

SENATE BILL 176

Introduced by B. Brown

1/22	Introduced
1/23	Referred to Business & Industry
1/23	First Reading
1/30	Fiscal Note Requested
1/31	Hearing
2/04	Fiscal Note Received
2/04	Fiscal Note Printed
2/06	Committee Report--Bill Passed as Amended
2/09	2nd Reading Do Pass Motion Failed
2/09	2nd Reading Indefinitely Postponed

1 Senate BILL NO. 176  
 2 INTRODUCED BY Bob Brown  
 3 BY REQUEST OF THE DEPARTMENT OF COMMERCE

4  
 5 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR LICENSURE  
 6 AND REGULATION OF PROPERTY MANAGERS AND LEASING AGENTS;  
 7 ALLOWING A PERSON TO BECOME LICENSED AS A PROPERTY MANAGER  
 8 OR LEASING AGENT UNDER QUALIFICATIONS OTHER THAN THOSE  
 9 REQUIRED OF A REAL ESTATE BROKER; ALLOWING LICENSED REAL  
 10 ESTATE BROKERS TO ACT AS PROPERTY MANAGERS WITHOUT SECURING  
 11 AN ADDITIONAL LICENSE; AND AMENDING SECTIONS 37-51-102,  
 12 37-51-103, 37-51-301, 37-51-302, 37-51-303, 37-51-305,  
 13 37-51-306, 37-51-308, 37-51-309, 37-51-312, 37-51-321,  
 14 37-51-322, 37-51-323, AND 37-51-401, MCA."

15  
 16 WHEREAS, the Legislature of the State of Montana finds  
 17 that a person who manages real estate for rent or lease for  
 18 others is presently required to be licensed as and meet the  
 19 qualifications of a real estate broker; and

20 WHEREAS, the Legislature finds that the qualifications  
 21 for licensure as a real estate broker include and  
 22 concentrate on experience and knowledge in sales of real  
 23 estate for others; and

24 WHEREAS, the Legislature finds that persons who manage  
 25 real estate for rent or lease for others are not involved in

1 the sales of real estate for others.  
 2 THEREFORE, the Legislature finds it appropriate to allow  
 3 persons who manage real estate for rent or lease for others  
 4 to become licensed under qualifications other than those  
 5 presently required of a real estate broker or salesman and  
 6 to continue to allow real estate brokers to manage real  
 7 estate for rent or lease for others without an additional  
 8 license.

9  
 10 STATEMENT OF INTENT  
 11 A statement of intent is required for this bill because  
 12 it delegates rulemaking authority to the board of realty  
 13 regulation to provide for the licensure and regulation of  
 14 real estate property managers and leasing agents.

15 It is the intent of the legislature that the board have  
 16 general authority to adopt rules to implement and enforce  
 17 the licensing procedure, including specific authority to  
 18 adopt rules regarding the procedure for processing license  
 19 applications and issuing licenses, administering  
 20 examinations, setting criteria for grading examinations,  
 21 establishing disciplinary standards for licensees, and  
 22 establishing procedures for investigating complaints against  
 23 licensees.

24 It is the intent of the legislature that the board have  
 25 authority to set and modify fees commensurate with the costs



1 of licensing and regulating the occupations of property  
2 manager and leasing agent.

3  
4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

5 **Section 1.** Section 37-51-102, MCA, is amended to read:

6 "37-51-102. Definitions. Unless the context requires  
7 otherwise, in this chapter the following definitions apply:

8 (1) "Account" means the real estate recovery account  
9 established in 37-51-501.

10 (2) "Board" means the board of realty regulation  
11 provided for in 2-15-1867.

12 (3) "Broker" includes an individual who:

13 (a) for another or for valuable consideration or who  
14 with the intent or expectation of receiving valuable  
15 consideration negotiates or attempts to negotiate the  
16 listing, sale, purchase, rental, exchange, or lease of real  
17 estate or of the improvements on real estate or collects  
18 rents or attempts to collect rents;

19 (b) is employed by or on behalf of the owner or lessor  
20 of real estate to conduct the sale, leasing, subleasing, or  
21 other disposition of real estate for consideration;

22 (c) engages in the business of charging an advance fee  
23 or contracting for collection of a fee in connection with a  
24 contract by which he undertakes primarily to promote the  
25 sale, lease, or other disposition of real estate in this

1 state through its listing in a publication issued primarily  
2 for this purpose or for referral of information concerning  
3 real estate to brokers;

4 (d) makes the advertising, sale, lease, or other real  
5 estate information available by public display to potential  
6 buyers and who aids, attempts, or offers to aid, for a fee,  
7 any person in locating or obtaining any real estate for  
8 purchase or lease;

9 (e) aids or attempts or offers to aid, for a fee, any  
10 person in locating or obtaining any real estate for purchase  
11 or lease; or

12 (f) advertises or holds himself out as engaged in any  
13 of the activities referred to in subsections (3)(a) through  
14 (3)(e).

