

H B

389

AMENDMENT

HB 389 (regulation of real estate brokers and salesmen)

ON page 2, at line 18:

INSERT a new *Sec 3 to read:

*Sec. 3. As 08.88.081 is amended to read;
sec. 08.88.081. COMMISSION REGULATIONS
The com'n shall adopt regulations pertaining to the responsibilities of persons licensed under this chapter and the grounds for revoking or suspending a license. The com'n shall also adopt regulations to carry out the other purposes of this chapter.

Remember secs. of bill accordingly

(An alternative which would mean more change in the bill would be to correct the OP1 + II + new language as subsec (a) (b) + (c))

AMENDED

1 IN THE HOUSE

BY FURNACE

2

HOUSE BILL NO. 389

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

THIRTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6 For an Act entitled: "An Act relating to the regulation of real estate

7

brokers and salesmen."

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

9

* Section 1. AS 08.88.071(a)(3) is amended to read: *oh*

10

(3) after hearing, have the authority to reprimand a li-

11

icensee or suspend or revoke the license of a licensee who

12

(A) with respect to a real estate transaction

13

(i) made a substantial misrepresentation;

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(ii) made a false promise likely to influence,

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persuade, or induce;

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(iii) in the case of a real estate broker, pursued

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a flagrant course of misrepresentation or made a false

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promise through an agent, associate real estate broker, or

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real estate salesman;

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(iv) has engaged in conduct that is fraudulent or

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dishonest;

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(v) violates AS 08.88.391;

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(B) procures a license by deceiving the commission, or

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aids another to do so;

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(C) has engaged in conduct in which the commission had

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no knowledge at the time the licensee was licensed demonstrating

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the licensee's unfitness to engage in the business for which the

28

licensee is licensed;

29

(D) knowingly authorizes, directs, connives at or aids

1 in publishing, distributing, or circulating a material false
2 statement or misrepresentation concerning the licensee's business
3 or concerning real estate for sale in the licensee's business in
4 this or any other state;

5 (E) if a real estate broker, wilfully violates AS 08.-
6 88.171(d) or 08.88.291;

7 (F) if an associate real estate broker, claims to be a
8 real estate broker, or, if a real estate salesman, claims to be a
9 real estate broker or associate real estate broker;

10 (G) if a real estate broker, employs an unlicensed
11 associate real estate broker or real estate salesman;

12 (H) if an associate real estate broker or real estate
13 salesman, fails immediately to turn money collected in a real
14 estate transaction over to the employing real estate broker;

15 * Sec. 2. AS 08.88.071(a)(3) is amended by adding a new subparagraph to
16 read:

17 (I) violates a provision of this chapter;

18 * Sec. 3. AS 08.88.091 is amended by adding a new subsection to read:

19 (b) The commission may charge a fee for informational material
20 published under this section to a person or organization that obtains
21 more than five copies of the publication. The charge may not exceed
22 the cost of publishing the copies and no charge may be required for
23 the first five copies obtained.

24 * Sec. 4. AS 08.88.161 is amended by adding a new paragraph to read:

25 (9) for compensation, manage commercial or residential ~~real~~
26 ~~estate, homeowners' association, condominium association, or similar organization.~~

27 * Sec. 5. AS 08.88.251(a) is amended to read:

28 (a) A licensee with active status [PERSON LICENSED BY THE COM-
29 MISSION] may obtain [BECOME] inactive status by completing [RETURNING

1 TO THE COMMISSION THE PERSON'S LICENSE CERTIFICATE AND] a form pro-
2 vided by the commission and submitting the form with the required fee
3 to the commission. In the form, the licensee [PERSON] shall state the
4 date on which the licensee [PERSON] intends to become inactive. The
5 licensee's [PERSON'S] inactive status begins on the date stated. [THE
6 COMMISSION SHALL ISSUE THE PERSON AN INACTIVE LICENSE CERTIFICATE.]

7 * Sec. 6. AS 08.88.251(c) is amended to read:

8 (c) A licensee with [PERSON WHO IS] inactive status may obtain
9 [BECOME] active status by applying for [AN] active status with the
10 commission [LICENSE] and paying the required fees. In the application
11 form the licensee [PERSON] shall state the date on which the licensee
12 [PERSON] intends to become active. The licensee's [PERSON'S] active
13 status begins on the date stated. [THE COMMISSION SHALL SEND THE
14 PERSON A LICENSE CERTIFICATE.] A licensee [PERSON] is entitled to
15 change from an inactive to an active status without examination if the
16 licensee [PERSON] has not been inactive more than three years. If the
17 licensee [PERSON] has been inactive more than three years, the li-
18 icensee [PERSON] is required to take an examination.

