

# MAINE STATE LEGISLATURE

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1 FIRST REGULAR SESSION  
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3 ONE HUNDRED AND ELEVENTH LEGISLATURE  
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5 Legislative Document

No. 837

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7 H.P. 681

House of Representatives, February 24, 1983

8 Reported by Representative Brannigan from the Committee on Business  
9 Legislation. Sent up for concurrence and ordered printed.

10 EDWIN H. PERT, Clerk

Submitted by the Joint Standing Committee on Business Legislation  
pursuant to Joint Rule 19. Approved by Legislative Council April 4, 1982.

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12 STATE OF MAINE  
13

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14 IN THE YEAR OF OUR LORD  
15 NINETEEN HUNDRED AND EIGHTY-THREE  
16

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17 AN ACT to Improve the Operation of the  
18 Maine Real Estate Commission.  
19

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20 Be it enacted by the People of the State of Maine as  
21 follows:

22 Sec. 1. 4 MRSA §1151, sub-§2, as amended by PL  
23 1981, c. 698, §5, is further amended to read:

24 2. Licensing jurisdiction. Except as provided in  
25 Title 5, section 10004~~7~~; Title 29, chapter 17; Title  
26 32, chapter 59; and Title 35, section 13-A, the  
27 Administrative Court shall have exclusive jurisdic-  
28 tion upon complaint of an agency or, if the licensing  
29 agency fails or refuses to act within a reasonable  
30 time, upon complaint of the Attorney General, to  
31 revoke or suspend licenses issued by the agency, and  
32 shall have original jurisdiction upon complaint of a  
33 licensing agency to determine whether renewal or

1 reissuance of a license of that agency may be  
2 refused.

3 Notwithstanding any other provisions of law, no  
4 licensing agency shall have the authority to rein-  
5 state or otherwise affect a license suspended,  
6 revoked or modified by the Administrative Court pur-  
7 suant to a complaint filed by the Attorney General,  
8 without the approval of the Attorney General.

9       Sec. 2. 4 MRSA §1151, sub-§2-A, is enacted to  
10 read:

11       2-A. Appellate jurisdiction. Pursuant to Title  
12 32, section 4056, subsection 2, the Administrative  
13 Court shall have exclusive jurisdiction to hear  
14 appeals from disciplinary decisions of the Real  
15 Estate Commission. The Maine Administrative Procedure  
16 Act, Title 5, chapter 375, subchapter VII, shall  
17 govern this procedure as far as applicable, substi-  
18 tuting "Administrative Court" for "Superior Court."

19       Sec. 3. 5 MRSA §10051, sub-§1, as amended by PL  
20 1981, c. 698, §13, is further amended to read:

21       1. Jurisdiction. Except as provided in section  
22 10004,; Title 29, chapter 17; Title 32, chapter 59;  
23 and Title 35, section 13-A, the Administrative Court  
24 shall have exclusive jurisdiction upon complaint of  
25 any agency or, if the licensing agency fails or  
26 refuses to act within a reasonable time, upon com-  
27 plaint of the Attorney General to revoke or suspend  
28 licenses issued by such the agency and shall have  
29 original jurisdiction upon complaint of an agency to  
30 determine whether renewal or reissuance of a license  
31 of that agency may be refused.

32       Sec. 4. 5 MRSA §10051, sub-§3 is enacted to  
33 read:

34       3. Appellate jurisdiction. Pursuant to Title  
35 32, section 4056, subsection 2, the Administrative  
36 Court shall have exclusive jurisdiction to hear  
37 appeals from disciplinary decisions of the Real  
38 Estate Commission. The Maine Administrative Procedure  
39 Act, chapter 375, subchapter VII, shall govern  
40 this procedure as far as applicable, substituting  
41 "Administrative Court" for "Superior Court."