15 (4) "Broker associate" means a broker who associates  
16 with a broker owner and does not own an interest in a real  
17 estate firm.

18 (5) "Broker owner" means a broker who owns or has a  
19 financial interest in a real estate firm.

20 (6) "Department" means the department of commerce  
21 provided for in Title 2, chapter 15, part 18.

22 (7) "Franchise agreement" means a contract or agreement  
23 by which:

24 (a) a franchisee is granted the right to engage in  
25 business under a marketing plan prescribed in substantial

1 part by the franchisor;

2 (b) the operation of the franchisee's business is  
3 substantially associated with the franchisor's trademark,  
4 trade name, logotype, or other commercial symbol or  
5 advertising designating the franchisor; and

6 (c) the franchisee is required to pay, directly or  
7 indirectly, a fee for the right to operate under the  
8 agreement.

9 (8) "Lease" means a transfer of possession of real  
10 estate without the transfer of title to the real estate and  
11 includes rent, hiring, and any similar term.

12 (9) "Leasing agent" means an individual who, for a  
13 salary, commission, or compensation of any kind, is  
14 associated, either directly or indirectly, regularly or  
15 occasionally, with a property manager to lease real estate.

16 ~~(8)~~(10) "Person" includes individuals, partnerships,  
17 associations, and corporations, foreign and domestic, except  
18 that when referring to a person licensed under this chapter,  
19 it means an individual.

20 (11) "Property management firm" means a property  
21 management business operated by a property manager.

22 (12) "Property manager" means an individual who:

23 (a) for a fee, commission, or other valuable  
24 consideration or with the intent or expectation of receiving  
25 consideration negotiates or attempts to negotiate for

1 another person the lease of real estate or the improvements  
2 on real estate, collects or attempts to collect rents, or  
3 advertises or holds himself out as engaged in any of the  
4 foregoing activities;

5 (b) is employed by or on behalf of the owner or lessor  
6 of real estate to conduct the leasing of real estate for a  
7 salary;

8 (c) engages in the business of charging an advance fee  
9 or contracting for collection of a fee in connection with a  
10 contract by which he undertakes to promote leasing in this  
11 state through listing in a publication issued:

12 (i) primarily for promoting leasing;

13 (ii) for the referral of information concerning real  
14 estate to property managers; or

15 (iii) for both of the purposes referred to in  
16 subsections (12)(c)(i) and (12)(c)(ii).

17 (13) "Property manager associate" means a property  
18 manager who associates with a property manager owner and  
19 does not own an interest in a property management firm.

20 (14) "Property manager owner" means a property manager  
21 who owns or has a financial interest in a property  
22 management firm.

23 ~~(9)~~(15) "Real estate" includes leaseholds as well as any  
24 other interest or estate in land, whether corporeal,  
25 incorporeal, freehold, or nonfreehold and whether the real

1 estate is situated in this state or elsewhere.

2 ~~{10}~~(16) "Salesman" includes an individual who for a  
3 salary, commission, or compensation of any kind is  
4 associated, either directly, indirectly, regularly, or  
5 occasionally, with a real estate broker to sell, purchase,  
6 or negotiate for the sale, purchase, exchange, or renting of  
7 real estate."

8 **Section 2.** Section 37-51-103, MCA, is amended to read:

9 **"37-51-103. Exemptions.** (1) An Except as provided in  
10 this section, a person who performs a single act performed  
11 for compensation of any kind in the:

12 (a) buying, selling, exchanging, leasing, or renting of  
13 real estate or in negotiating therefor for others,--except-as  
14 specified--in--this--section,--shall--constitute--the-person  
15 performing-any-of-the-acts is acting as a real estate broker  
16 or real estate salesman; or

17 (b) leasing of real estate or in negotiating a lease  
18 for others is acting as a real estate property manager or  
19 leasing agent.

