, which card among other things shall contain an imprint of the seal of the commission board and shall certify that the person whose name appears thereon is a licensed real estate broker or real estate salesman, as the case may be; and if it is a real estate salesman's card, it shall contain the name and address of his employer. The matter to be printed on such pocket card, except as herein set forth, shall be prescribed by the commission board.

Sec. 36. 32 MRSA §4115, 2nd and 3rd sentences, as last repealed and replaced by PL 1973, c. 729, §6, are amended to read:

The commission bureau shall issue a new pocket card for each ensuing biennial period in the absence of any reason or condition which might warrant the refusal of granting of a license, upon receipt of the written request of the applicant and the biennial fee therefor. Licenses which have not been renewed must be returned to the ~~Real-Estate-Commission-~~bureau by registered certified mail not later than 30 days after expiration.

Sec. 37. 32 MRSA §4115-A, first sentence, as enacted by PL 1973, c. 729, §7, is amended to read:

The commission bureau is authorized, for implementation and administration of biennial licensing, to issue licenses for less than a 2-year term.

Sec. 38. 32 MRSA §4117, 2nd ¶, as amended by PL 1973, c. 50, §2, is further amended to read:

Notice in writing shall be given to the commission bureau by each licensee of any change of principal business location no later than 10 days after the change of such location, whereupon the commission bureau shall issue a new license for the unexpired period for a fee of \$5. In the event such notice is not given before said date, the commission bureau shall

issue the new license for the unexpired period for a fee of \$10.

Sec. 39. 32 MRSA §4118 is amended to read:

§4118. Termination of employment

When any real estate salesman shall be discharged or shall terminate his employment with the real estate broker by whom he is employed, it shall be the duty of such real estate broker to immediately deliver or mail by registered certified mail to the commission bureau such real estate salesman's license. The real estate broker shall, at the time of mailing such real estate salesman's license to the commission bureau, address a communication to the last known residence address of such real estate salesman, which communication shall advise such real estate salesman that his license has been delivered or mailed to the commission bureau. A copy of such communication to the real estate salesman shall accompany the license when mailed or delivered to the commission bureau. It shall be unlawful for any real estate salesman to perform any of the acts contemplated by this chapter, either directly or indirectly, under authority of said license from and after the date of receipt of said communication advising him that his license has been delivered or mailed to the commission bureau. Prompt notice in writing within 10 days shall be given to the commission bureau by any real estate salesman of a change of employer, and of the name of the new employer into whose service such salesman is about to enter or has entered, and a new license

shall thereupon be issued by the ~~commission~~ bureau to such salesman for the unexpired term of the original license, provided such new employer shall be a duly licensed real estate broker. The salesman shall pay a transfer fee of ~~-\$2-~~ \$5 for such new license. Another license shall not be issued to such real estate salesman until he shall return his former pocket card to the ~~commission~~ bureau or shall satisfactorily account to it for the same. No more than one license shall be issued to any real estate salesman for the same period of time.

Sec. 40. 32 MRSA §4118-A, first sentence, as last amended by PL 1969, c. 312, §5, is further amended to read:

Any member of a partnership or association or officer or director of a corporation licensed under this chapter who does not desire to do, or perform, any of the acts or services enumerated in section 4001, subsections 1, 3 and 4, and any registered broker or salesman who is a resident of Maine who desires to preserve his registration, during a period while not engaged as a broker or salesman, may surrender his license to the ~~commission~~ bureau which shall hold said license until such time as the licensee shall apply for reinstatement to active status.

Sec. 41. Transitional provision. Notwithstanding the section 10 provisions of / of this Act, the present Chairman of the Maine Real Estate Commission shall serve as a member of

the Board of Real Estate Brokers and Salesmen until May 20, 1976, and the Governor shall not appoint a member for a one-year term.

Fiscal Note

The annual expenditures of special revenue account 4177.1 would be increased by approxiamtely \$3,000.'

Statement of Fact

amendment
The purpose of this / is to modify the operational structure and managerial accountability of the Real Estate Commission into a form better suited to serve the public and the real estate industry. It is designed to provide a more efficient handling of the growing day to day workload, eliminate unnecessary functions and help assure that the commission is responsive to the interests and needs of the public.

Reported by the Committee on State Government.

Reproduced and distributed under the direction of the Clerk of the House.
6/16/75

(Filing No. H-752)