1           Sec. 5. 32 MRSA §4005, as amended by PL 1975, c.  
2 767, §49, is further amended to read:

3           §4005. Penalties

4           Any real estate broker or real estate salesman  
5 licensed as such real estate broker or real estate  
6 salesman in accordance with this chapter, who fails  
7 to renew his, her or its license biennially and con-  
8 tinues to act as a real estate broker or real estate  
9 salesman, shall be punished by a fine of not less  
10 than ~~§25~~ \$100 nor more than ~~§100~~ \$400. Any person or  
11 corporation violating any other provision of this  
12 chapter shall upon conviction thereof, if a natural  
13 person, be punished by a fine of not more than ~~§500~~  
14 \$1,000, plus the amount of compensation received in  
15 the subject transaction, or by imprisonment for not  
16 more than 6 months, or by both; and, if a corpora-  
17 tion, be punished by a fine of not more than ~~§1,000~~  
18 \$2,000, plus the amount of compensation received in  
19 the subject transaction. Any officer or agent of a  
20 corporation, or member or agent of a partnership or  
21 association, who shall personally participate in or  
22 be accessory to any violation of this chapter by such  
23 partnership, association or corporation, shall be  
24 subject to the penalties prescribed for individuals.  
25 Any court of competent jurisdiction shall have full  
26 power to try any violation of this chapter, and upon  
27 conviction, the court may at its discretion revoke,  
28 or suspend, the license of the person, partnership,  
29 association or corporation so convicted. All fines  
30 and penalties over and above the cost of court pro-  
31 ceedings shall inure to the commission. A violation  
32 of this chapter shall include performing or attempt-  
33 ing to perform those acts which constitute prohibited  
34 practices under section 4056.

35           Sec. 6. 32 MRSA §4051-A, as amended by PL 1981,  
36 c. 359, §8, is repealed and the following enacted in  
37 its place:

38           §4051-A. Real Estate Commission; organization

39           1. Real Estate Commission created. There is  
40 created the Real Estate Commission, hereinafter  
41 referred to as the "commission." The commission

1 shall consist of 4 industry members and one public  
2 member, as provided in this section.

3 2. Qualifications. Each industry member of the  
4 commission shall have been a real estate broker or  
5 salesman by vocation in this State for at least 5  
6 years prior to appointment. The public member shall  
7 have had no professional or financial connection with  
8 the real estate business.

9 3. Geographic distribution. There shall at no  
10 time be more than one member of the commission from  
11 any one county.

12 4. Term; removal. Terms of the members of the  
13 commission shall be for 3 years. No person may be  
14 appointed for more than 2 consecutive 3-year terms.  
15 A vacancy occurring prior to the expiration of a term  
16 shall be filled by an appointment for the unexpired  
17 term. Members may be removed by the Governor for  
18 cause.

19 5. Quorum; procedure. A majority of the members  
20 of the commission constitutes a quorum for the trans-  
21 action of business under this chapter. The commis-  
22 sion shall establish guidelines, policies and rules  
23 by which it shall carry out the duties prescribed by  
24 this chapter.

25 6. Appointments. The members of the commission  
26 shall be appointed by the Governor, subject to review  
27 by the joint standing committee of the Legislature  
28 having jurisdiction over business legislation and to  
29 confirmation by the Senate. As a part of the  
30 appointment, the Governor shall specify whether the  
31 appointment is for a vacancy occurring prior to the  
32 expiration of a term, in which case the appointment  
33 shall be only for the remainder of the unexpired  
34 term.

35 7. Chairman. The commission shall annually  
36 elect a chairman from its members.

37 Sec. 7. 32 MRSA §4051-C is enacted to read:

38 §4051-C. Director

1           1. Appointment. The Commissioner of Business  
2 Regulation, with the advice of the Real Estate Com-  
3 mission and subject to the Personnel Law, shall  
4 appoint a director of the commission.