20 (2) The provisions of this chapter may not:

21 (a) apply to any a person who, as owner or lessor,  
22 ~~shall--perform~~ performs any acts listed in subsection (1)  
23 with reference to property owned or leased by himself or to  
24 an auctioneer employed by the owner or lessor to aid and  
25 assist in conducting a public sale held by the owner or

1 lessor;

2 (b) apply to any a person acting as attorney-in-fact  
3 under a duly executed special or general power of attorney  
4 from the owner of any real estate authorizing the purchase,  
5 sale, exchange, renting, or leasing of any real estate,  
6 unless the person acting as attorney-in-fact does so  
7 regularly or consistently for a person or persons, for or  
8 with the expectation of receiving a fee, commission, or  
9 other valuable consideration in conjunction with a business  
10 or for the purpose of avoiding license requirements;

11 (c) be construed to include in any way the services  
12 rendered by any an attorney at law in the performance of his  
13 duty as an attorney at law;

14 (d) apply to any a person duly appointed by a court for  
15 the purpose of evaluation or appraising an estate in a  
16 probate matter;

17 (e) be held to include, while acting as such, a  
18 receiver, a trustee in bankruptcy, an administrator or  
19 executor, any person selling real estate under order of any  
20 court, a trustee under a trust agreement, deed of trust, or  
21 will, or an auctioneer employed by a receiver, trustee in  
22 bankruptcy, administrator, executor, or trustee to aid and  
23 assist in conducting a public sale held by the officer;

24 (f) apply to public officials in the conduct of their  
25 official duties;

1 (g) apply to any a person, partnership, association, or  
 2 corporation, foreign or domestic, performing any act with  
 3 respect to prospecting, leasing, drilling, or operating land  
 4 for hydrocarbons and hard minerals or disposing of any  
 5 hydrocarbons, hard minerals, or mining rights therein in  
 6 land, whether upon a royalty basis or otherwise; or

7 (h) apply to persons acting as managers of housing  
 8 complexes for low-income persons, which are subsidized,  
 9 directly or indirectly, by this state or an agency or  
 10 subdivision thereof of this state or by the government of  
 11 the United States or an agency thereof of the government.

12 {2}{3} The provisions of this chapter do not apply to a  
 13 newspaper or other publication of general circulation or to  
 14 a radio or television station engaged in the normal course  
 15 of business."

16 **Section 3.** Section 37-51-301, MCA, is amended to read:

17 "37-51-301. License required -- limited to persons.

18 (1) (a) It is unlawful for a person to engage in or conduct,  
 19 directly or indirectly, or to advertise or hold himself out  
 20 as engaging in or conducting the business or acting in the  
 21 capacity of a real estate broker, ~~or a real estate salesman,~~  
 22 property manager, or leasing agent within this state without  
 23 a license ~~as a broker or salesman~~ or otherwise complying  
 24 with this chapter.

25 (b) A real estate broker may act as a property manager

1 for all purposes of this chapter without being licensed as a  
 2 property manager and without meeting any qualifications in  
 3 addition to those required for licensure as a real estate  
 4 broker.

5 (2) (a) Corporations, partnerships, and associations  
 6 may not be licensed under this chapter.

7 (b) A corporation or a partnership may act as a  
 8 licensee if every each corporate officer and every each  
 9 partner performing the functions of a licensee is licensed  
 10 under this chapter.

11 (c) A corporation or a partnership may act as a  
 12 property manager if each corporate officer and each partner  
 13 performing the functions of a property manager is licensed  
 14 as a property manager.

15 (d) All officers of a corporation or all members of a  
 16 partnership acting as ~~a licensee~~ licensees are in violation  
 17 of this chapter unless there is full compliance with this  
 18 subsection section."

19 **Section 4.** Section 37-51-302, MCA, is amended to read:

20 "37-51-302. ~~Broker--or--salesman--license~~ License --  
 21 qualifications of applicant. (1) (a) Licenses may be granted  
 22 only to individuals considered by the board to be of good  
 23 repute and competent to transact the business of a broker,  
 24 or salesman, property manager, or leasing agent in a manner  
 25 as to safeguard the interests of the public.

1 (b) The board shall require information from an  
 2 applicant that it considers necessary to determine his  
 3 honesty, trustworthiness, and competency.

4 (2) An applicant for a broker's license shall:

5 (a) must be at least 18 years of age;

6 (b) must have graduated from an accredited high school  
 7 or completed an equivalent education as determined by the  
 8 board;

9 (c) must have been actively engaged as a licensed real  
 10 estate salesman for ~~a--period--of~~ 2 years or have had  
 11 experience or special education equivalent to that which a  
 12 licensed real estate salesman ordinarily would receive  
 13 during this 2-year period as determined by the board, except  
 14 that if the board finds that an applicant could not obtain  
 15 employment as a licensed real estate salesman because of  
 16 conditions existing in the area where he resides, the board  
 17 may waive this experience requirement;

18 (d) shall file an application for license with the  
 19 department; and

20 (e) shall furnish written evidence that he has  
 21 completed 60 classroom or equivalent hours (in addition to  
 22 those required to secure a salesman's license) in a course  
 23 of study approved by the board and taught by instructors  
 24 approved by the board and has satisfactorily passed an  
 25 examination dealing with the material taught in each course.