19 * Sec. 7. AS 08.88.291 is amended to read:

20 Sec. 08.88.291. LOCATION. A licensed real estate broker shall
21 register with [INFORM] the commission [OF] the broker's principal
22 office and [OF] any branch offices the broker maintains by completing
23 and submitting a form provided by the commission [HAS]. The broker
24 and each person with a license issued under this chapter who [THE
25 ASSOCIATE REAL ESTATE BROKERS AND REAL ESTATE SALESMEN] the broker
26 employs may do business only from [IN OR OUT OF] the broker's princi-
27 pal or branch [OFFICE AND THE BROKER'S BRANCH] offices. Failure of a
28 real estate broker to maintain a place of business or inform the
29 commission of its location and the names and addresses of all li-

1 censees employed by [UNDER] the broker [BROKER'S JURISDICTION] at the
2 location are grounds for the suspension or revocation of the broker's
3 license.

4 * Sec. 8. AS 08.88.331 is amended to read:

5 Sec. 08.88.331. MAKING OF TRANSACTIONS. A real estate salesman
6 or associate real estate broker may make a real estate transaction
7 only through the real estate broker who employs the real estate sales-
8 man or associate real estate broker. All money collected on behalf of
9 the broker shall immediately be turned over to the broker or the
10 broker's agent. All transactions in real estate by a real estate
11 salesman or associate real estate broker shall be processed through
12 the real estate salesman's or the associate real estate broker's
13 employing real estate broker's office and shall be supervised by the
14 real estate broker, whether the transactions are for the real estate
15 salesman's or associate real estate broker's own use or the use of a
16 client.

17 * Sec. 9. AS 08.88.351 is amended by adding a new subsection to read:

18 (b) The records required under this section of transactions that
19 are for the broker or an employee of the broker shall be similar to
20 and as complete as records of transactions for clients.

21 * Sec. 10. AS 08.88.421 is amended by adding new paragraphs to read:

22 (11) the developer of commercial or residential ^{condominium} ~~real estate~~
23 when acting as manager of the ^{A condominium} ~~real estate~~; ASSOCIATION

24 (12) a member of the board of directors of a homeowner's
25 association, condominium association, or similar organization when
26 managing the real estate in the course of performing duties as a
27 member of the board of directors.

28 * Sec. 11. AS 08.88.455(a) is amended to read:

29 (a) A licensed real estate broker, [OR] associate broker, or

\$125.00

1 salesman when obtaining or renewing a real estate license, in lieu of
2 obtaining a corporate surety bond, shall pay to the commission in
3 addition to the license fee, a bond fee not to exceed \$125 [, AND A
4 LICENSED SALESMAN, WHEN OBTAINING OR RENEWING A LICENSE, IN LIEU OF
5 OBTAINING A CORPORATE SURETY BOND, SHALL PAY TO THE COMMISSION IN
6 ADDITION TO THE LICENSE FEE, A BOND FEE NOT TO EXCEED \$40]. After the
7 fund reaches \$250,000 the commission shall by regulation adjust the
8 bond fees so that, taking into account anticipated expenditures for
9 claims against the fund and real estate educational purposes, the fund
10 is maintained at a level not less than \$250,000.

11 * Sec. 12. AS 08.88.460 is amended by adding a new subsection to read:

12 (c) A claimant under this section shall pay a filing fee of \$100
13 to the commission at the time the claim is filed. The filing fee
14 shall be refunded if the commission makes an award to claimant
15 from the real estate surety fund.

16 * Sec. 13. AS 08.88.261 is repealed.

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16 (iii) in the case of a real estate broker, pursued
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18 promise through an agent, associate real estate broker, or
19 real estate salesman;

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21 dishonest;

22 (v) violates AS 08.88.391;

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24 aids another to do so;

25 (C) has engaged in conduct in which the commission had
26 no knowledge at the time the licensee was licensed demonstrating
27 the licensee's unfitness to engage in the business for which the
28 licensee is licensed;

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3 or concerning real estate for sale in the licensee's business in
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125.00 BROKER
125.00 SALESMAN

New § 3 of bill + renewed
add to, CP 1. "The comm shall
also adopt reg to carry out the
purposes of this chapter."

