

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1959

ENROLLED

SENATE BILL NO. 119

(By Mr. MARTIN)

PASSED Feb. 17 1959

In Effect July 1, 1959 Passage



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JOE F. BURDETT  
SECRETARY OF STATE

119

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AN ACT to repeal article twelve, chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and to enact in lieu thereof a new article, designated article twelve, relating to real estate commission, brokers, salesmen, defining real estate brokers and real estate salesmen and providing for licensing, regulation and supervision of resident and nonresident real estate brokers and real estate salesmen and their business, and providing penalties for violations.

*Be it enacted by the Legislature of West Virginia:*

That article twelve, chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended,

be repealed and that a new article twelve in lieu thereof be enacted to read as follows:

**Article 12. Real Estate Commission, Brokers and Salesmen.**

Section 1. *To be Known as the Real Estate Brokers*

2 *License Act.*—This act shall be known, and may be cited,  
3 as the real estate brokers license act of one thousand nine  
4 hundred fifty-nine, and from and after the effective date  
5 of this act it shall be unlawful for any person, partnership,  
6 association or corporation to engage in or carry on, di-  
7 rectly or indirectly or to advertise or hold himself, itself  
8 or themselves out as engaging in or carrying on the busi-  
9 ness or act in the capacity of a real estate broker or a real  
10 estate salesman within this state, without first obtaining  
11 a license as a real estate broker or real estate salesman as  
12 provided for in this act.

Sec. 2. *Broker Defined.*—The term “real estate broker”  
2 within the meaning of this act shall include all persons,  
3 partnerships, associations and corporations, foreign and  
4 domestic, who for a fee, commission or other valuable  
5 consideration or who with the intention or expectation  
6 of receiving or collecting the same, lists, sells, purchases,

7 exchanges, rents, manages, leases or auctions any real  
8 estate or the improvements thereon, including options, or  
9 who negotiates or attempts to negotiate any such activity;  
10 or who advertises or holds himself, itself or themselves  
11 out as engaged in such activities; or who directs or assists  
12 in the procuring of a purchaser or prospect calculated or  
13 intended to result in a real estate transaction. The term  
14 "real estate broker" shall also include any person, part-  
15 nership, association or corporation employed by or on  
16 behalf of the owner or owners of lots, or other parcels of  
17 real estate, at a stated salary or upon a fee, commission  
18 or otherwise to sell such real estate, or any parts thereof,  
19 in lots or other parcels, and who shall sell, manage, ex-  
20 change, lease, offer, attempt or agree to negotiate the  
21 sale, exchange or lease of any such lot or parcel of real  
22 estate.

23 (a) The term "real estate" as used in this act shall in-  
24 clude leaseholds as well as any and every interest or  
25 estate in land, whether corporeal or incorporeal, freehold  
26 or nonfreehold, and whether said property is situated in  
27 this state or elsewhere.

28 (b) One act in consideration of or with the expectation  
29 or intention of or upon the promise of receiving compen-  
30 sation by fee, commission or otherwise, in the perform-  
31 ance of any act or activity contained in section two of  
32 this act, shall constitute such persons, partnerships, asso-  
33 ciation or corporation, a real estate broker and make him,  
34 them or it subject to the provisions and requirements of  
35 this act.

36 (c) The term "real estate salesman" shall mean and  
37 include any person employed or engaged by or on behalf  
38 of a licensed real estate broker to do or deal in any ac-  
39 tivity as included in section two of this act, for compensa-  
40 tion or otherwise.

41 (d) Neither the term "real estate broker" nor "real  
42 estate salesman" shall be held to include any person,  
43 partnership, association or corporation, who, as a bona  
44 fide owner or lessor, shall perform any aforesaid act.

