

MAINE STATE LEGISLATURE

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908

L.D. 1525

DATE: 5/31/15

(Filing No. H-583)

BUSINESS, RESEARCH AND ECONOMIC DEVELOPMENT

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
122ND LEGISLATURE
FIRST SPECIAL SESSION

COMMITTEE AMENDMENT "A" to H.P. 1072, L.D. 1525, Bill, "An Act To Amend the Real Estate Brokerage Laws"

Amend the bill by inserting after the enacting clause and before section 1 the following:

Sec. 1. 10 MRSA §8003-C, sub-§6 is enacted to read:

6. Unlicensed practice; private cause of action; repeal. In addition to the penalties and remedies provided under this chapter, an affected person may bring an action in District Court to enjoin any person from violating the provisions of subsection 4. For the purposes of this section, "affected person" may include, but is not limited to, a person who has used the services of a person suspected of violating the provisions of subsection 4 or a private association composed primarily of members practicing a profession for which licensure is required pursuant to this chapter.

If an affected person is successful in obtaining a permanent injunction, that person is entitled to the costs of suit and attorney's fees. In any action brought by an affected person against a person for violating the terms of an injunction issued under this subsection, the court may make the necessary orders or judgments to restore to any person who has suffered any ascertainable loss of money or personal or real property or to compel the return of compensation received by reason of such conduct found to be in violation of an injunction.

COMMITTEE AMENDMENT

2 This subsection is repealed July 1, 2007.'

4 Further amend the bill by inserting after section 5 the
6 following:

8 'Sec. 6. 32 MRSA §13196, sub-§2, ¶¶A, B and C, as enacted by PL
1999, c. 129, §10 and affected by §16, are amended to read:

10 A. For those applicants remaining inactive from the
12 issuance of the inactive licenses up to 2 years, ~~15~~ 21 clock
hours of continuing education completed within the previous
14 biennium;

16 B. For those applicants remaining inactive for more than 2
years but less than 4 years, ~~22~~ 28 clock hours of continuing
18 education completed within the previous biennium; or

20 C. For those applicants remaining inactive for more than 4
years but less than 6 years, ~~30~~ 36 clock hours of continuing
22 education completed within the previous biennium.

24 Sec. 7. 32 MRSA §13197, sub-§1, as amended by PL 1999, c. 129,
§11 and affected by §16, is further amended to read:

26 1. Requirement. As a prerequisite to renewal of a license,
28 applicants must complete ~~15~~ 21 clock hours of continuing
education within 2 years prior to the date of application in
30 programs or courses approved by the commission. This requirement
does not apply to agency and company licenses.

32 Sec. 8. 32 MRSA §13199, sub-§2, as amended by PL 1999, c. 129,
§12 and affected by §16, is repealed.

34 Sec. 9. 32 MRSA §13199, sub-§2-A is enacted to read:

36 2-A. Professional qualifications. An applicant for an
38 associate broker license must have practiced as a real estate
40 sales agent for 2 years within the 5 years immediately preceding
42 the date of application and satisfactorily completed a course of
44 study meeting guidelines established by the commission. The
commission may not issue a license under this section until an
individual has completed 2 years as a licensed real estate sales
agent.

46 Sec. 10. 32 MRSA §13200, sub-§2, as enacted by PL 1987, c.
395, Pt. A, §212, is amended to read:

48 2. Professional qualification. Each applicant for a sales
50 agent license shall ~~ene---~~ must meet ~~ene---~~ of the following

qualifications-:

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A. The applicant shall ~~shall~~ must satisfactorily complete a course of study meeting commission established guidelines; and

B. The applicant may ~~may~~ must appear at such time and place as the director may designate for the purpose of a written sales agent examination.'

Further amend the bill by inserting after section 17 the following:

'Sec. 18. 33 MRSA §172, first ¶, as enacted by PL 1999, c. 476, §1, is amended to read:

This subchapter applies to the transfer of any interest in residential real property, whether by sale, exchange, installment land contract, lease with an option to purchase or any other option to purchase, ~~when the transaction is without the assistance of a person licensed to practice real estate brokerage.~~ If a person licensed to practice real estate brokerage is involved in the transaction, the licensee is subject to the requirements of licensure in Title 32, chapter 114. The following transfers are exempt from this subchapter:

Sec. 19. 33 MRSA §173, sub-§2, as enacted by PL 1999, c. 476, §1, is repealed.

