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IN THE HOUSE

BY MR. SANDERS

HOUSE BILL NO. 411

IN THE LEGISLATURE OF THE STATE OF ALASKA

SECOND LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act to provide for the licensing of real estate brokers and salesmen, and for the formation of a state Real Estate Commission; and providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

Section 1. PURPOSE. The purpose of this Act is to provide a comprehensive and workable plan of regulation and control of the real estate business in Alaska for the protection of the safety and welfare of its inhabitants, by first, creating a real estate commission, and second, providing for licensing of persons engaged in the real estate business.

ARTICLE I

ALASKA REAL ESTATE COMMISSION

Sec. 2. CREATION OF COMMISSION. a. There is hereby created the Real Estate Commission of the State of Alaska. It is composed of five members, of whom one is the commissioner of commerce and the other four are appointed by the governor, subject to confirmation by a majority of the members of the legislature in joint session. Members may be reappointed. One appointive member of the initial board shall be appointed for one year, one for two years, one for three years, and one for four years. Thereafter appointive members serve for overlapping four-year terms. Vacancies shall be filled by appointment for the unexpired

1 portion of the term.

2 b. To be eligible for appointment as a member of the commis-  
3 sion a person must be

4 (1) a citizen of the United States,

5 (2) at least 21 years of age,

6 (3) actively engaged full time as an owner or manager  
7 of a real estate office, and

8 (4) a real estate broker for at least five years in  
9 this state.

10 c. Not more than two members may be appointed from one  
11 area or district.

12 Sec. 3. MEETINGS. a. The commission shall meet at least  
13 every three months at a place it designates within the state.  
14 The commission may hold other meetings as it deems advisable  
15 upon at least 10 days notice in writing by the chairman at the  
16 request of a majority of the members of the commission. The  
17 chairman may call a meeting at any time if it is necessary.

18 b. A majority of the board constitutes a quorum. A  
19 vacancy on the commission does not impair the rights or powers  
20 of the remaining members.

21 Sec. 4. DUTIES. The commission shall

22 (1) annually appoint a chairman of the commission to  
23 serve during the tenure of his appointment as a member,

24 (2) promulgate necessary regulations,

25 (3) adopt a seal which bears the words "Real Estate  
26 Commission, State of Alaska", to be used to authenticate proceed-  
27 ings and official documents, and

28 (4) otherwise carry out the provisions and intent of  
29 this Act.

1           Sec. 5. EMPLOYEES. The commission shall appoint and fix  
2 the compensation of a secretary and such other assistants,  
3 deputies, and clerks as are necessary. With the exception of  
4 the four appointed members of the commission no officer or employee  
5 of the commission may be directly or indirectly connected with  
6 or interested in any real estate company or real estate brokerage  
7 firm in this state or elsewhere.

8           Sec. 6. DIRECTORY. On July 1 of each year the commission  
9 shall issue a directory of licensed brokers and salesmen, which  
10 shall be mailed without charge to all licensed brokers within  
11 the state. In connection with the directory, it may reproduce  
12 the laws relating to licensing of real estate brokers and  
13 salesmen and any matter connected therewith which it considers  
14 advisable. It may publish from time to time a bulletin of  
15 information relating to the commission, and it may disseminate  
16 information to licensees and the public in appropriate established  
17 publications.

18           Sec. 7. INVESTIGATIONS. The commission on its own motion  
19 may and upon a verified complaint in writing shall investigate  
20 the actions of any person, corporation or partnership engaged  
21 in the business or acting in the capacity of real estate  
22 broker or salesman, and may at any time examine the books and  
23 records of a broker or salesman used in connection with his  
24 business insofar as such books or records pertain to the transfer,  
25 sale, rental or lease of real property.

26           Sec. 8. EDUCATION. The commission may conduct or hold, or  
27 assist in conducting or holding real estate clinics, meetings,  
28 courses or institutes and may incur the necessary expenses  
29 in connection therewith. The commission may assist libraries

1 and educational institutions in sponsoring studies and programs  
2 for the purpose of raising the standards of real estate business  
3 and the competency of licensees.

