

RECEIVED

1993 MAY 12 PM 4: 17

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1993



ENROLLED

Committee Substitute for
SENATE BILL NO. 54

(By Senator Wooten)



PASSED April 9, 1993

In Effect 90 days from Passage

E N R O L L E D

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 54

(SENATOR WOOTON, *original sponsor*)

[Passed April 9, 1993; in effect ninety days from passage.]

AN ACT to amend and reenact sections one, two, three, four, five, six, seven, seven-a, eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, seventeen, eighteen and twenty-three, article twelve, chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the real estate brokers licensing; changing compensation of commission members; changing secretary to director; requiring continuing legal education to be real estate related; changing fees; adding violations; amending purchase agreements; and requiring education to have been completed during preceding five years.

Be it enacted by the Legislature of West Virginia:

That sections one, two, three, four, five, six, seven, seven-a, eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, seventeen, eighteen and twenty-three, article twelve, chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

**ARTICLE 12. REAL ESTATE COMMISSION, BROKERS AND SALES-
PERSONS.**

**§47-12-1. Title of article; broker's or salesperson's license
required.**

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

§47-12-2. Definitions and exceptions.

1 (a) The term "real estate broker" within the mean-
2 ing of this article includes all persons, partnerships,
3 associations and corporations, foreign and domestic,
4 who for a fee, commission or other valuable consider-
5 ation or who with the intention or expectation of
6 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,
9 or who negotiates or attempts to negotiate any such
10 activity; or who advertises or holds himself, herself,
11 itself or themselves out as engaged in such activities;
12 or who directs or assists in the procuring of a purchas-
13 er or prospect calculated or intended to result in a real
14 estate transaction. The term "real estate broker" shall
15 also include any person, partnership, association or
16 corporation employed by or on behalf of the owner or
17 owners of lots, or other parcels of real estate, at a
18 stated salary or upon a fee, commission or otherwise
19 to sell such real estate, or any parts thereof, in lots or
20 other parcels, and who shall sell, manage, exchange,
21 lease, offer, attempt or agree to negotiate the sale,
22 exchange or lease of any such lot or parcel of real
23 estate.

24 (b) The term "real estate" as used in this article
25 includes leaseholds as well as any and every interest
26 or estate in land, whether corporeal or incorporeal,
27 freehold or nonfreehold, and whether said property is
28 situated in this state or elsewhere.

29 (c) The term "associate broker" means any person
30 who for compensation or other valuable consideration
31 is employed by a broker to perform all the functions
32 authorized by a broker's license only for and on behalf
33 of such employing broker including, but not limited to,
34 authority to supervise other salespersons employed by
35 a broker and manage an office on behalf of a broker.

36 (d) The term "real estate salesperson" means and
37 includes any person employed or engaged by or on
38 behalf of a licensed real estate broker to do or deal in
39 any activity as included in this section, for compensa-
40 tion or otherwise.

41 (e) One act in consideration of or with the expect-
42 ation or intention of or upon the promise of receiving
43 compensation by fee, commission or otherwise, in the
44 performance of any act or activity contained in this
45 section, constitutes such persons, partnerships, asso-
46 ciation or corporation, a real estate broker and make
47 him or her, them or it subject to the provisions and
48 requirements of this article.

49 (f) The term "real estate broker" or "real estate
50 salesperson" shall not include any person, partnership,
51 association or corporation, who, as a bona fide owner
52 or lessor, performs any aforesaid act:

53 (1) With reference to property owned or leased by
54 him or her to the regular employees thereof, where
55 such acts are performed in the regular course of or as
56 an incident to the management of, such property and
57 the investment therein;

58 (2) Nor shall this article be construed to include
59 attorneys-at-law, except that attorneys-at-law shall be
60 required to submit to the written examination
61 required under section seven of this article in order to
62 qualify for a broker's license: *Provided*, That an

63 attorney-at-law who is licensed as a real estate broker
64 prior to the effective date of this section is exempt
65 from the written examination required under section
66 seven of this article;

67 (3) Nor any person holding in good faith a duly
68 executed power of attorney from the owner authoriz-
69 ing the final consummation and execution for the sale,
70 purchase, lease or exchange of real estate;

71 (4) Nor to the acts of any person while acting as a
72 receiver, trustee, administrator, executor, guardian, or
73 under the order of any court or while acting under
74 authority of a deed of trust or will;

75 (5) Nor shall this article apply to public officers
76 while performing their duties as such;

77 (6) Nor shall this article apply to the acquisition or
78 disposition of coal, oil or gas leasehold or coal, oil or
79 gas interests.