5           2. Duties. The director is responsible for man-  
6 agement of the commission's affairs, within the  
7 guidelines, policies and rules established by the  
8 commission, and for carrying out any duties allocated  
9 to the director under this chapter. Except as other-  
10 wise provided, duties of the director may be per-  
11 formed by the director's designee, other than a  
12 member of the commission.

13           Sec. 8. 32 MRSA §4056, sub-§1, as amended by PL  
14 1981, c. 359, §10, is repealed and the following  
15 enacted in its place:

16           1. Investigations. The director, upon receipt  
17 of a verified written complaint or in accordance with  
18 guidelines and policies prescribed by the commission,  
19 shall investigate the actions of any real estate  
20 licensee or any person who assumes to act in the  
21 capacity of a licensee. Upon completion of the  
22 investigation, the director shall take one of the  
23 following actions, and give notice to all interested  
24 parties of the action and of their rights to further  
25 pursue the matter:

26           A. Dismiss the complaint;

27           B. In the case of an investigation without a  
28 complaint, elect not to pursue the matter;

29           C. File the complaint or charge, subject to fur-  
30 ther action at a later time if required in the  
31 public interest;

32           D. With the consent of the parties and subject  
33 to approval of the commission and commission  
34 counsel, execute a consent agreement providing  
35 for resolution of the basis of the dispute; or

36           E. Issue a staff complaint for a hearing before  
37 the commission, setting forth the basis for the  
38 complaint and, in the director's discretion, any  
39 recommended disposition.

1           Sec. 9. 32 MRSA §4056, sub-§2, as repealed and  
2 replaced by PL 1977, c. 365, is repealed and the fol-  
3 lowing enacted in its place:

4           2. Commission action. In the case of an alleged  
5 violation of this chapter, the commission shall hold  
6 a hearing as follows.

7           A. The commission shall hold a hearing on a  
8 staff complaint, or if the director has elected  
9 to dismiss, file or not pursue a matter, on peti-  
10 tion of a party aggrieved by the director's deci-  
11 sion. An aggrieved party shall have 10 days from  
12 receipt of notice of the director's decision in  
13 which to file the petition with the commission.

14           B. The director may act as an advocate at a  
15 hearing, presenting evidence and argument in sup-  
16 port of a staff complaint or other staff deci-  
17 sion.

18           C. Notice of a hearing shall be given to all  
19 interested parties at least 10 days prior to the  
20 date on which the hearing is set.

21           D. The commission shall adopt rules governing  
22 the conduct of hearings. The rules shall include  
23 provisions governing communications between the  
24 members of the commission and the director and  
25 staff, in order to assure that members are not  
26 prejudiced in a case through ex parte communica-  
27 tions with the director and staff. These rules  
28 shall not be construed to prohibit communications  
29 between members of the commission and the direc-  
30 tor and staff with regard to matters other than  
31 the merits of a case pending hearing before the  
32 commission.

33           E. In the discharge of the duties imposed by  
34 this chapter, the commission may administer oaths  
35 and affirmations, certify to official acts and  
36 issue subpoenas to compel the attendance of wit-  
37 nesses and the production of books, papers, cor-  
38 respondence, memoranda and other records deemed  
39 necessary as evidence in connection with the  
40 administration of this chapter. Whenever a  
41 person refuses to obey a subpoena duly issued by

1 the commission, the Superior Court for Kennebec  
2 County or any court of this State within the  
3 jurisdiction of which the person resides or  
4 transacts business shall have jurisdiction to  
5 issue to that person an order requiring him to  
6 comply with the subpoena, and any failure to obey  
7 that order may be punished by the court as con-  
8 tempt. Refusal to obey a commission subpoena  
9 constitutes a violation of this chapter.