4       Sec. 9. GIVING OF EXAMINATIONS. The commission shall  
5 provide for the giving of examinations required by this Act at  
6 least once each year, and may give them more often if necessary.  
7 It shall give advance notice of the time and places of holding  
8 of each examination.

9       Sec. 10. DELEGATION OF POWERS. The commission may delegate  
10 to the chairman or to the commissioner such of its powers as  
11 may be necessary to the effective continuance of its business  
12 between regular meetings.

13       Sec. 11. LEGAL MATTERS. The attorney general shall act  
14 for the commissioner in all legal actions or proceedings and  
15 shall advise him upon all questions of law arising out of the  
16 administration of this Act.

17                                   ARTICLE II

18                                   LICENSING

19       Sec. 12. TYPES OF LICENSE. a. Real estate broker's  
20 license. A real estate broker's license entitles the holder to  
21 act as a real estate broker as defined by this Act.

22       b. Associate broker's license. An associate broker's  
23 license is in all respects like a real estate broker's license  
24 except the associate broker may act only in association with a  
25 real estate broker.

26       c. Real estate salesman's license. A real estate sales-  
27 man's license permits the holder to act as real estate salesman  
28 as defined by this Act.

29       d. Limited license. A limited license is a nontransferable

1 license for training. It is valid until the giving of the  
2 next examination after the passage of six months from the time  
3 of issuance. The holder of a limited license is not authorized  
4 to sign papers and documents for a broker or salesman.

5 Sec. 13. QUALIFICATIONS. a. Any person may apply for a  
6 broker's or associate broker's license who

7 (1) is a citizen of the United States,

8 (2) has a high school education or has had six months  
9 training and two years service as a real estate salesman,

10 (3) has been a resident of the state for at least 90  
11 days,

12 (4) is at least 21 years old, and

13 (5) is of good moral character.

14 b. Any person may apply for a license as a real estate  
15 salesman who

16 (1) is a citizen of the United States,

17 (2) has either a high school education or has attended  
18 a course in real estate and had at least six months training in  
19 the real estate field, under the supervision of a real estate  
20 broker,

21 (3) is at least 21 years old, and

22 (4) is of good moral character.

23 Sec. 14. APPLICATIONS. a. Applications are made in writing,  
24 signed by the applicant. The board may not accept applications  
25 which are not accompanied by the examination fee. An applicant  
26 for a broker's or associate broker's license shall submit with  
27 the application letters of recommendation from three owners of  
28 real estate in the area. An applicant for a salesman's license  
29 shall submit a statement from an employing broker certifying

1 to the good moral character of the applicant.

2 b. The board may not accept an application unless it  
3 contains

4 (1) for a broker's or salesman's license:

5 (a) the name, address, length of residence in  
6 the state;

7 (b) the name or assumed name of the company or  
8 individual designated broker, proposed place of business,  
9 mailing address and the location of branch offices if any;  
10 and

11 (c) the education and background of the applicant,  
12 real estate courses attended, references of three reputable  
13 business men and last employer, and length of time in the  
14 real estate business;

15 (2) for a limited license:

16 (a) the name and mailing address of the applicant;

17 (b) age, education and background, length of  
18 residence in this state;

19 (c) three references, mailing address and  
20 designated office and employing broker's signature.

21 Sec. 15. EXAMINATIONS. a. An applicant for a broker's  
22 or salesman's license shall pass a written examination prepared  
23 by or under the supervision of the commission. The examination  
24 shall be given at such times and at such places within the state  
25 as the commission prescribes. The examination for a broker's  
26 license shall include business ethics, writing composition,  
27 arithmetic, elementary principles of land economics and appraisal,  
28 a general knowledge of the statutes of this state relating to  
29 deeds, mortgages, real estate contracts, subdivisions, legal

1 descriptions, building codes, agency and brokerage, the provisions  
2 of this Act, and regulations of the commission. The examination  
3 for a broker's license shall be more exacting than the  
4 examination for a salesman's license. The examination for an  
5 associate broker's license shall be the same as that for a  
6 broker's license.

7 b. An applicant who has failed the examination on two  
8 successive occasions is ineligible for further examination for  
9 six months.

10 c. Any person holding an active license on the effective  
11 date of this Act, upon complying with the other requirements,  
12 may obtain a license as a broker or salesman without examination  
13 if application is made within 90 days of the effective date of  
14 this Act.