1 The course of study must include the subjects of real estate  
 2 principles, real estate law, real estate finance, and  
 3 related topics.

4 ~~(3)--The board shall require--information--it--considers~~  
 5 ~~necessary--from--an--applicant--to--determine--his--honesty,~~  
 6 ~~trustworthiness,--and--competency.~~

7 ~~(4)~~(3) (a) An applicant for a salesman's license shall:

8 (i) must be at least 18 years of age;

9 (ii) must have received credit for completion of 2 years  
 10 of full curriculum study at an accredited high school or  
 11 completed an equivalent education as determined by the  
 12 board;

13 (iii) shall file an application for license with the  
 14 department; and

15 (iv) shall furnish written evidence that he has  
 16 completed 60 classroom or equivalent hours in a course of  
 17 study approved by the board and taught by instructors  
 18 approved by the board and has satisfactorily passed an  
 19 examination dealing with the material taught in each course.  
 20 The course of study must include the subjects of real estate  
 21 principles, real estate law and ethics, real estate finance,  
 22 and related topics.

23 (b) His application ~~shall~~ must be accompanied by the  
 24 recommendation of the licensed broker by whom the applicant  
 25 will be employed or placed under contract, certifying that

1 the applicant is of good repute and that the broker will  
2 actively supervise and train the applicant during the period  
3 the requested license remains in effect.

4 (4) An applicant for a property manager's license:

5 (a) must be at least 18 years of age;

6 (b) must have graduated from an accredited high school  
7 or completed an equivalent education as determined by the  
8 board;

9 (c) must have been actively engaged as a leasing agent  
10 for 2 years or have had experience or continuing education  
11 equivalent to that which a leasing agent ordinarily would  
12 receive during a 2-year period as determined by the board.  
13 If the board finds that an applicant could not obtain  
14 employment as a leasing agent because of conditions existing  
15 in the area where he resides, the board may waive this  
16 experience requirement.

17 (d) shall file an application for license with the  
18 department; and

19 (e) shall furnish written evidence that he has  
20 completed 20 classroom or equivalent hours (in addition to  
21 those required to secure a leasing agent's license) in a  
22 course of study approved by the board and taught by  
23 instructors approved by the board and has satisfactorily  
24 passed an examination dealing with the material taught in  
25 each course. The course of study must include the subjects

1 of real estate leasing principles, real estate leasing law,  
2 and related topics.

3 (5) (a) An applicant for a leasing agent's license:

4 (i) must be at least 18 years of age;

5 (ii) must have received credit for completion of 2 years  
6 of full curriculum study at an accredited high school or  
7 completed an equivalent education as determined by the  
8 board;

9 (iii) shall file an application for license with the  
10 department; and

11 (iv) shall furnish written evidence that he has  
12 completed 20 classroom or equivalent hours in a course of  
13 study approved by the board and taught by instructors  
14 approved by the board and has satisfactorily passed an  
15 examination dealing with the material taught in each course.  
16 The course of study must include the subjects of real estate  
17 leasing principles, real estate leasing law, and related  
18 topics.

19 (b) The application must be accompanied by the  
20 recommendation of the property manager who will be employing  
21 or contracting with the applicant, certifying that the  
22 applicant is of good repute and that the property manager  
23 will actively supervise and train the applicant during the  
24 period the license remains in effect.

25 (5)(6) The department shall issue to each licensed



1 ~~broker--and-to-each-licensed-salesman~~ licensee a license and  
2 a pocket card in a form and size as the board prescribes.

3 ~~f6}~~(7) A broker's license must indicate whether the  
4 broker is a broker owner or a broker associate. A property  
5 manager's license must indicate whether the licensee is a  
6 property manager owner or property manager associate."

7 **Section 5.** Section 37-51-303, MCA, is amended to read:

8 **"37-51-303. Broker-----or-----salesman-----examination**  
9 **Examinations.** (1) In addition to proof of honesty,  
10 trustworthiness, and good reputation, an applicant whose  
11 application is then pending shall satisfactorily pass a  
12 written examination prepared by or under the supervision of  
13 the board. The examination ~~shall~~ must be given at least once  
14 each 6 months and at places within the state the board  
15 prescribes.