10 F. If the commission, after a hearing, finds  
11 that a violation of this chapter has occurred, it  
12 shall:

13 (1) Report its findings and recommendations  
14 to the Attorney General or district attorney  
15 for prosecution;

16 (2) If it finds that there are mitigating  
17 circumstances, reprimand the person;

18 (3) Assess the violator a fine of no more  
19 than \$500 for each violation;

20 (4) Except for violations under subsection  
21 5, suspend the violator's license for up to  
22 60 days; or

23 (5) Require the person to comply with such  
24 terms and conditions as it determines are  
25 necessary to correct or prevent the basis of  
26 the violation.

27 G. Appeals from decisions of the commission  
28 shall be to the Administrative Court. Appeals  
29 shall be based on questions of law. The proce-  
30 dure for appeals under this section shall be as  
31 provided in the Maine Administrative Procedure  
32 Act, Title 5, chapter 375, subchapter VII, except  
33 that, for purposes of this section, all refer-  
34 ences to the Superior Court shall be construed as  
35 references to the Administrative Court. Further  
36 appeal shall be directly to the Law Court.

37 Sec. 10. 32 MRSA §4058, as amended by PL 1975,  
38 c. 767, §60, is repealed.



1           Sec. 11. 32 MRSA §4103, as amended by PL 1981,  
2       c. 76, §2, is repealed and the following enacted in  
3       its place:

4       §4103. Application for real estate broker's license  
5           or salesman's license

6           An applicant for a real estate broker's license  
7       or salesman's license shall submit to the commission  
8       the following:

9           1. Application. A properly completed applica-  
10       tion in writing upon blanks prepared or furnished by  
11       the commission;

12           2. Evidence of qualifications. Written evi-  
13       dence, verified by oath, that the applicant:

14           A. Is 18 years of age or older;

15           B. Is a resident of this State, qualified to  
16       vote in municipal and state elections prior to  
17       his application, except this paragraph shall not  
18       apply when the applicant is a nonresident of this  
19       State qualifying under section 4002;

20           C. Has not had an application rejected in this  
21       State or any other state within 6 months prior to  
22       the date of the application;

23           D. Has not had a real estate license revoked in  
24       this State or any other state within 2 years  
25       prior to the date of the application; and

26           E. Except in the case of a person who has held  
27       any license from the commission prior to December  
28       31, 1963, has a high school education or its  
29       equivalent approved by the commission;

30           3. Sworn statement. A sworn statement setting  
31       forth:

32           A. The applicant's present address of his busi-  
33       ness and residence, and a complete list of all  
34       former places where the applicant may have  
35       resided and been engaged in business for a period  
36       of 60 days or more during the last 2 years,

1 together with the name and address of one real  
2 estate owner in each of those places; and

3 B. A statement of whether the applicant has been  
4 convicted of a criminal offense, other than a  
5 violation of the fish and wildlife laws, motor  
6 vehicle traffic laws or municipal ordinances  
7 where the fine imposed does not exceed \$50, and,  
8 if so, what offense;

9 4. Recommendations. The recommendation of at  
10 least 3 citizens, not related to the applicant, who  
11 have owned real estate for a period of no less than  
12 one year in the county in which the applicant resides  
13 or has a place of business, and who acknowledge  
14 before a notary public that:

15 A. They have known the applicant for a period of  
16 at least the 6 months immediately prior to the  
17 date of the application;

18 B. The applicant bears a good reputation of hon-  
19 esty, trustfulness, fair dealing and competency;  
20 and

21 C. They recommend that a license be granted to  
22 the applicant;

23 5. Other information. Such other information as  
24 is required by this chapter or which the commission,  
25 with due regard to the paramount interests of the  
26 public, deems desirable to prove the honesty,  
27 truthfulness, integrity, reputation and competency of  
28 the applicant; and

29 6. Fee. Payment for the fee prescribed by  
30 section 4107.