Sec. 20. 33 MRSA §173, sub-§2-A is enacted to read:

2-A. Heating system or heating source. Detailed information on the system or source used to supply heat to the property, including:

- A. The type of heating system or source;
- B. The age of the heating system or source;
- C. The name of the company that services the heating system or source;
- D. The date of the most recent service call on the heating system or source;
- E. The annual fuel consumption per heating system or source; and
- F. Any malfunctions per heating system or source within the past 2 years;

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2 **Sec. 21. Transition provisions; sales agent; associate broker; applications processed.** A license application for real estate sales
 4 agent must be processed according to the laws in effect on the
 6 date the application is received by the Real Estate Commission.
 8 If an applicant has satisfactorily completed the requirements for
 10 licensure by July 1, 2006, the license application must be
 12 processed according to the laws in effect on June 30, 2006. A
 person already licensed as a sales agent on the effective date of
 this Act must comply with the examination procedures of Title 32,
 section 13200, subsection 2 to become licensed as an associate
 broker.

14 **Sec. 22. Commercial leasing and sunrise review.** Pursuant to the
 16 Maine Revised Statutes, Title 32, chapter 1-A, subchapter 2, the
 18 Commissioner of Professional and Financial Regulation shall
 20 conduct an independent assessment concerning expansion of the
 22 scope of practice of real estate brokerage under Title 32,
 24 section 13001, subsection 2, to include leasing of any
 26 nonresidential property, that, notwithstanding Title 32, section
 28 13279, does not include any residential component. The
 commissioner shall submit a report to the Joint Standing
 Committee on Business, Research and Economic Development no later
 than January 15, 2006. The joint standing committee is
 authorized to introduce a bill to the First Regular Session of
 the 122nd Legislature expanding the scope of practice of real
 estate brokerage to include leasing of any nonresidential
 property.'

30 Further amend the bill in section 18 in the first line (page
 32 14, line 6 in L.D.) by striking out the following: "January" and
 inserting in its place the following: 'July'

34 Further amend the bill by relettering or renumbering any
 36 nonconsecutive Part letter or section number to read
 consecutively.

SUMMARY

40 This amendment provides for a sunrise review of commercial
 42 leasing by the Department of Professional and Financial
 44 Regulation. It also creates a private cause of action by which
 46 an affected party may seek a court-ordered injunction to prohibit
 48 unlicensed activity. The amendment does not affect the authority
 of the Attorney General's office to investigate and prosecute
 unlicensed activity. It also amends the education provisions for
 real estate brokerage licensees by increasing the continuing
 education requirement for licensees from 15 hours to 21 hours and
 50 makes the commensurate adjustment to the continuing

education required for reinstatement. It removes the requirement that associate real estate brokerage license applicants take an examination and requires that applicants for a real estate sales agent license both complete a course of study and take an examination.

This amendment also requires that all sellers provide property disclosures containing certain information, whether or not a person licensed to practice real estate brokerage is involved in the transfer. The requirement that persons licensed to practice real estate brokerage provide such disclosures remains unchanged. It also updates the seller's mandatory disclosures involving reference to heating systems and sources rather than insulation. It changes the effective date to July 1, 2006 and includes transition language for sales agents and associate brokers.

FISCAL NOTE REQUIRED
(See attached)



Approved: 05/24/05 *MAC*

122nd MAINE LEGISLATURE

LD 1525

LR 2133(02)

An Act To Amend the Real Estate Brokerage Laws

Fiscal Note for Bill as Amended by Committee Amendment "A"

Committee: Business, Research and Economic Development

Fiscal Note Required: Yes

Fiscal Note

Minor cost increase - Other Special Revenue Funds

Fiscal Detail and Notes

Additional costs to the Real Estate Commission within the Office of Licensing and Registration, Department of Professional and Financial Regulation associated with rulemaking and the sunrise review can be absorbed utilizing existing budgeted resources.