**§47-12-3. Commission created; powers generally; member-
ship; appointment and removal of members;
qualifications; terms; organization; salaries
and expenses; executive director and assist-
ants; seal; admissibility of and inspection of
records; termination of commission.**

1 There shall be a commission known as the "West
2 Virginia Real Estate Commission", which commission
3 shall be a corporation and as such may sue and be
4 sued, may contract and be contracted with and shall
5 have a common seal. The commission shall consist of
6 three persons to be appointed by the governor by and
7 with the advice and consent of the Senate. Two of
8 such appointees each shall have been a resident and a
9 citizen of this state for at least six years prior to his or
10 her appointment and whose vocation for at least ten
11 years shall have been that of a real estate broker or
12 real estate salesperson and the third shall be a repre-
13 sentative of the public generally. Members in office on
14 the date this section becomes effective shall continue
15 in office until their respective terms expire. The term
16 of the members of said commission shall be for four

17 years and until their successors are appointed and
18 qualify. No more than two members of such commis-
19 sion shall belong to the same political party. No
20 member shall be a candidate for or hold any other
21 public office or be a member of any political commit-
22 tee while acting as such commissioner. In case any
23 commissioner be a candidate for or hold any other
24 public office or be a member of any political commit-
25 tee, his or her office as such commissioner shall ipso
26 facto be vacated. Members to fill vacancies shall be
27 appointed by the governor for the unexpired term. No
28 member may be removed from office by the governor
29 except for official misconduct, incompetency, neglect
30 of duty, gross immorality or other good cause shown
31 and then only in the manner prescribed by law for the
32 removal by the governor of state elective officers. The
33 governor shall designate one member of the commis-
34 sion as the chairman thereof and the members shall
35 choose one of the members thereof as secretary. Two
36 members of the commission shall constitute a quorum
37 for the conduct of official business.

38 (a) The commission shall do all things necessary and
39 convenient for carrying into effect the provisions of
40 this article and may from time to time promulgate
41 reasonable, fair and impartial rules and regulations in
42 accordance with the provisions of article three, chap-
43 ter twenty-nine-a of this code. The board shall pay
44 each member the same compensation as is paid to
45 members of the Legislature for their interim duties as
46 recommended by the citizens legislative compensation
47 commission and authorized by law for each day or
48 portion thereof engaged in the discharge of official
49 duties and shall reimburse each member for actual
50 and necessary expenses incurred in the discharge of
51 official duties.

52 (b) The commission shall employ an executive
53 director and such clerks, investigators and assistants as
54 it shall deem necessary to discharge the duties
55 imposed by the provisions of this article and to effect
56 its purposes, and the commission shall determine the
57 duties and fix the compensation of such executive

58 director, clerks, investigators and assistants, subject to
59 the general laws of the state.

60 (c) The commission shall adopt a seal by which it
61 shall authenticate its proceedings. Copies of all records
62 and papers in the office of the commission, duly
63 certified and authenticated by the seal of said commis-
64 sion, shall be received in evidence in all courts equally
65 and with like effect as the original. All records kept in
66 the office of the commission under authority of this
67 article shall be open to public inspection under
68 reasonable rules and regulations as shall be prescribed
69 by the commission.

70 (d) After having conducted a performance and fiscal
71 audit through its joint committee on government
72 operations, pursuant to section nine, article ten,
73 chapter four of this code, the Legislature hereby finds
74 and declares that the West Virginia real estate com-
75 mission should be continued and reestablished.
76 Accordingly, notwithstanding the provisions of section
77 four of said article, the West Virginia real estate
78 commission shall continue to exist until the first day
79 of July, one thousand nine hundred ninety-four.

§47-12-4. Qualifications for licenses.