31 Sec. 12. 32 MRSA §4104, as amended by PL 1975,  
32 c. 767, §70, is repealed and the following enacted in  
33 its place:

34 §4104. Additional application requirements for bro-  
35 ker's license

36 In addition to the application materials required  
37 by section 4103, an applicant for a real estate bro-

1 ker's license shall submit to the commission the fol-  
2 lowing:

3 1. Associates. The name of the person, firm,  
4 partnership, association or corporation with which  
5 the applicant will be associated in the business of  
6 real estate;

7 2. Location. The location of the place or  
8 places for which the license is desired;

9 3. Experience. The period of time, if any,  
10 during which the applicant has been engaged in the  
11 real estate business; and

12 4. Education. Except in the case of a person  
13 who has held any license from the commission prior to  
14 December 31, 1963, and except as provided in section  
15 4002, evidence that the applicant has satisfactorily  
16 completed an educational course in the field of real  
17 estate approved by the commission or has been  
18 employed as a licensed salesman full time for at  
19 least a year.

20 Sec. 13. 32 MRSA §4105, as amended by PL 1967,  
21 c. 359, §§3 and 4, is repealed and the following  
22 enacted in its place:

23 §4105. Additional application requirements for  
24 salesman's license

25 In addition to the application materials required  
26 by section 4103, an applicant for a real estate  
27 salesman license shall submit to the commission the  
28 following:

29 1. Associates. The name and address of the  
30 applicant's last employer and the name and place of  
31 business of the person, firm, partnership, associa-  
32 tion or corporation then employing the applicant or  
33 into whose service the applicant is about to enter;

34 2. Experience. The period of time, if any,  
35 during which the applicant has been engaged in the  
36 real estate business; and

1           3. Broker's recommendation. A written statement  
2 by the broker, into whose service the applicant is  
3 about to enter, stating that, in the broker's opin-  
4 ion, the applicant is honest, truthful and of good  
5 reputation and recommending that the license be  
6 granted to the applicant.

7           Sec. 14. 32 MRSA §4106, as amended by PL 1975,  
8 c. 767, §71, is repealed and the following enacted in  
9 its place:

10           §4106. Additional application requirements for asso-  
11 ciations, partnerships and corporations

12           In addition to the application materials required  
13 elsewhere in this chapter, an association, partner-  
14 ship or corporation applying for a license to conduct  
15 the business of a real estate broker shall submit to  
16 the commission the following;

17           1. Associations and partnerships. Where the  
18 applicant is an association or partnership, a sworn  
19 statement containing:

20           A. The name and address of each member thereof;  
21 and

22           B. A statement whether any member thereof has  
23 been convicted of a crime specified in section  
24 4103, subsection 3, paragraph B, and, if so, the  
25 member's name and the offense;

26           2. Corporations. Where the applicant is a cor-  
27 poration, a sworn statement containing:

28           A. The name and address of each officer and  
29 director thereof; and

30           B. A statement whether any officer or director  
31 has been convicted of a crime specified in  
32 section 4103, subsection 3, paragraph B, and, if  
33 so, the person's name and the offense; and

34           3. Designated broker. Where the applicant is an  
35 association, partnership or corporation, a designa-  
36 tion of one of its officers, who is licensed by the  
37 commission as a real estate broker, as its designated  
38 broker.

1           Sec. 15. 32 MRSA §4107, sub-§3 is enacted to  
2 read:

3           3. Conversion. A real estate salesman who  
4 applies and qualifies for a real estate broker li-  
5 cence shall receive a real estate broker license for  
6 any unexpired period remaining on the salesman's li-  
7 cence without charge.