45 (1) With reference to property owned or leased by  
46 them or to the regular employees thereof, where such acts  
47 are performed in the regular course of or as an incident

48 to the management of, such property and the investment  
49 therein;

50 (2) Nor shall this act be construed to include attorneys  
51 at law;

52 (3) Nor any person holding in good faith a duly  
53 executed power of attorney from the owner authorizing  
54 the final consummation and execution for the sale, pur-  
55 chase, leasing or exchange of real estate;

56 (4) Nor to the acts of any person while acting as a  
57 receiver, trustee, administrator, executor, guardian, or  
58 under the order of any court or while acting under au-  
59 thority of a deed of trust or will;

60 (5) Nor shall this act apply to public officers while  
61 performing their duties as such.

Sec. 3. *Commission Membership; Term of Office; Va-*  
2 *cancies.*—There shall be a commission known as the “West  
3 Virginia Real Estate Commission”, which commission  
4 shall be a corporation and as such may sue and be sued,  
5 may contract and be contracted with and shall have a  
6 common seal. The commission shall consist of three per-  
7 sons to be appointed by the governor by and with the ad-

8 vice and consent of the senate. Two of such appointees  
9 each shall have been a resident and a citizen of this state  
10 for at least six years prior to his or her appointment and  
11 whose vocation for at least ten years shall have been that  
12 of a real estate broker or real estate salesman and the third  
13 shall be a representative of the public generally. Members  
14 in office on the date this section becomes effective shall  
15 continue in office until their respective terms expire. The  
16 term of the members of said commission shall be for four  
17 years and until their successors are appointed and qualify.  
18 No more than two members of such commission shall be-  
19 long to the same political party. No member shall be a  
20 candidate for or hold any other public office or be a mem-  
21 ber of any political committee while acting as such com-  
22 missioner. In case any commissioner be a candidate for  
23 or hold any other public office or be a member of any  
24 political committee, his office as such commissioner shall  
25 *ipso facto* be vacated. Members to fill vacancies shall be  
26 appointed by the governor for the unexpired term. No  
27 member may be removed from office by the governor ex-  
28 cept for official misconduct, incompetency, neglect of duty,

29 gross immorality or other good cause shown and then only  
30 in the manner prescribed by law for the removal by the  
31 governor of state elective offices. The governor shall desig-  
32 nate one member of the commission as the chairman there-  
33 of and the members shall choose one of the members  
34 thereof as secretary. Two members of the commission  
35 shall constitute a quorum for the conduct of official busi-  
36 ness.

37 (a) The commission shall do all things necessary and  
38 convenient for carrying into effect the provisions of this  
39 act and may from time to time promulgate reasonable,  
40 fair and impartial rules and regulations. Each member of  
41 the commission shall receive as full compensation for his  
42 services the sum of twenty dollars per day for each full  
43 day actually spent on the work of the commission and his  
44 actual and necessary expenses incurred in the perform-  
45 ance of duties pertaining to his office.

46 (b) The commission shall employ an executive secre-  
47 tary and such clerks, investigators and assistants as it shall  
48 deem necessary to discharge the duties imposed by the  
49 provisions of this act and to effect its purposes and the

50 commission shall determine the duties and fix the com-  
51 pensation of such executive secretary, clerks, investigators  
52 and assistants, subject to the general laws of the state.

53 (c) The commission shall adopt a seal by which it shall  
54 authenticate its proceedings. Copies of all records and pa-  
55 pers in the office of the commission, duly certified and  
56 authenticated by the seal of said commission, shall be re-  
57 ceived in evidence in all courts equally and with like effect  
58 as the original. All records kept in the office of the com-  
59 mission under authority of the act shall be open to public  
60 inspection under reasonable rules and regulations as shall  
61 be prescribed by the commission.

Sec. 4. *Qualifications for License.*—Licenses shall be  
2 granted only to persons who are trustworthy, of good  
3 character and competent to transact the business of a real  
4 estate broker or real estate salesman in such manner as  
5 to safeguard the interests of the public. Every applicant  
6 for a license as a real estate broker shall be of the age of  
7 twenty-one years or over, a citizen of the United States  
8 and shall have served a bona fide apprenticeship as a li-  
9 censed real estate salesman for two years or shall produce

10 to the real estate commission satisfactory evidence of real  
11 estate experience. No broker's license shall be issued to a  
12 partnership, association or corporation unless each mem-  
13 ber or officer thereof who will actively engage in the real  
14 estate business be licensed as a real estate salesman when  
15 and after said broker shall have been granted a broker's  
16 license.