1 (1) Licenses shall be granted only to persons who are
2 trustworthy, of good character and competent to
3 transact the business of a real estate broker or real
4 estate salesperson in such manner as to safeguard the
5 interests of the public. Every applicant for a license as
6 a real estate broker shall be of the age of eighteen
7 years or over, a citizen of the United States and shall
8 have served a bona fide apprenticeship as a licensed
9 real estate salesperson for two years or shall produce
10 to the real estate commission satisfactory evidence of
11 real estate experience. No broker's license shall be
12 issued to a partnership, association or corporation
13 unless each member or officer thereof who will
14 actively engage in the real estate business be licensed
15 as a real estate salesperson or associate broker, when
16 and after said broker shall have been granted a
17 broker's license.

18 (2) A broker's or salesperson's license may be issued
19 to any person who is either a high school graduate or
20 the holder of a certificate of high school equivalency.

21 (3) Applicants for a broker's license shall show
22 evidence satisfactory to the commission that they have
23 completed at least one hundred eighty clock-hours
24 (twelve credit hours) of formal instruction in a real
25 estate course or courses approved by the commission.
26 Such courses must cover real estate principles, real
27 estate law, real estate appraising and real estate
28 finance and such other topics approved by the com-
29 mission. Any applicant for a broker's license who is
30 licensed as a salesperson at the time a broker's
31 application is submitted to the commission, shall only
32 be required to show evidence satisfactory to the
33 commission that they have completed the additional
34 ninety clock-hours (six credit hours) of formal instruc-
35 tion in a real estate course or courses approved by the
36 commission. The applicant shall satisfactorily pass an
37 examination or examinations covering the material
38 taught in each such course.

39 (4) Applicants for a salesperson's license shall show
40 evidence satisfactory to the commission that they have
41 completed at least ninety clock-hours (six credit hours)
42 of formal instruction in a real estate course or courses
43 approved by the commission. Such courses must cover
44 real estate principles, real estate law, real estate
45 appraising and real estate finance, and such other
46 topics approved by the commission. The applicant shall
47 satisfactorily pass an examination covering the mate-
48 rial taught in each such course.

49 (5) Effective the first day of July, one thousand nine
50 hundred ninety-four, any applicant for either a bro-
51 ker's or salesperson's license must have completed the
52 required education course or courses during the five
53 year period preceding the date of application.

54 (6) Subsections (3) and (4) of this section do not apply
55 to any applicant who holds a valid broker's or sales-
56 person's license issued prior to the first day of July,
57 one thousand nine hundred eighty. Each such appli-

58 cant shall complete at least ninety clock-hours (six
59 credit hours) of instruction as specified in subsection
60 (3) of this section if he or she has not completed the
61 broker's examination required under section seven of
62 this article by the first day of July, one thousand nine
63 hundred eighty-two.

64 (7) The commission, pursuant to this section, shall
65 publish a list of real estate courses which are approved
66 and shall update such list yearly. Additionally, the
67 commission shall, on request of any person, evaluate a
68 specific course or courses which are not on the
69 approved list and approve or disapprove such course
70 or courses promptly and in writing.

§47-12-5. Applications for licenses.

1 Every applicant for a real estate broker's license
2 shall apply therefor in writing upon blanks prepared
3 by the commission which shall contain such data and
4 information as the commission shall require.

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

15 (b) Every applicant for a salesperson's license shall
16 apply therefor in writing upon blanks prepared by the
17 commission which shall contain such data and infor-
18 mation as the commission may require. The applica-
19 tion shall be accompanied by a sworn statement by the
20 broker in whose employ the applicant desires to enter,
21 certifying that, in his or her opinion, the applicant is
22 honest and trustworthy, and recommending the
23 license be granted to the applicant.