8           Sec. 16. 32 MRSA 4107-A, as repealed and  
9 replaced by PL 1979, c. 693, §3, is repealed.

10           Sec. 17. 32 MRSA §4108 is repealed and the fol-  
11 lowing enacted in its place

12 §4108. Denial of license or renewal

13           1. Grounds for denial. An application for a  
14 real estate broker's license or salesman's license or  
15 renewal may be denied for any of the following  
16 reasons:

17           A. The applicant fails to submit to the commis-  
18 sion any materials, statements or fees required  
19 by this chapter, including the requirements of  
20 section 4115-C;

21           B. The applicant fails to submit satisfactory  
22 proof to the commission that he is trustworthy  
23 and competent to transact the business of real  
24 estate broker or salesman in such manner as to  
25 safeguard the interests of the public;

26           C. The applicant makes a material misrepresenta-  
27 tion in applications or related materials to the  
28 commission;

29           D. Subject to Title 5, chapter 341, the commis-  
30 sion determines that the applicant's conviction  
31 of a crime disqualifies him for the license; or

32           E. If the applicant is required under section  
33 4110 to submit to a written examination, and he  
34 fails to achieve a passing score on the examina-  
35 tion.

1           2. Additional grounds for denial; association,  
2 partnership or corporation. In addition to the  
3 grounds specified in subsection 1, a license or  
4 renewal may be denied to an association, partnership  
5 or corporation for any of the following reasons:

6           A. None of the principal officers holds a cur-  
7 rent real estate broker license; or

8           B. Any employee, member or officer of the asso-  
9 ciation, partnership or corporation, who acts as  
10 a real estate broker or salesman, is not licensed  
11 by the commission as a real estate broker or  
12 saleman.

13           3. Powers and duties of the director. If it  
14 appears to the director that grounds for the denial  
15 of a license or renewal exist under this section, the  
16 director shall promptly notify the applicant and:

17           A. If the basis for denial is that the applica-  
18 tion materials are incomplete, as described in  
19 subsection 1, paragraph A, notify the applicant:

20                   (1) Of the materials needed to complete the  
21 application;

22                   (2) That the application will be held for  
23 30 days pending completion by the applicant;

24                   (3) That if the materials are not received  
25 at the commission by the end of this period,  
26 the license or renewal may be denied by the  
27 director; and

28                   (4) Of the applicant's right to a hearing  
29 before the commission pursuant to section  
30 4109, if requested within the 30-day period;

31           B. If the basis for the denial is that the  
32 applicant has failed an examination required for  
33 the license, notify the applicant;

34           C. If the basis for the denial is that the  
35 applicant is an association, partnership or cor-  
36 poration failing to meet the requirements of sub-  
37 section 2, notify the applicant:

1           (1) That the license or renewal is being  
2           denied, together with the reason for the  
3           denial; and

4           (2) Of the applicant's right to a hearing  
5           before the commission pursuant to section  
6           4109, if requested within 30 days of the  
7           notice; or

8           D. If it appears to the director that some other  
9           basis for denial of the license or renewal  
10           exists, notify the applicant:

11           (1) Of the possible basis for denial; and

12           (2) That a hearing before the commission  
13           pursuant to section 4109 will be held to  
14           determine what action will be taken.

15           Sec. 18. 32 MRSA §4109 is repealed and the fol-  
16           lowing enacted in its place:

17           §4109. Hearing on denial of license or renewal

18           1. Application. A hearing shall be held pur-  
19           suant to this section if:

20           A. Pursuant to section 4108, subsection 3, para-  
21           graph A, B or C, the applicant requests a hear-  
22           ing; or

23           B. Pursuant to section 4108, subsection 3, para-  
24           graph D, such a hearing is required.

25           2. Director. The director shall seek to protect  
26           the interests of the public and the industry in  
27           assuring the trustworthiness, competence and qualifi-  
28           cations of applicants for licenses and renewals. In  
29           this capacity, the director may serve as an advocate  
30           in hearings under this section, presenting evidence  
31           and argument in support of a recommended disposition.

32           3. Notice. Notice of a hearing shall be given  
33           to the applicant at least 10 days prior to the date  
34           on which the hearing is set.

1           4. Procedure; rules, subpoenas. The provisions  
2 of section 4056, subsection 2, paragraphs D and E,  
3 and rules promulgated in accordance therewith, shall  
4 apply equally to hearings held under this section.