Sec. 5. *Application for License.*—Every applicant for a  
2 real estate broker's license shall apply therefor in writing  
3 upon blanks prepared by the commission which shall con-  
4 tain such data and information as the commission shall  
5 require.

6 (a) Such application for broker's license shall be ac-  
7 companied by the recommendation of at least two citizens  
8 who are property owners at the time of signing said appli-  
9 cation and have been property owners for at least twelve  
10 months preceding such application, who have known the  
11 applicant for two years and are not related to the appli-  
12 cant, certifying that the applicant bears a good reputation  
13 for honesty and trustworthiness, and recommending that  
14 a license be granted to the applicant.

15 (b) Every applicant for a salesman's license shall apply  
16 therefor in writing upon blanks prepared by the commis-  
17 sion which shall contain such data and information as the  
18 commission may require. The application shall be accom-  
19 panied by a sworn statement by the broker in whose em-  
20 ploy the applicant desires to enter, certifying that, in his  
21 opinion, the applicant is honest and trustworthy, and  
22 recommending the license be granted to the applicant.

Sec. 6. *Nonresident Reciprocity.*—A nonresident of this  
2 state may become a real estate broker by conforming to  
3 all the provisions of this act, except that such nonresident  
4 broker regularly engaged in the real estate business as a  
5 vocation and who maintains a definite place of business  
6 and is licensed in some other state, which offers the same  
7 privileges to the licensed brokers of this state, shall not be  
8 required to maintain a place of business in this state. The  
9 commission shall recognize the license issued to a real es-  
10 tate broker or salesman by another state as satisfactorily  
11 qualifying him for license as a broker or salesman: *Pro-*  
12 *vided*, That said nonresident broker or salesman has quali-  
13 fied for license in his own state by written examination

14 and also that said other state permits license to be issued  
15 to licensed brokers or salesmen in this state without ex-  
16 amination. Every nonresident applicant shall file an ir-  
17 revocable written consent that suits and actions may be  
18 commenced against such applicant in the proper court of  
19 any county of the state in which a cause of action growing  
20 out of a real estate transaction may arise, in which the  
21 plaintiff may reside, by the service of any process or plead-  
22 ing authorized by the laws of this state, on any member of  
23 the commission, or the executive secretary, said consent  
24 stipulating and agreeing that such service of such process  
25 or pleading shall be taken and held in all courts to be as  
26 valid and binding as if due service had been made upon  
27 said applicant in this state. Said consent shall be duly ac-  
28 knowledged and if made by a corporation shall be authen-  
29 ticated by the seal of such corporation. Any service of pro-  
30 cess or pleading shall be by duplicate copies, one of which  
31 shall be filed in the office of the commission and the other  
32 immediately forwarded by registered mail to the last  
33 known main office of the applicant against whom said  
34 process or pleading is directed, and no default in any such

35 proceeding or action shall be taken except upon certifica-  
36 tion of the commission or the executive secretary that a  
37 copy of said process or pleading was mailed to the de-  
38 fendant as herein required, and no judgment by default  
39 shall be taken in any such action or proceeding until after  
40 twenty days from the date of mailing of such process or  
41 pleading to the nonresident defendant.

42 (a) Before a license as a real estate broker shall be is-  
43 sued to any person who does not have his principal place  
44 of business in the state of West Virginia, he shall file with  
45 the commission a bond in the penalty of two thousand dol-  
46 lars, in form and with security to be approved by the com-  
47 mission and conditioned so as to be for the benefit of and  
48 to indemnify any person in the state who may have any  
49 cause of action against the principal.