**§47-12-6. Licensing nonresidents; reciprocity; consent to
service of process, etc.; manner of service;
judgment by default; bond.**

1 A nonresident of this state may become a real estate
2 broker by conforming to all the provisions of this
3 article, except that such nonresident broker regularly
4 engaged in the real estate business as a vocation and
5 who maintains a definite place of business and is
6 licensed in some other state, which offers the same
7 privileges to the licensed brokers of this state, shall not
8 be required to maintain a place of business in this
9 state. The commission shall recognize the license
10 issued to a real estate broker or salesperson by another
11 state as satisfactorily qualifying him or her for license
12 as a broker or salesperson: *Provided*, That said nonres-
13 ident broker or salesperson has qualified for license in
14 his or her own state by written examination and also
15 that said other state permits license to be issued to
16 licensed brokers or salespersons in this state without
17 examination. Every nonresident applicant shall file an
18 irrevocable written consent that suits and actions may
19 be commenced against such applicant in the proper
20 court of any county of the state in which a cause of
21 action growing out of a real estate transaction may
22 arise, in which the plaintiff may reside, by the service
23 of any process or pleading authorized by the laws of
24 this state, on any member of the commission, or the
25 executive director, said consent stipulating and agree-
26 ing that such service of such process or pleading shall
27 be taken and held in all courts to be as valid and
28 binding as if due service had been made upon said
29 applicant in this state. Said consent shall be duly
30 acknowledged and if made by a corporation shall be
31 authenticated by the seal of such corporation. Any
32 service of process or pleading shall be by duplicate
33 copies, one of which shall be filed in the office of the
34 commission and the other immediately forwarded by
35 registered mail to the last-known main office of the
36 applicant against whom said process or pleading is
37 directed; and no default in any such proceeding or
38 action shall be taken except upon certification of the
39 commission or the executive director that a copy of
40 said process or pleading was mailed to the defendant
41 as herein required; and no judgment by default shall
42 be taken in any such action or proceeding until after

43 twenty days from the date of mailing of such process
44 or pleading to the nonresident defendant.

45 (a) Before a license as a real estate broker shall be
46 issued to any person who does not have his or her
47 principal place of business in the state of West Virgin-
48 ia, he or she shall file with the commission a bond in
49 the penalty of two thousand dollars, in form and with
50 security to be approved by the commission and condi-
51 tioned so as to be for the benefit of and to indemnify
52 any person in the state who may have any cause of
53 action against the principal.

54 (b) Before a license as a real estate salesperson shall
55 be issued to any person who is not a bona fide resident
56 of this state, whether he or she be an employee of a
57 resident or a nonresident real estate broker, such
58 applicant shall file with the commission a bond such as
59 is herein required to be filed by a nonresident broker.

**§47-12-7. Written examinations required; exceptions;
requirements for reissuance of revoked
license; reexamination after failure; exami-
nation where applicant a partnership, etc.;
issuance of license.**

1 In addition to proof of honesty, trustworthiness, good
2 character and good reputation of any applicant for a
3 license, the applicant shall submit to a written exam-
4 ination to be conducted by the commission which shall
5 include reading, writing, spelling, elementary arithme-
6 tic, a general knowledge of the statutes of this state
7 relating to real property, deeds, mortgages, agree-
8 ments of sale, agency contract, leases, ethics, appraisals
9 and the provisions of this article: *Provided*, That any
10 person who has been actively engaged in the real
11 estate business as a real estate broker or real estate
12 salesperson within the year preceding the effective
13 date of this article and is thus engaged in this state at
14 the time this article goes into effect, may secure a
15 license as a real estate broker or a salesperson without
16 an examination: *Provided, however*, That such person
17 shall make application to the commission for registra-
18 tion within ninety days after the effective date of this

19 article. The examination for a broker's license shall
20 differ from the examination for a salesperson's license
21 in that it shall be of a more exacting nature and
22 require higher standards of knowledge of real estate.
23 The commission shall conduct examinations at such
24 times and places as it shall determine.

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

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

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

46 (d) Upon satisfactorily passing such examination and
47 upon complying with all other provisions of law and
48 conditions of this article a license shall thereupon be
49 issued to the successful applicant and upon receiving
50 such license is authorized to conduct the business of a
51 real estate broker or real estate salesperson in this
52 state. A person who has qualified for a real estate
53 license as provided above is considered to be a profes-
54 sional in his or her trade.

§47-12-7a. Continuing education; license renewal.

1 In addition to other provisions of this article, begin-
2 ning the first day of July, one thousand nine hundred

3 ninety, and every year thereafter, every real estate
4 broker and salesperson shall complete seven actual
5 hours of continuing education, with each hour equal-
6 ing fifty minutes of instructions. The commission shall
7 establish the continuing education program by rules
8 and shall approve all courses, seminars and lectures:
9 *Provided*, That real estate related continuing legal
10 education courses approved by the West Virginia state
11 bar shall be approved by the commission. If approved
12 in advance by the real estate commission, correspon-
13 dence courses and audio or video tapes may be used to
14 satisfy the continuing education requirement.