5           5. Disposition. After hearing, the commission  
6 may:

7           A. Affirm, modify or reverse a decision of the  
8 director to deny a license or renewal;

9           B. Issue, deny or refuse to issue a license or  
10 renewal; or

11           C. In the case of an application for renewal, in  
12 its discretion, file a complaint in the Adminis-  
13 trative Court, pursuant to Title 4, chapter 25,  
14 and Title 5, section 10051, to determine whether  
15 renewal of the license may be denied.

16           Sec. 19. 32 MRSA §4110, last ¶, as repealed and  
17 replaced by PL 1979, c. 693, §4, is repealed.

18           Sec. 20. 32 MRSA §4111, as amended by PL 1975,  
19 c. 767, §73, is repealed.

20           Sec. 21. 32 MRSA §4112, as amended by PL 1975,  
21 c. 767, §74, is further amended to read:

22           §4112. Contents; display

23           The ~~commission~~ director shall issue to each  
24 licensee a license in ~~such the~~ form and size as ~~shall~~  
25 be prescribed by the commission. Each license ~~shall~~  
26 ~~have imprinted thereon the seal of the commission and~~  
27 ~~in addition~~ shall contain such matter as shall be  
28 prescribed by the commission. The license of each  
29 real estate salesman shall be delivered or mailed to  
30 the real estate broker by whom such real estate  
31 salesman is employed and shall be kept in the custody  
32 and control of such broker. It shall be the duty of  
33 each real estate broker to display conspicuously his  
34 license and the licenses of all his salesmen in his  
35 place of business.

36           Sec. 22. 32 MRSA §4113, as repealed and replaced  
37 by PL 1977, c. 682, §10, is amended to read:



1     §4113. Pocket cards

2           The ~~commission~~ director may prepare and deliver  
3 to each licensee a pocket card, which among other  
4 things shall certify that the person whose name  
5 appears thereon is a licensed real estate broker or  
6 real estate salesman, as the case may be; and if it  
7 is a real estate salesman's card, it shall contain  
8 the name of the real estate broker by whom he is  
9 employed.

10           Sec. 23. 32 MRSA §4115-B, 4th ¶, as amended by  
11 PL 1981, c. 707, §3, is further amended to read:

12           The ~~commission~~ director shall collect the pre-  
13 scribed application fee. The commission may promul-  
14 gate rules necessary for implementation and enforce-  
15 ment of this section and shall maintain a current  
16 list of programs receiving approval under this  
17 section.

18           Sec. 24. Transition clause. All appointments  
19 heretofore made by the persons referred to in this  
20 Act shall continue in force and effect on the effec-  
21 tive date of this Act. The provisions of section 6  
22 regarding qualifications, term and appointments of  
23 commissioners shall apply to all appointments and  
24 reappointments made after the effective date of this  
25 Act.

26   STATEMENT OF FACT

27           This bill contains the recommended legislation  
28 from the Joint Standing Committee on Business  
29 Legislation's study of the Maine Real Estate Commis-  
30 sion, conducted during the 1982 interim. The thrust  
31 of these proposals is to clarify the lines of author-  
32 ity at the commission, to streamline parts of the  
33 licensing and enforcement processes, and to clarify  
34 provisions of the statute which over time have become  
35 unduly confusing. In this latter regard, a number of  
36 sections of the bill, particularly those revising the  
37 license law, sections 10 through 23, effect no sub-  
38 stantive change; rather, they reallocate portions of  
39 present law in order to make the statute progress in  
40 a more logical manner.

1           This bill makes changes in the composition and  
2 method of appointment of members of the Maine Real  
3 Estate Commission, and reforms the process of inves-  
4 tigation and discipline of real estate licensees.  
5 This proposal also reorganizes the current real  
6 estate license law and clarifies the powers and  
7 duties of the Maine Real Estate Commission and its  
8 director.