50 (b) Before a license as a real estate salesman shall be  
51 issued to any person who is not a bona fide resident of this  
52 state, whether he be an employee of a resident or a non-  
53 resident real estate broker, such applicant shall file with  
54 the commission a bond such as is herein required to be  
55 filed by a nonresident broker.

Sec. 7. *Written Examination.*—In addition to proof of  
2 honesty, trustworthiness, good character and good reputa-  
3 tion of any applicant for a license, the applicant shall sub-  
4 mit to a written examination to be conducted by the com-  
5 mission which shall include reading, writing, spelling,  
6 elementary arithmetic, a general knowledge of the stat-  
7 utes of this state relating to real property, deeds, mort-  
8 gages, agreements of sale, agency contract, leases, ethics,  
9 appraisals and the provisions of this act: *Provided, how-*  
10 *ever,* That any person who has been actively engaged in  
11 the real estate business as a real estate broker or real  
12 estate salesman within the year preceding the effective  
13 date of this act and is thus engaged in this state at the  
14 time this act goes into effect, may secure a license as a  
15 real estate broker or a salesman without an examination:  
16 *Provided further,* That such person shall make applica-  
17 tion to the commission for registration within ninety days  
18 after the effective date of this act. The examination for a  
19 broker's license shall differ from the examination for a  
20 salesman's license in that it shall be of a more exacting  
21 nature and require higher standards of knowledge of real

22 estate. The commission shall conduct examinations at  
23 such times and places as it shall determine.

24 (a) In event the license of any real estate broker or  
25 salesman shall be revoked by the commission, subsequent  
26 to the enactment of this act, no new license shall be issued  
27 to such person unless he complies with the provisions of  
28 this act.

29 (b) No person shall be permitted or authorized to act  
30 as a real estate broker until he has qualified by examina-  
31 tion, except as hereinbefore provided. Any individual  
32 who fails to pass the examination upon two occasions shall  
33 be ineligible for a similar examination until after the ex-  
34 piration of one full year from the time such individual  
35 took the last examination and then only upon making  
36 application as in the first instance.

37 (c) If the applicant is a partnership, association or  
38 corporation said examination shall be submitted to on  
39 behalf of said partnership, association or corporation by  
40 the member or officer thereof who is designated in the  
41 application as the person to receive a license by virtue of

42 the issuing of a license to the partnership, association or  
43 corporation.

44 (d) Upon satisfactorily passing such examination and  
45 upon complying with all other provisions of law and con-  
46 ditions of this act a license shall thereupon be issued to  
47 the successful applicant and upon receiving such license  
48 is authorized to conduct the business of a real estate  
49 broker or real estate salesman in this state.

Sec. 8. *Place of Business.*—Every person, partnership,  
2 association or corporation licensed as a real estate broker  
3 shall be required to have and maintain a definite place of  
4 business within this state, which shall be a room or rooms  
5 used for the transaction of the real estate business, or  
6 such business and any allied business. The certificate of  
7 registration as broker and the certificate of each real  
8 estate salesman employed by such broker shall be prom-  
9 inently displayed in said office. The said place of business  
10 shall be designated in the license, and no license issued  
11 under the authority of this act shall authorize the licensee  
12 to transact business at any other address. In case of re-  
13 moval from the designated address, the licensee shall

14 make application to the commission before said removal  
15 or within ten days after said removal, designating the new  
16 location of such office, whereupon the commission shall  
17 forthwith issue a new license for the new location for the  
18 unexpired period, if said new location is satisfactory, upon  
19 return to the commission of the license previously issued.

20 (a) Each and every branch office owned or operated  
21 by a duly licensed broker shall be supervised and oper-  
22 ated by a licensed broker or licensed salesman.