15 Upon application for renewal of a real estate license
16 in each year following one thousand nine hundred
17 ninety, such real estate broker or salesperson must
18 furnish satisfactory evidence, as established by the
19 commission, that he or she has completed the required
20 number of continuing education hours: *Provided*, That
21 a real estate broker or salesperson holding a license on
22 the first day of July, one thousand nine hundred sixty-
23 nine, and continuously thereafter, shall be exempt
24 from continuing education requirements. When a real
25 estate broker or salesperson in an inactive status
26 reverts to an active status, he or she will obtain seven
27 hours continuing education each year without being
28 required to complete additional hours of education
29 resulting from his or her inactive status.

**§47-12-8. Place of business; display of certificates of registra-
tion; notice of change of address; branch
offices; change of employer or employment
by real estate salespersons.**

1 Every person, partnership, association or corporation
2 licensed as a real estate broker shall be required to
3 have and maintain a definite place of business within
4 this state, which shall be a room or rooms used for the
5 transaction of the real estate business, or such business
6 and any allied business. The certificate of registration
7 as broker and the certificate of each real estate
8 salesperson employed by such broker shall be promi-
9 nently displayed in said office. The said place of
10 business shall be designated in the license and no

11 license issued under the authority of this article shall
12 authorize the licensee to transact business at any other
13 address. In case of removal from the designated
14 address, the licensee shall make application to the
15 commission before said removal or within ten days
16 after said removal, designating the new location of
17 such office, whereupon the commission shall forthwith
18 issue a new license for the new location for the
19 unexpired period, if said new location is satisfactory,
20 upon return to the commission of the license previous-
21 ly issued.

22 (a) Each and every branch office owned or operated
23 by a duly licensed broker shall be supervised and
24 operated by a licensed broker or licensed salesperson.

25 (b) All licenses issued to a real estate salesperson
26 shall designate the employer of such salesperson.
27 Prompt notice in writing, within ten days, shall be
28 given to the commission by any real estate salesperson
29 of a change of employer, and of the licensed broker
30 into whose employ the salesperson is about to enter,
31 and a new license shall thereupon be issued by the
32 commission to such salesperson for the unexpired
33 term of the original license, upon return to the
34 commission of the license previously issued. The
35 change of employer or employment by any licensed
36 real estate salesperson, without notice to the commis-
37 sion, as aforesaid, shall automatically cancel the
38 license to him or her theretofore issued. Upon termi-
39 nation of salesperson's employment, the broker
40 employer shall forthwith return the salesperson's
41 license to the commission for cancellation. It shall be
42 unlawful for any real estate salesperson to perform
43 any of the acts contemplated by this article either
44 directly or indirectly after his or her employment has
45 been terminated and license as a salesperson has been
46 returned for cancellation until said license has been
47 reissued by the commission.

**§47-12-9. License fees, annual registration; fee for additional
offices, charge for change of location and for
duplicate or transfer of license.**

1 To pay for the maintenance and operation of the
2 office of the commission and the enforcement of this
3 article, the commission shall charge the following fees:

4 (a) Examination fee — twenty-five dollars, with no
5 additional fee for second examination.

6 (b) Investigation fee — ten dollars.

7 (c) Broker's license — eighty dollars.

8 (d) Salesperson's license — forty dollars.

9 (e) Broker's renewal fee — eighty dollars, payable
10 by the thirtieth day of June of each year.

11 (f) Salesperson's renewal fee — forty dollars, pay-
12 able by the thirtieth day of June of each year.

13 (g) Branch office fee — eighty dollars.

14 (h) Renewal of branch office license — eighty
15 dollars.

16 (i) Transfer of salesperson's license — ten dollars.

17 (j) Duplicate license or certification — ten dollars.

18 (k) Change of name — ten dollars.

19 (l) Change of office — ten dollars.