15 d. No examination is required of an applicant for a sales-  
16 man's or a broker's license who held an unrevoked and unsuspended  
17 broker's or salesman's license on December 31 of the preceding  
18 year, or of an applicant for a broker's or salesman's license  
19 holding an honorable discharge from the armed forces of the  
20 United States who, at the time of entering the service, held  
21 an unrevoked and unsuspended license of the kind applied for.

22 Sec. 16. RECIPROCITY. The holder of a valid, active  
23 license from another state, territory, or possession of the  
24 United States may be issued a license of the kind that he holds  
25 there, without examination, if

- 26 (1) he meets all the other requirements of this Act,  
27 (2) he has resided in Alaska for 90 days,  
28 (3) he has provided proof of honesty and trustworthi-  
29 ness,

1 (4) the application is made during the calendar year  
2 in which he holds the license in the other jurisdiction, and

3 (5) the other states extend a similar courtesy to  
4 applicants holding licenses from this state.

5 Sec. 17. BONDS. Before issuing a license to a broker or  
6 salesman the commission shall require him to obtain a corporate  
7 surety bond, to be approved by the commission, in the amount of  
8 \$2500. The bond shall be conditioned upon the faithful compliance  
9 of the broker or salesman with the provisions of this Act, and  
10 the bond shall be in favor of the state, for the benefit of  
11 any person injured by the wrongful act, default, fraud, or mis-  
12 representation of the broker or salesman in his capacity as such.  
13 Any person so injured may bring suit on the bond in his own  
14 name.

15 Sec. 18. ISSUANCE OF LICENSE. a. At each regular meeting  
16 of the commission, it shall consider all applications properly  
17 before it, and as soon as possible after the meeting shall  
18 issue to all applicants who have qualified an appropriate license  
19 and pocket card.

20 b. A license issued under the provisions of this Act,  
21 authorizes the licensee to do business only at the location set  
22 forth therein. Licenses shall be prominently displayed in the  
23 office of the real estate broker. A salesman's or associate  
24 broker's license remains in possession of the employing broker  
25 until cancelled or until the licensee leaves the employ of the  
26 broker, when it shall be returned to the commission by the  
27 employing broker for cancellation or transfer.

28 Sec. 19. PLACE OF BUSINESS. a. A broker licensed under  
29 this Act shall maintain a definite place of business within the

1 state. No office shall be located in a dwelling unless the  
2 office is completely separated from the living portion thereof.  
3 No office shall be located in a residential district.

4 b. A licensee shall give notice in writing to the com-  
5 missioner, of a change in location of place of business, where-  
6 upon the commissioner shall issue a new license for the  
7 unexpired period. Change or abandonment of a business location  
8 without notice automatically cancels the license.

9 Sec. 20. BRANCH OFFICES. An applicant shall procure a  
10 license for each branch office maintained. If the branch office  
11 is outside the district of the main office, it shall be in charge  
12 of a licensed real estate broker. Offices within the district  
13 of the principal office may be in charge of a salesman. The  
14 bond prescribed herein shall cover all branch offices of the  
15 applicant.

16 Sec. 21. SIGNS. Every person licensed as a broker shall  
17 maintain a sign in a conspicuous place on the premises to  
18 indicate that he is a licensed broker. The name or assumed trade  
19 name shall be clearly shown thereon.

20 Sec. 22. ADMINISTRATION OF LICENSES. a. All license fees  
21 shall be paid in advance, and are the same regardless of when  
22 the license is issued.

23 b. All licenses expire on December 31 of each year at  
24 midnight.

25 c. A license may be renewed by filing an application on  
26 a form provided by the commission. The renewal shall be granted  
27 without again requiring the applicant to present recommendations  
28 or be examined.

29 d. The commissioner may reinstate a license cancelled but

1 not suspended or revoked within the calendar year upon receipt  
2 of application, the proper fee and late fee penalty, of \$5 if  
3 for a salesman and \$10 for a broker.

4 e. A license is not renewable after it has been inactive  
5 for 12 months.

6 f. A person holding a broker's license may obtain a license  
7 as a salesman by making application and paying the appropriate  
8 fee. The term of his broker's license continues to run, even  
9 though his technical status becomes that of a salesman.