23 (b) All licenses issued to real estate salesmen shall  
24 designate the employer of such salesman. Prompt notice  
25 in writing, within ten days, shall be given to the commis-  
26 sion by any real estate salesman of a change of employer,  
27 and of the licensed broker into whose employ the sales-  
28 man is about to enter, and a new license shall thereupon  
29 be issued by the commission to such salesman for the un-  
30 expired term of the original license, upon return to the  
31 commission of the license previously issued. The change  
32 of employer or employment by any licensed real estate  
33 salesman, without notice to the commission, as aforesaid,  
34 shall automatically cancel the license to him theretofore

35 issued. Upon termination of a salesman's employment,  
36 the broker employer shall forthwith return the salesman's  
37 license to the commission for cancellation. It shall be un-  
38 lawful for any real estate salesman to perform any of  
39 the acts contemplated by this act either directly or in-  
40 directly after his employment has been terminated and  
41 license as a salesman has been returned for cancellation  
42 until said license has been reissued by the commission.

Sec. 9. *License Fee.*—The original fee and annual re-  
2 newal fee for each real estate broker's license shall be fifty  
3 dollars if such licensee's place of business is located in a  
4 city having a population of seventy-five hundred or more.  
5 The original fee and annual renewal fee for each real es-  
6 tate broker's license shall be ten dollars if such licensee's  
7 place of business is located in a town having a population  
8 of less than seventy-five hundred.

9 The original fee and annual renewal fee for each real  
10 estate salesman's license shall be twenty-five dollars if  
11 such licensee's place of business is located in a city having  
12 a population of seventy-five hundred or more. The original  
13 fee and annual renewal fee for each real estate salesman's

14 license shall be five dollars if such licensee's place of busi-  
15 ness is located in a town having a population of less than  
16 seventy-five hundred.

17 If any applicant for a real estate broker's or salesman's  
18 license shall fail to pass the required examination, he may  
19 be eligible to take the next or succeeding examination  
20 without payment of an additional fee.

21 (1) It shall be the duty of all persons licensed who prac-  
22 tice as a real estate broker or salesman to register annually  
23 with the commission and to pay for each such annual  
24 registration the fees set forth above. Said application for  
25 renewal of real estate broker's license shall be made to the  
26 commission annually no later than June thirtieth of each  
27 succeeding year.

28 (2) For each additional office or place of business an ad-  
29 ditional annual fee of five dollars shall be collected.

30 (3) For each change of office or place of business, an ad-  
31 ditional fee of one dollar shall be collected.

32 (4) For each duplicate or transfer of salesman's license,  
33 an additional fee of one dollar shall be collected.

34 (5) For each duplicate license where the original license  
35 is lost or destroyed and affidavit made thereof, a fee of two  
36 dollars shall be collected.

Sec. 10. *Real Estate License Fund.*—All fees charged and  
2 collected under this act shall be paid by the executive sec-  
3 retary at least once a month into the treasury of the state  
4 to credit of a fund to be known as the “real estate license  
5 fund”, which is hereby created. All moneys which shall  
6 be paid into the state treasury and credited to the “real  
7 estate license fund” are hereby appropriated to the use of  
8 the commission in carrying out the provisions of the act,  
9 including the payment of salaries and expenses and the  
10 printing of an annual directory of licensees and for educa-  
11 tional purposes.

12 (a) The amount paid to or expended by the commission  
13 shall not exceed the revenues derived under the provisions  
14 of this article as hereinbefore provided.

Sec. 11. *Grounds for Refusal, Suspension, or Revocation*  
2 *of License.*—The Commission may upon its own motion,  
3 and shall, upon the verified complaint in writing of any  
4 person setting forth a cause of action under this section,

5 ascertain the facts and if warranted hold a hearing for the  
6 suspension or revocation of a license. The commission  
7 shall have full power to refuse a license for reasonable  
8 cause or to revoke or suspend a license where it has been  
9 obtained by false or fraudulent representation, or where  
10 the licensee in performing or attempting to perform any  
11 of the acts mentioned herein, is deemed to be guilty of:

12 (1) Making any substantial misrepresentation, or

13 (2) Making any false promises or representations of  
14 a character likely to influence, persuade, or induce, or

15 (3) Pursuing a continued or flagrant course of mis-  
16 representation, or making of false promises or representa-  
17 tions through agents or salesmen or any medium of ad-  
18 vertising or otherwise, or