20 Willful failure to pay any of the fees is just cause for
21 revocation of or refusal to issue or renew a license.

**§47-12-10. Disposition of fees; real estate license fund;
expenditures by commission.**

1 All fees charged and collected under this article shall
2 be paid by the executive director at least once a month
3 into the treasury of the state to credit of a fund to be
4 known as the "real estate license fund", which is
5 hereby created. All moneys which shall be paid into
6 the state treasury and credited to the "real estate
7 license fund" are hereby appropriated to the use of
8 the commission in carrying out the provisions of this
9 article, including the payment of salaries and expenses
10 and the printing of an annual directory of licensees
11 and for educational purposes.

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

**§47-12-11. Procedure and grounds for refusal, suspension or
revocation of license.**

1 The commission may upon its own motion and shall,
2 upon the verified complaint in writing of any person
3 setting forth a cause of action under this section,
4 ascertain the facts and if warranted hold a hearing for
5 the suspension or revocation of a license. The commis-
6 sion shall have full power to refuse a license for
7 reasonable cause or to revoke or suspend a license if
8 the licensee:

9 (1) Obtains, renews or attempts to obtain or renew
10 a license through the submission of any application or
11 other writing that contains false or fraudulent
12 information;

13 (2) Makes any substantial misrepresentation;

14 (3) Makes any false promises or representations of
15 character likely to influence, persuade or induce a
16 person involved in a real estate transaction;

17 (4) Pursues a continued or flagrant course of misrep-
18 resentation or makes false promises or representations
19 through agents or salespersons or any medium of
20 advertising or otherwise;

21 (5) Uses misleading or false advertising or uses any
22 trade name or insignia of membership in any real
23 estate organization, in which the licensee is not a
24 member;

25 (6) Acts for more than one party in a transaction
26 without the knowledge of all parties for whom he or
27 she acts;

28 (7) Fails, within a reasonable time, to account for or
29 to remit any moneys coming into his or her possession
30 belonging to others, or commingles moneys belonging
31 to others with his or her own funds;

32 (8) Displays a "for sale" or "for rent" sign on any

33 property without an agency therefor or without the
34 owner's consent;

35 (9) Fails to disclose in writing to all parties to a real
36 estate transaction, on the form promulgated by the
37 commission, whether the licensee is representing the
38 seller, the buyer or both;

39 (10) Fails to voluntarily furnish copies of a notice of
40 agency disclosure, and all listing agreements, sales
41 contracts, and lease agreements to all parties executing
42 the same;

43 (11) Pays or receives any rebate, profit, compensa-
44 tion or commission as a result of a real estate transac-
45 tion from any person other than his or her principal;

46 (12) Induces any party to a contract, sale or lease to
47 enter into another contract, in lieu thereof, for the
48 personal gain of the licensee;

49 (13) Accepts a commission or other valuable consid-
50 eration as a real estate salesperson for the perfor-
51 mance of any of the acts specified in this article, from
52 any person, other than his or her employer, who must
53 be a licensed real estate broker;

54 (14) Pays a commission or other valuable consider-
55 ation to any person for acts or services performed
56 either in violation of this article or the real estate
57 licensure laws of any other state;

58 (15) Engages in the unlawful or unauthorized prac-
59 tice of law as defined by the supreme court of appeals
60 of West Virginia;

61 (16) Procures an attorney for any customer or
62 solicits legal business for any attorney-at-law;

63 (17) Engages in any act or conduct which constitutes
64 or demonstrates bad faith, incompetency or untrust-
65 worthiness, or dishonest, fraudulent or improper
66 dealing;

67 (18) Has been convicted in a court of competent
68 jurisdiction in this or in any other state of forgery,
69 embezzlement, obtaining money under false pretense,

70 extortion, conspiracy to defraud or of any other like
71 offense; or

72 (19) Has been convicted in a court of competent
73 jurisdiction in this or any other state of a felony.

74 As used in this section:

75 (1) The words "convicted in a court of competent
76 jurisdiction" mean a plea of guilty or nolo contendere
77 entered by a person or a verdict of guilt returned
78 against a person at the conclusion of a trial;

79 (2) A certified copy of a guilty verdict or plea
80 entered in such court is sufficient evidence to demon-
81 strate a person has been convicted in a court of
82 competent jurisdiction.