Collateral references. — 12 Am. Jur. & Brokers, §§ 18-22. 58 Am. Jur. 2d, Occupations, Trades and Professions, § 1722. C.J.S., Brokers, §§ 6-24.

Sec. 08.88.161. License required. Unless licensed as a real estate broker, associate real estate broker, or real estate salesman, a natural person, foreign or domestic corporation, or partnership, or limited partnership, or other entity may not

- 1) sell, exchange, rent, lease, auction, or purchase real estate;
 - 2) list real estate for sale, exchange, rent, lease, auction, or purchase;
 - 3) collect rent for the use of real estate;
 - 4) as a business, buy, sell, or deal in
 - A) options in real estate; or
 - B) options in improvements to real estate;
 - 5) assist in or direct the procuring of prospective buyers or the negotiation of a transaction which results or is calculated to result in the sale, exchange, rent, lease, auction, or purchase of real estate;
 - 6) hold out to the public as being engaged in the business of doing any of the things listed in this section;
 - 7) attempt or offer to do any of the things listed in this section.
- (5) Repealed by § 4, ch. 28, SLA 1982. (§ 1 ch 95 SLA 1964; am § 321 ch 108 SLA 1970; am § 324 ch 28 SLA 1974)

Cross references. — As to activities in and of housing for minority groups, see AS 240.215. Editor's notes. — This section was redrafted by the revisor of statutes to remove personal pronouns in conformity with AS 01.05.031(c) and § 4, Chapter 58, SLA 1982.

Sec. 08.88.171. Entitlement to license. (a) A person is entitled to a real estate broker license if the person is a resident of the state, if the person passes the real estate brokers examination, if the person applies for a license within six months after the person has taken the real estate brokers examination, if the person has had at least 24 months of active and continuous experience as a licensed real estate salesman, if the person is not under indictment for, or seven years have elapsed since the person has completed a sentence imposed upon conviction of, forgery, theft, extortion, conspiracy to defraud creditors, or any other felony involving moral turpitude, and if the person is an owner of a real estate business or employed as a real estate broker by a corporation or partnership, and if that corporation or partnership does not have an existing licensed broker. Unless the broker fails to pay the biennial renewal fee or unless the broker's license is suspended or revoked under AS 08.88.071(a)(3), the real estate broker's license continues in

Supplement

Title 9
Code of Civil Procedure

Sec. 08.88.431. Definitions. In AS 08.88.011 — 08.88.500

- (1) "real estate" means an interest or estate in land, corporeal or incorporeal;
- (2) "commission" means the Real Estate Commission;
- (3) Repealed by § 42 ch 167 SLA 1980.
- (4) "lease" includes a lease that is a part of another transaction.
- (5) "resident manager" means a person who resides on real property and manages it for the benefit of another person. (§ 1 ch 95 SLA 1964; am § 58 ch 218 SLA 1976; am §§ 32, 2 ch 167 SLA 1980)

Effect of amendments. — The 1980 amendment repealed paragraph (3), and added paragraph (5).

Article 4. General Provisions.

Section

- 421. Exceptions
- 431. Definitions

Sec. 08.88.421. Exceptions. AS 08.88.011 — 08.88.500 do not apply to

(1) a person who is not licensed under AS 08.88.011 — 08.88.500 who makes a real estate transaction with respect to real estate he owns or on his own behalf, unless the transaction involves land defined in AS 34.55.044(6) which is not in Alaska;

(2) an attorney in fact under a power of attorney authorizing the consummation of a specific real estate transaction; an attorney in fact may not act as such for more than two transactions in a calendar year;

(3) a lawyer performing his duties as a lawyer;

(4) a public official in the conduct of his official duties;

(5) a person acting as receiver, trustee, administrator, executor, or guardian;

(6) a person acting under court order;

(7) a person acting under the authority of a will or trust instrument;

(8) a person dealing in mineral rights transactions;

(9) each of the following:

(A) a domestic or foreign corporation, or a general or limited partnership; or

(B) a partner or regular employee of a domestic or foreign corporation or a general or limited partnership, when performing an act described in AS 08.88.161 in the regular course, or as an incident to, the management, sale or other disposition of real estate owned by the corporation or partnership; the exemption provided in this subparagraph does not apply to a person who performs an act described in AS 08.88.161 either as a vocation or for compensation if the amount of the compensation is dependent upon or directly related to the value of the real estate with respect to which the act is performed.