19 (4) Any misleading or untruthful advertising, includ-  
20 ing the unauthorized use of the term "realtor" by one not  
21 a member of the national association of real estate boards,  
22 or using any other trade name or insignia of membership  
23 in any real estate organization, of which the licensee is not  
24 a member, or

25 (5) Acting for more than one party in a transaction

26 without the knowledge of all parties for whom he acts, or

27 (6) Failing, within a reasonable time, to account for or  
28 to remit any moneys coming into his possession which be-  
29 long to others, or commingling of moneys belonging to  
30 others with his own funds, or

31 (7) Conviction in a court of competent jurisdiction of  
32 this or any other state of forgery, embezzlement, obtain-  
33 ing money under false pretense, extortion, conspiracy to  
34 defraud or other like offense or offenses, or

35 (8) Of displaying a "for sale" or "for rent" sign on any  
36 property without an agency therefor or without the own-  
37 er's consent, or

38 (9) Of failing to furnish voluntarily copies of all listing  
39 and agreement of sale contracts to all parties executing  
40 the same, or

41 (10) Paying or receiving any rebate, profit, compensa-  
42 tion, or commission from any person other than his prin-  
43 cipal, or

44 (11) Inducing any party to a contract, sale, or lease to  
45 break such contract for the purpose of substituting in lieu

46 thereof a new contract, where such substitution is moti-  
47 vated by the personal gain of the licensee, or

48 (12) Accepting a commission or valuable consideration  
49 as a real estate salesman for the performance of any of the  
50 acts specified in this act, from any person, except his em-  
51 ployer, who must be a licensed real estate broker, or

52 (13) Any act or conduct, whether of the same or a dif-  
53 ferent character than hereinabove specified, which con-  
54 stitutes or demonstrates bad faith, incompetency or un-  
55 trustworthiness, or dishonest, fraudulent, or improper  
56 dealing.

57 (14) Paid a commission or valuable consideration to any  
58 persons for acts or services performed in violation of this  
59 act.

60 (15) The unlawful or unauthorized practice of law as  
61 defined by the supreme court of appeals of West Virginia.

62 (16) Procuring an attorney for any customer or solicit-  
63 ing legal business for any attorney at law.

Sec. 12. *Hearings.*—Upon complaint initiated by the  
2 commission or filed with it, the licensee shall be given  
3 fifteen days notice of hearing upon the charges filed, to-

4 gether with a copy of the complaint. This applicant or  
5 licensee shall have an opportunity to be heard thereon in  
6 person, to offer testimony in his behalf and to examine  
7 the witnesses appearing in connection with the complaint.  
8 At such hearings, all witnesses shall be sworn by a mem-  
9 ber of the commission or the executive secretary, and  
10 stenographic notes of the proceedings shall be taken and  
11 filed as a part of the record in the case. Any party to the  
12 proceedings desiring it shall be furnished with a copy of  
13 such stenographic notes, upon payment to the commission  
14 of such fees as it shall prescribe, not exceeding, however,  
15 twenty-five cents per one hundred words. The commis-  
16 sion shall render a decision on any complaint and shall  
17 immediately notify the parties to the proceedings in writ-  
18 ing of its ruling, order, or decision.

Sec. 13. *Appeal.*—Any applicant or licensee, or person  
2 aggrieved, shall have the right of appeal from any ad-  
3 verse ruling, order, or decision of the commission to the  
4 circuit court of the county where the hearing was held,  
5 within thirty days from the service of notice of the action  
6 of the commission upon the parties in interest.

7 (a) Notice of appeal shall be filed in the office of the  
8 clerk of the circuit court wherein the hearing was held,  
9 who shall issue a writ of certiorari directed to the com-  
10 mission, commanding it, within ten days after service  
11 thereof, to certify to such court, its entire record in the  
12 matter in which the appeal has been taken. The appeal  
13 shall thereupon be heard, in due course, by said court,  
14 which shall review the record and make its determination  
15 of the cause between the parties.