§47-12-12. Notice of hearing on complaint; conduct of hearing.

1 Upon complaint initiated by the commission or filed
2 with it, the licensee shall be given ten days' written
3 notice of hearing upon the charges filed, together with
4 a copy of the complaint. The applicant or licensee shall
5 have an opportunity to be heard thereon in person, to
6 offer testimony in his or her behalf and to examine
7 the witnesses, appearing in connection with the
8 complaint. The hearing shall be conducted in accor-
9 dance with the provisions of article five, chapter
10 twenty-nine-a of this code, and all rights, procedures
11 and duties contained therein shall be observed.

§47-12-13. Appeals.

1 Any applicant or licensee, or person aggrieved, shall
2 have the right of appeal from any adverse ruling,
3 order, or decision of the commission to the circuit
4 court of the county where the hearing was held within
5 thirty days from the service of notice of the action of
6 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
9 held, who shall issue a writ of certiorari directed to
10 the commission, commanding it, within ten days after
11 service thereof, to certify to such court, its entire

12 record in the matter in which the appeal has been
13 taken. The appeal shall thereupon be heard, in due
14 course, by said court, which shall review the record
15 and make its determination of the cause between the
16 parties.

17 (b) In the event an appeal is taken by a licensee or
18 applicant, such an appeal shall not stay enforcement of
19 the commission's order or decision or act as a super-
20 sedeas thereof unless otherwise ordered by the circuit
21 court.

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

26 (d) Appeal may be taken from the circuit court to
27 the supreme court of appeals by manner prescribed by
28 law.

**§47-12-14. Real estate courses for licensees; assisting studies,
surveys, etc.**

1 (a) The commission is authorized to conduct or hold
2 or to assist in conducting or holding real estate courses
3 or institutes. The commission may incur and pay the
4 necessary expenses in connection therewith. Such
5 courses or institutes are open to any licensee.

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

11 (c) The commission may provide correspondence
12 courses for applicants for brokers' and salespersons'
13 licenses sufficient to meet the educational require-
14 ments contained in subsections (3) and (4), section four
15 of this article as an alternative means of meeting said
16 educational requirements.

§47-12-15. Executive director's bond.

1 The executive director appointed by the commission
2 shall give bond in such sum with surety as the

3 commission may direct and approve.

**§47-12-17. Actions for commissions; revocation of broker's
license as suspending salesperson's licenses;
listing agreements; broker or salesperson to
disclose agency status; purchase agreements.**

1 No person, partnership, association or corporation
2 shall bring or maintain an action in any court of this
3 state for the recovery of a commission, a fee or
4 compensation for any act done or service rendered,
5 the doing or rendering of which is prohibited under
6 the provisions of this article to other than licensed real
7 estate brokers, unless such person was duly licensed
8 hereunder as a real estate broker at the time of the
9 doing of such act or the rendering of such service.

10 (a) No real estate salesperson shall have the right to
11 institute suit in his or her own name for the recovery
12 of a fee, commission or compensation for the services
13 as a real estate salesperson, but any such action shall
14 be instituted and brought by the broker employing
15 such salesperson: *Provided*, That a real estate salesper-
16 son shall have the right to institute suit in his or her
17 own name for the recovery of a fee, commission or
18 compensation for services as a real estate salesperson
19 due him or her from the broker by whom he or she
20 is employed.

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

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

36 broker of his or her intention to cancel such listing
37 after such definite expiration date: *Provided*, That an
38 exclusive listing agreement may provide that upon the
39 expiration of the exclusive feature the listing shall
40 continue to a definite expiration date as a nonexclu-
41 sive listing only. No provision shall be inserted in any
42 listing agreement which would obligate the person,
43 partnership, association or corporation signing such
44 listing to pay a commission or other valuable consid-
45 eration to the broker after such expiration date if the
46 property is then listed by a different broker: *Provided*,
47 *however*, That if there is a currently enforceable offer
48 to purchase pending on the listed property at the time
49 of the listing's expiration, the first broker may still be
50 entitled to a commission or other valuable
51 consideration.