10 g. A license pocket card lost, stolen, or destroyed,  
11 may be duplicated upon application and payment of the duplicate  
12 fee. The loss, disappearance or destruction of license or  
13 pocket card shall be reported immediately to the commission.

14 Sec. 23. FEES. The following fees shall be charged:

- 15 (1) a broker's license fee, \$25,
- 16 (2) a broker's examination fee, \$25,
- 17 (3) a broker's renewal fee, \$25,
- 18 (4) associate broker's fee, \$25,
- 19 (5) salesman's license fee, \$15,
- 20 (6) salesman's renewal fee, \$15,
- 21 (7) salesman's examination fee, \$25,
- 22 (8) limited license fee, \$15,
- 23 (9) branch office fee, for branch office license, \$10,
- 24 (10) change of name, address, or location fee, \$10,
- 25 (11) transfer of salesman or associate broker license  
26 fee, \$1,
- 27 (12) duplicate license or pocket card fee, \$5, and
- 28 (13) reinstatement of license, within the calendar  
29 year only, penalty \$5.

1           Sec. 24. DISPOSITION OF MONEY. All money collected under  
2 the provisions of this Act shall be transmitted to the Department  
3 of Revenue for deposit in the general fund.

4           Sec. 25. ASSOCIATE BROKERS AND SALESMEN. A broker shall  
5 employ and pay only legally licensed salesmen. An associate  
6 broker shall accept employment and compensation as such only  
7 from his legally licensed broker.

8           Sec. 26. MAKING OF TRANSACTIONS. No salesman, associate  
9 broker, or employee may make any transaction in real estate except  
10 through his employing broker. All money collected on behalf of  
11 the employing broker shall immediately be turned over to the  
12 employing broker or his agent. Failure to do so is cause to  
13 suspend the license of the offender. All transactions in real  
14 estate by a salesman, associate broker, or employee shall be  
15 processed through the employing broker's office whether they are  
16 for his own use or the use of a client.

17           Sec. 27. DISCHARGE OF SALESMAN. When a salesman is dis-  
18 charged by his employing broker, for any reason, the employing  
19 broker shall immediately file a verified statement of the facts  
20 with the commissioner. Upon payment of the proper transfer fee  
21 the license may be reinstated and transferred to another office  
22 under the provisions set forth in this Act.

23           Sec. 28. OUT-OF-STATE BROKERS. A licensed real estate  
24 broker from this state may pay a fee, commission or compensation  
25 to a licensed real estate broker from another state and may  
26 collect such fee, commission or compensation in accordance with  
27 the laws of that state.

28           Sec. 29. LISTINGS. All real estate listings must be in  
29 writing and signed by the seller or his agent legally authorized

1 to sign for the owner, and shall have a definite expiration date.

2           Sec. 30. RECORD OF TRANSACTION. Brokers shall keep a  
3 complete record of all transactions for a period of at least three  
4 years and shall make a closing statement to both buyer and seller  
5 of all transactions, showing disbursements and accounting for all  
6 money in the transaction, and shall keep a separate trust account  
7 in a bank, from which he may withdraw his rightful commission only  
8 when the transaction has been completely closed.

9           Sec. 31. REVOCATION AND SUSPENSION OF LICENSE. a. A license  
10 issued under the provisions of this Act, may be revoked or sus-  
11 pended if the holder, while a licensee under this Act, within three  
12 years immediately preceding, in the performance of or attempt to  
13 perform any real estate transaction has:

14                   (1) made any substantial misrepresentation,

15                   (2) made any false promises likely to influence,  
16 persuade or induce,

17                   (3) pursued a flagrant course of misrepresentation or  
18 made false promises through an agent or salesman,

19                   (4) acted for more than one party in a transaction  
20 without the knowledge or consent of all parties to it,

21                   (5) been guilty of any other conduct, whether of the  
22 same or different character, which constitutes fraud or dishonest  
23 dealings,

24                   (6) violated any regulations prescribed by the commission,

25                   (7) procured a license under the provisions of this Act  
26 for himself or another by fraud, misrepresentation or deceit,

27                   (8) been convicted of a felony, of which the commission  
28 did not have knowledge at the time of the last issuance of a  
29 license to the licensee,

1 (9) knowingly authorized, directed, connived at or  
2 aided in the publication, advertisement, distribution or circu-  
3 lation of any material false statement or misrepresentation  
4 concerning his business or any land or subdivision thereof  
5 offered for sale, in this or any other state,

6 (10) wilfully disregarded or violated any of the  
7 provisions of this Act, and

8 (11) wilfully used the term "real estate broker" or  
9 "salesman" without the legal right to do so or employed an  
10 unlicensed salesman.