16 (b) Any order, rule, or decision of the commission  
17 shall not take effect until after the time for appeal to said  
18 court shall have expired. In event an appeal is taken by  
19 a licensee or applicant, such an appeal shall act as a  
20 supersedeas and the court shall dispose of said appeal and  
21 enter its decision promptly.

22 (c) Any person taking an appeal shall post a satisfac-  
23 tory bond in the amount of two hundred dollars for the  
24 payment of any costs which may be adjudged against  
25 him.

26 (d) Appeal may be taken from the Circuit Court to the  
27 Supreme Court of Appeals by manner prescribed by law.

Sec. 14. *Real Estate Courses.*—The commission is here-  
2 by authorized to conduct or hold or to assist in conducting  
3 or holding real estate courses or institutes and to incur  
4 and pay the necessary expenses in connection therewith,  
5 which courses or institutes shall be open to any licensee  
6 without any charge or fee.

7 (a) The commission is hereby authorized to assist  
8 libraries, real estate institutes and foundations with finan-  
9 cial aid or otherwise, in providing texts, sponsoring  
10 studies, surveys and programs for the benefit of real estate  
11 and the elevation of the real estate business.

Sec. 15. *Executive Secretary's Bond.*—The executive  
2 secretary appointed by the commission shall give bond in  
3 such sum with such surety as the commission may direct  
4 and approve.

Sec. 16. *Penalties for Violation.*—Any person violating  
2 a provision of this act shall, upon conviction of a first  
3 violation thereof, if a person, be punished by a fine of  
4 not less than one hundred dollars nor more than five  
5 hundred dollars, or by imprisonment for a term not to  
6 exceed ninety days or both; and if a corporation, be pun-

7 ished by a fine of not more than one thousand dollars.  
8 Upon conviction of a second or subsequent violation, if a  
9 person, shall be punished by a fine of not less than five  
10 hundred dollars nor more than one thousand dollars, or by  
11 imprisonment for a term not to exceed one year, or both;  
12 if a corporation, be punished by a fine of not less than  
13 two thousand dollars nor more than five thousand dollars.  
14 Any officer or agent of a corporation, or any member or  
15 agent of a partnership or association, shall be subject to  
16 the penalties herein prescribed for individuals.

Sec. 17. *Actions for Commission.*—No person, partner-  
2 ship, association or corporation shall bring or maintain an  
3 action in any court of this state for the recovery of a com-  
4 mission, a fee, or compensation for any act done or service  
5 rendered, the doing or rendering of which is prohibited  
6 under the provisions of this act to other than licensed  
7 real estate brokers, unless such person was duly licensed  
8 hereunder as a real estate broker at the time of the doing  
9 of such act or the rendering of such service.

10 (a) No real estate salesman shall have the right to  
11 institute suit in his own name for the recovery of a fee,

12 commission, or compensation for the services as a real  
13 estate salesman, but any such action shall be instituted  
14 and brought by the broker employing such salesman:  
15 *Provided, however,* That a real estate salesman shall have  
16 the right to institute suit in his own name for the re-  
17 covery of a fee, commission or compensation for services  
18 as a real estate salesman due him from the broker by  
19 whom he is employed.

20 (b) The revocation of a broker's license shall auto-  
21 matically suspend every real estate salesman's license  
22 granted to any person by virtue of his employment by the  
23 broker whose license has been revoked, pending a change  
24 of employer and the issuance of a new license. Such new  
25 license shall be issued without charge, if granted during  
26 the same year in which the original license was granted.

27 (c) A broker or salesman who obtains a listing shall,  
28 at the time of securing such listing, give the person or  
29 persons signing such listing a true, legible copy thereof.  
30 Every listing agreement, exclusive or nonexclusive, shall  
31 have set forth in its terms a definite expiration date; it  
32 shall contain no provision requiring the party signing

33 such listing to notify the broker of his intention to cancel  
34 such listing after such definite expiration date; however,  
35 an exclusive listing agreement may provide that upon the  
36 expiration of the exclusive feature the listing shall con-  
37 tinue to a definite expiration date as a nonexclusive list-  
38 ing only.