52 (d) A broker or salesperson shall promptly, or at
53 least prior to any purchaser signing a written offer to
54 purchase, disclose in writing to all parties to a real
55 estate transaction, on a form promulgated by the
56 commission, whether the broker or salesperson repre-
57 sents the seller, the buyer, or both.

58 (e) A broker or salesperson shall promptly tender to
59 the seller every written offer to purchase obtained on
60 the property involved and, upon obtaining a proper
61 acceptance of the offer to purchase, shall promptly
62 deliver true executed copies of same, signed by the
63 seller and purchaser, to both purchaser and seller; all
64 brokers and salespersons shall make certain that all of
65 the terms and conditions of the real estate transaction
66 are included in such offer to purchase.

§47-12-18. Trust fund accounts; records.

1 Every person, partnership or corporation holding a
2 broker's license under provisions of the real estate
3 license law who does not immediately place all funds
4 entrusted to him or her by his or her principal or
5 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
8 entrusted funds therein upon receipt.

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

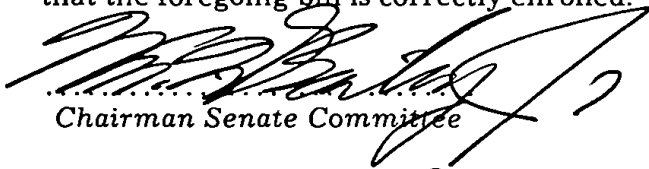
12 Every broker required to maintain such trust fund
13 account shall keep records of all funds deposited
14 therein, which records shall clearly indicate the date
15 and from whom he or she received the money, date
16 deposited, date of withdrawals and other pertinent
17 information concerning the transaction,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

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

§47-12-23. Duration of existing licenses.

1 All licenses issued either to a real estate broker or
2 real estate salesperson preceding the effective date of
3 this article, shall be valid until the thirtieth day of
4 June, one thousand nine hundred fifty-nine, in
5 absence of any reason appearing to the commission to
6 cancel and withdraw any license issued by it, for
7 violation of any provisions of this article.

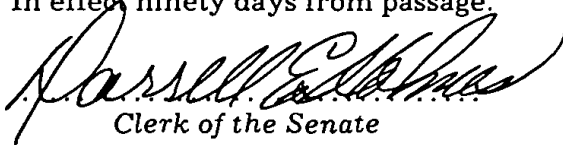
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

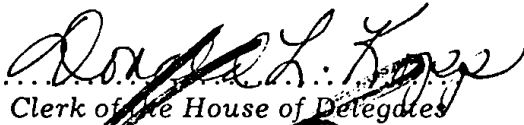

.....
Chairman Senate Committee

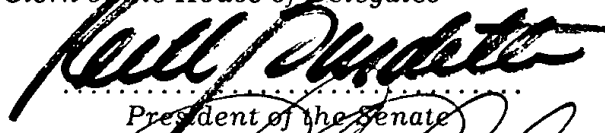
.....Ernest C. Moore.....
Chairman House Committee

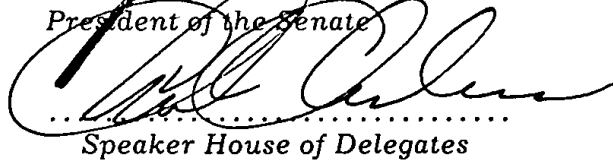
Originated in the Senate.

In effect ninety days from passage.

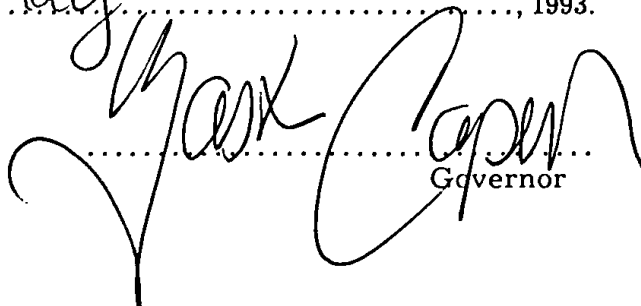

.....
Clerk of the Senate


.....
Clerk of the House of Delegates


.....
President of the Senate


.....
Speaker House of Delegates

The within is approved this the 12th
May
day of, 1993.


.....
Governor

PRESENTED TO THE

GOVERNOR

Date 4/27/03

Time 3:40 pm