9           Sections 1 through 4 amend the Maine Administra-  
10 tive Procedure Act to allow for the limited enforce-  
11 ment powers granted to the commission elsewhere in  
12 the proposal, and to provide for appeals to the  
13 Administrative Court on questions of law.

14          Section 5 provides for increased penalties for  
15 violators, including provisions for forfeiture of  
16 any gain realized on account of the violation.

17          Section 6 changes the composition of the Maine  
18 Real Estate Commission by removing the director as a  
19 member, replacing the director with an additional  
20 industry member, changing the commissioners' terms  
21 from 4 years to 3 years and requiring Senate confir-  
22 mation of appointments after review by the Joint  
23 Standing Committee on Business Legislation.

24          Section 7 clarifies the position of the director  
25 as an administrator.

26          Section 8 assigns the primary enforcement duties  
27 to the director, including the power to dismiss or  
28 file a case where no further action is merited.  
29 Present practice results in unnecessary costs and  
30 delays, where the full commission must review each  
31 case, regardless of merit. At the same time, the  
32 proposal allows recourse to the commission from the  
33 director's decision, to guard against the abuse of  
34 his discretion.

35          Section 9 sets out the powers and duties of the  
36 commission with regard to enforcement matters. Proce-  
37 dures are designed to prevent prejudgment of a case  
38 by the commissioners, a hazard of the present prac-  
39 tices. The commission is given subpoena power to  
40 assure access to information, the limited enforcement  
41 powers to issue fines or suspensions, subject to

1 appeal to the Administrative Court. Present law  
2 limits the commission to reprimands, consent orders  
3 or to the referral of cases for prosecution to the  
4 Attorney General.

5 Section 9 also provides that the director may act  
6 as an advocate in order to assure that the public's  
7 interests are protected. Presently, there sometimes  
8 may be no incentive to a complainant to pursue a  
9 case, where the ultimate resolution may be, e.g., a  
10 license suspension rather than a monetary settlement.

11 Section 10 repeals a provision replaced in  
12 section 17.

13 Section 11 combines the basic license require-  
14 ments which all applicants must fulfill. These  
15 provisions are contained in the present law, but are  
16 scattered throughout the subchapter.

17 Sections 12 through 14 set out the additional re-  
18 quirements for 3 types of licenses: Broker, salesman  
19 and firm. Again these are not substantive changes,  
20 but a reallocation to a more logical progression of  
21 provisions.

22 Sections 15 and 19 reallocate a provision on con-  
23 version of licenses.

24 Section 16 repeals a provision replaced in  
25 section 17.

26 Section 17 represents the first set of substan-  
27 tive changes in the license law portions of the bill.  
28 It lays out the grounds and procedures for denial of  
29 a license or renewal. In those cases involving ques-  
30 tions of evidence or policy, a hearing before the  
31 commission is provided. In cases where the determi-  
32 nation of ineligibility is a more strictly ministe-  
33 rial act, the director would be allowed to deny the  
34 license or renewal, subject to the opportunity for a  
35 hearing before the commission on request.

36 Section 18 sets out the powers and duties of the  
37 commission with regard to denials of licenses and  
38 renewals. The reference in proposed section 4109,  
39 subsection 4, to section 4056, subsection 2, para-

1 graphs D and E, is to the latter section as proposed  
2 in section 9 of the bill.

3 Section 20 repeals a provision replaced in  
4 section 17.

5 Sections 21 through 23 simply clarify certain  
6 purely administrative duties as belonging to the  
7 director, not the commission. In addition, section  
8 21 repeals the requirement for the commission's seal  
9 to be imprinted on each license. This step unneces-  
10 sarily complicates the issuance of licenses through  
11 the Central Licensing Division of the Department of  
12 Business Regulation. Licenses would continue to bear  
13 the seal of the State of Maine.

14 Section 24 provides for the transition between  
15 the present commission and future appointments.

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