(10) a resident manager of rented real estate if his duties are limited to the negotiation of leases and rental agreements and the collection of rent for the use of the real estate and if he is

(A) employed by the owner of the real estate; or

(B) employed by, or engaged under contract with, a licensed real estate broker. (§ 1 ch 95 SLA 1964; am § 1 ch 38 SLA 1969; am § 19 ch 28 SLA 1974; am §§ 29—31 ch. 167 SLA 1980)

Effect of amendments. — The 1980 amendment substituted "who is not licensed under AS 08.88.011 — 08.88.500 who makes" for "making" near the beginning of paragraph (1), added "which is not in Alaska" at the end of paragraph (1); in paragraph (9), restructured the paragraph into present subparagraphs (A) and (B), added the introductory phrase, "each of the following", inserted "or a" preceding "general" in subparagraph (A), substituted a semicolon for a comma following "limited partnership" at the end

of subparagraph (A), substituted "a domestic or foreign corporation or a general or limited partnership" for "one of these," and "an act" for "acts", deleted "however" following "the corporation or partnership", inserted "exemption provided in this subparagraph does not apply to a", and substituted "who performs an act described in AS 08.88.161 either" for "may not perform these acts", all near the middle of subparagraph (B), and substituted "act is" for "acts are" at the end of subparagraph (B); and added paragraph (10).

Amendments for HB-389

Page 2 Line 26 Add ", or a condominium Association, community Association, or any other type organization which manages commercial or residential real estate."

Page 4 Line 23 Add " or condominium Association, community Association or similar organization."

STATE OF ALASKA
FISCAL NOTE

Revision Date _____, 1983

I. REQUEST

Bill/Resolution No.: HB 389
 Title: Regs. of real estate brokers & salesmen
 Sponsor: Furnace
 Requestor: House Labor & Commerce

II. FISCAL DETAIL

Agency Affected: Commerce & Econ. Develop.
 Program Category Affected: Public Protection
 BRU, Program of Subprogram(s) Affected: Real Estate Commission

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL						
REVENUE (to surety fund)	0	123.8	123.8	123.8	123.8	123.8

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: James L. Magowan, Executive Director Phone: 272-5508
 Division: Real Estate Commission Date: _____
 Approved by Commissioner: Richard A. Lyon Date: 5/10/83
 Department: Commerce & Economic Development

Distribution:

- Original to Legislative Finance
- Copy to Office of Management and Budget (for Legislature introduced bills)
- Copy to Department (for Governor introduced bills)
- Copy to Sponsor
- Copy to Requestor (if different from Sponsor)

3/8/83

FISCAL NOTE ANALYSIS OF HB 389

The surety fund is a self-sustaining fund not supported by general revenues. Fees are set by regulation, up to a maximum statutory limit, to cover expenditures and appropriations from the fund. The fund is currently showing a slight negative balance between revenue and expenditures.

Licenses issued and renewed remains the same as currently is the case.

This bill raises the maximum surety payment by salesmen to \$125.00 which is what brokers currently pay.

These fees are for surety fund and educational programs only. The actual fees will be set by regulation to cover the expenditures of the fund. It is estimated that the actual fee will be \$100.00. The estimated increase in revenue is \$123,250 per year. In the event that heavy losses due to claims should deplete the fund, the fees could be adjusted to bring in (at current licensee numbers) 337,500 per year - an increase of 191,250 over current revenues.

CALCULATIONS OF REVENUES

Based on 2500 salesmen and 700 broker renewals plus 2000 new salesman licenses and 200 new broker licenses per biennium.

Current Revenues (\$40 per salesman, \$125 per broker)

Salesman Renewals	\$100,000
Broker Renewals	87,500
New Salesmen	80,000
New Brokers	25,000
	<hr/>
	\$292,500/biennium
	\$146,250/annualized

Projected Revenues @\$100 uniform fee

\$540,000/biennium
\$270,000 annualized
\$123,750 annualized increase

Projected Revenues @\$125 (the maximum) uniform fee

\$675,000/biennium
\$337,500 annualized
\$191,250 annualized increase