39 (d) A broker or salesman shall promptly tender to the  
40 seller every written offer to purchase obtained on the  
41 property involved and, upon obtaining a proper accept-  
42 ance of the offer to purchase, shall promptly deliver true  
43 executed copies of same, signed by the seller and pur-  
44 chaser, to both purchaser and seller; all brokers and sales-  
45 men shall make certain that all of the terms and condi-  
46 tions of the real estate transaction are included in such  
47 offer to purchase.

Sec. 18. *Trust Fund Account.*—Every person, partner-  
2 ship or corporation holding a broker license under pro-  
3 visions of the real estate license law who does not imme-  
4 diately place all funds entrusted to him by his principal  
5 or others in a neutral escrow depository or in the hands  
6 of principals, shall maintain a trust fund account with

7 some bank or recognized depository and place all such en-  
8 trusted funds therein upon receipt.

9 Said trust fund account shall designate him as trustee  
10 and all such trust fund accounts must provide for with-  
11 drawal of the funds without previous notice.

12 Every broker required to maintain such trust fund ac-  
13 count shall keep records of all funds deposited therein,  
14 which records shall clearly indicate the date and from  
15 whom he received the money, date deposited, date of with-  
16 drawals, and other pertinent information concerning the  
17 transaction, and shall clearly show for whose account the  
18 money is deposited and to whom the money belongs.

19 All such records and funds shall be subject to inspection  
20 by the commission.

Sec. 19. *Rules and Regulations.*—The commission may  
2 act by a majority of the members thereof, and authority  
3 is hereby given to the commission to adopt, fix, and estab-  
4 lish all reasonable, fair and impartial rules and regulations  
5 in its opinion necessary for the conduct of its business, the  
6 holding of hearings before it, and otherwise generally for

7 the enforcement and administration of provisions of this  
8 act.

Sec. 20. *Rights to Examine Books.*—The commission  
2 shall have a right to examine the books and records re-  
3 lating to the real estate business of a broker, if that broker  
4 is charged in a complaint of any violation of this act. Ex-  
5 amination of broker's books and records shall not extend  
6 beyond the specific violation as charged in the complaint.

Sec. 21. *Unconstitutionality; Severance.*—If any section,  
2 sub-section, clause, phrase, or requirement of this act is  
3 for any reason held to be unconstitutional, such decision  
4 shall not affect the validity of the remaining portions. The  
5 Legislature hereby declares that it would have passed this  
6 act, and each section, subsection, sentence, clause, or  
7 phrase and requirement thereof, irrespective of the fact  
8 that any one or more sections, subsections, clauses,  
9 phrases, or requirements be declared unconstitutional.

Sec. 22. *Repeal.*—All acts or parts of acts, including li-  
2 censing acts, inconsistent with this act are hereby re-  
3 pealed. But nothing herein contained shall affect any right  
4 that municipalities may now or hereafter have to tax, li-

5 cense, or regulate persons engaged in the real estate busi-  
6 ness.

Sec. 23. *Saving Clause.*—All licenses issued either to a  
2 real estate broker or real estate salesman preceding the ef-  
3 fective date of this act, shall be valid until June thirtieth,  
4 one thousand nine hundred fifty-nine, in absence of any  
5 reason appearing to the commission to cancel and with-  
6 draw any license issued by it, for violation of any provi-  
7 sions of this act.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

*Wm. Gasper Jr.*  
Chairman Senate Committee

*J. F. Teem*  
~~Chairman~~ House Committee  
MEMBER

Originated in the Senate.

Takes effect *July 1, 1959* passage.

*J. B. Moore Myers*  
Clerk of the Senate

*C. A. Blankenship*  
Clerk of the House of Delegates

*Ralph J. Bean*  
President of the Senate

*H. R. Paulley*  
Speaker House of Delegates

The within *approved* this the *25th*  
day of *February*, 1959.

*Earl Underwood*  
Governor