11 b. The license of an officer, agent, salesman, corporation  
12 or partnership, acting under the license of a broker or firm  
13 thereof may be suspended or revoked without revoking or suspending  
14 the license of the firm, corporation or partnership.

15 Sec. 32. VIOLATION BY EMPLOYEE OR ASSOCIATE. The violation  
16 of this Act by a salesman, employee or associated broker of an  
17 employing broker, is not cause for suspension or revocation of  
18 the license of the employing broker unless the employer had  
19 actual knowledge of the violation.

20 Sec. 33. ADMINISTRATIVE PROCEDURE. All proceedings under  
21 this Act are governed by the Administrative Procedure Act.

22 ARTICLE III

23 PROHIBITIONS AND PENALTIES

24 Sec. 34. PROHIBITION OF UNLICENSED OPERATION. a. After the  
25 effective date of this Act no person may engage in or conduct,  
26 directly or indirectly, or advertise or hold himself out as  
27 engaging in or conducting the business or acting in the capacity,  
28 of a real estate broker or a real estate salesman within this  
29 state without first obtaining a license.

1           b. No person not licensed under this Act shall use the term  
2 "realtor", "real estate agent" or "real estate salesman".

3           Sec. 35    SALE OF LAND SUBJECT TO LIEN. No person may sell  
4 any lot, parcel, subdivision of real estate or the improvements  
5 thereon which is subject to any lien or encumbrance, other than  
6 taxes or assessments levied by public authority, without the full  
7 knowledge of the buyer of all such liens or encumbrances.

8           Sec. 36.   SALE OF CEMETERY PROPERTY. No person may sell or  
9 offer to sell cemetery property under any promise that the cemetery  
10 property sold or offered for sale may be resold at a profit. The  
11 conveyance of cemetery property pursuant to a sale in violation  
12 of this section is void.

13          Sec. 37.   COMPENSATING UNLICENSED OPERATOR. No person, firm  
14 or corporation, whether obligor, escrow holder or otherwise, may  
15 pay or deliver to anyone compensation for performing any acts  
16 specified in this Act, as a broker, who is not licensed at the  
17 time the service is rendered. A current license or pocket card  
18 issued by the commission is sufficient proof to relieve the  
19 obligor, escrow holder or other person from criminal liability  
20 under this Act.

21          Sec. 38.   MISREPRESENTATION. A person who knowingly author-  
22 izes, directs or aids in any publication or any false statement or  
23 representation concerning any land or subdivision offered for sale  
24 or lease, or who, with knowledge that any advertisement, pamphlets,  
25 or letters concerning the land or subdivision contains any written  
26 statement that is false or fraudulent, issues, circulates, pub-  
27 lishes or distributes it or causes it to be issued, circulated,  
28 published or distributed, or who in any respect wilfully violates  
29 or fails to comply with any order, permit, decision, demand or re-

1 quirement of the commission under the provisions of this Act is  
2 guilty of a misdemeanor.

3       Sec. 39. PENALTIES. A person who violates any provision of  
4 this Act is guilty of a misdemeanor, and upon conviction is  
5 punishable by a fine of not more than \$500, or by imprisonment  
6 for not more than six months or by both. A corporation may be  
7 fined in an amount not to exceed \$5,000.

8                                   ARTICLE IV

9                                   GENERAL PROVISIONS

10       Sec. 40. EXCEPTIONS. This Act does not apply to an owner of  
11 real estate or to his regular employees with respect to property  
12 owned or leased by him, or to an attorney-in-fact under a power of  
13 attorney authorizing the consummation of a specific real estate  
14 transaction, or to an attorney at law in the performance of his  
15 duties as an attorney, or to a public official in the conduct of  
16 his official duties, or to a person acting as receiver, trustee,  
17 administrator, executor, or guardian, or while acting under court  
18 order or while acting under the authority of a will or trust  
19 instrument.

20       Sec. 41. DEFINITIONS. As used in this Act, unless the  
21 context otherwise requires,

22               (1) "real estate" means any interest or estate in land,  
23 corporeal or incorporeal, situated in this state or elsewhere,

24               (2) "broker" or "real estate broker" means a person,  
25 other than a salesman, who, for another for compensation or other  
26 valuable consideration, or with intent, in the expectation, or  
27 upon the promise of receiving or collecting compensation or other  
28 valuable consideration

29                                   (a) lists or offers to list for sale, sells,

1 exchanges, rents or leases, or offers, attempts or agrees to  
2 negotiate a sale, exchange, purchase or rental of any real  
3 estate, estate or interest therein;

4 (b) collects, or offers, attempts or agrees to  
5 collect rent for the use of real estate;

6 (c) negotiates, or offers, attempts or agrees to  
7 negotiate a loan secured or to be secured by a mortgage or  
8 other encumbrance upon or transfer of real estate;

9 (d) auctions, or offers to auction, or attempts  
10 or agrees to auction real estate;

11 (e) advertises or holds himself out as engaged in  
12 the business of selling, exchanging, buying, renting or leas-  
13 ing real estate or counseling, or acts as a consultant or an  
14 appraiser of real estate or advertises thereon;

15 (f) assists in or directs the procuring of prospec-  
16 tive buyers or the negotiation or closing of any transaction  
17 which results or is calculated to result in the sale, ex-  
18 change, leasing or renting of real estate, or charges or  
19 offers to charge an advanced fee;

20 (g) buys, offers to buy, sells, offers to sell, or  
21 otherwise deals in options in real estate or improvements  
22 thereon as a business;

23 (3) "salesman" or "real estate salesman" means

24 (a) a person employed by or on behalf of the owner  
25 of real estate, at a stated salary, upon a commission, upon  
26 a salary and commission, or otherwise, to sell real estate,  
27 business opportunities to sell real estate or any part there-  
28 of, in lots, subdivisions, acreage, or other parcels, and who  
29 deals or exchanges, or offers, attempts or agrees to

1 negotiate the sale or exchange, or trade, of any lot, parcel,  
2 acreage or subdivision of real estate;

3 (b) a person employed by an owner who holds him-  
4 self out as a subdivider of real estate, or part time sub-  
5 divider or part time dealer or full time dealer in leasing,  
6 selling, exchanging or renting real estate if the owner or  
7 subdivider is a licensed real estate broker;

8 (c) a person engaged in the business of buying,  
9 selling, exchanging, leasing or renting of real estate on  
10 his own account and holding himself out as a full or part  
11 time dealer in real estate;

12 (d) a person engaged by or on behalf of, or asso-  
13 ciated with, a licensed real estate broker to perform any act  
14 or transaction included in the definition of real estate  
15 broker;

16 (4) "associate broker" means a licensed real estate  
17 broker engaged by or associated with a designated broker, who  
18 may perform any act or transaction included in the definition  
19 of a real estate broker and salesman,

20 (5) "limited license salesman" means any person  
21 licensed to train under the direction and supervision of a licensed  
22 real estate broker for a period of six months or until the nearest  
23 examination thereafter,

24 (6) "commissioner" means the commissioner of commerce,

25 (7) "lease" or "leasing" includes any lease, whether it  
26 is the sole, the principal or an incidental part of a transaction,

27 (8) "licensee" means a person to whom a license as real  
28 estate broker or salesman has been granted,

29 (9) "person" includes corporation, company, and any

1 other form of multiple organization for carrying on business.

2 Sec. 42. REPEALS. Ch. 154, SLA 1957, Ch. 144, SLA 1959  
3 and Ch. 109, SLA 1959 are repealed.

4 Sec. 43. SHORT TITLE. This Act may be cited as the Real  
5 Estate Act of 1962.

6 Sec. 44. EFFECTIVE DATE. This Act takes effect July 1, 1962.  
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