16 (2) (a) The examination for a salesman's license ~~shall~~  
17 must include:

18 (i) business ethics, writing, composition, arithmetic,  
19 and elementary principles of land economics and appraisal;

20 (ii) ~~a--general--knowledge-of~~ the statutes of this state  
21 relating to deeds, mortgages, contracts of sale, agency,  
22 brokerage, and of this chapter.

23 (b) If the applicant passes one subject portion of the  
24 examination, as required in subsection (2)(a)(i) or  
25 (2)(a)(ii), he shall may not be required to repeat that

1 portion of the examination if he passes the remaining  
2 portion within 12 months.

3 (3) The examination for a broker's license ~~shall~~ must  
4 be of a more exacting nature and scope and more stringent  
5 than the examination for a salesman's license.

6 (4) (a) The examination for a leasing agent's license  
7 must include:

8 (i) business ethics, writing, composition, and  
9 arithmetic;

10 (ii) the statutes of this state relating to leases,  
11 contracts for lease, agency, and this chapter; and

12 (iii) the provisions of The Montana Residential Landlord  
13 and Tenant Act of 1977, Title 70, chapter 24.

14 (b) If the applicant passes one portion of the  
15 examination, as required in subsection (4)(a)(i),  
16 (4)(a)(ii), or (4)(a)(iii), he may not be required to repeat  
17 that portion of the examination if he passes the remaining  
18 portion or portions within 12 months.

19 (5) The examination for a property manager's license  
20 must be of a more exacting nature and scope and more  
21 stringent than the examination for a leasing agent's  
22 license."

23 **Section 6.** Section 37-51-305, MCA, is amended to read:

24 **"37-51-305. License -- form -- delivery -- display --**  
25 **pocket card.** (1) The board shall prescribe the form of

1 license. A license ~~shall~~ must bear the seal of the board.

2 (2) (a) The license of a real estate salesman ~~shall~~  
3 must be delivered or mailed to the real estate broker with  
4 whom the real estate salesman is associated and ~~shall~~ must  
5 be kept in the custody and control of the broker.

6 (b) The license of a leasing agent must be delivered or  
7 mailed to the real estate broker or property manager with  
8 whom the leasing agent is associated and must be kept in the  
9 custody and control of the broker or property manager.

10 (3) A broker or property manager shall display his own  
11 license conspicuously in his place of business.

12 (4) The department shall annually prepare and deliver a  
13 pocket card:

14 (a) certifying that the person whose name appears is a  
15 registered real estate broker, ~~or a registered~~ real estate  
16 salesman, property manager, or leasing agent; and

17 (b) stating:

18 (i) the period for which fees have been paid; and,

19 (ii) on a real estate salesman's ~~cards-only card~~, the  
20 name and address of the broker with whom he is associated;  
21 or

22 (iii) on a leasing agent's card, the name and address of  
23 the broker or property manager with whom he is associated."

24 **Section 7.** Section 37-51-306, MCA, is amended to read:

25 "37-51-306. Transactions with nonresidents and with

1 nonlicensed brokers--or--salesmen persons -- reciprocity --  
2 consent to legal process. (1) ~~It~~ (a) Except as provided in  
3 subsection (1)(b), it is unlawful:

4 (i) for a licensed broker to employ or compensate,  
5 directly or indirectly, a person who is not a licensed  
6 broker or licensed salesman for performing the acts  
7 regulated by this chapter ~~who is not a licensed broker or~~  
8 ~~licensed salesman; or~~

9 (ii) for a licensed property manager to employ or  
10 compensate, directly or indirectly, a person who is not a  
11 licensed property manager or leasing agent for performing  
12 the acts regulated by this chapter.

13 (b) ~~However,--a~~ A licensed broker or licensed property  
14 manager may pay a commission to a licensed broker or  
15 licensed property manager of another state if the  
16 nonresident broker has not conducted and does not conduct in  
17 this state a service for which a fee, compensation, or  
18 commission is paid. This subsection does not limit the next  
19 provisions of subsection (2).

20 (2) A nonresident of this state actively engaged in the  
21 real estate business who maintains a place of business in  
22 another state and who has been licensed in the other state  
23 to conduct this business in that state may obtain a license  
24 as a broker or property manager in this state by complying  
25 with this chapter. However, this section applies only to

1 brokers and property managers of those other states which  
 2 that offer the same privileges to the ~~licensed--brokers~~  
 3 licensees of this state. The nonresident licensee need not  
 4 maintain a place of business in this state. The board may  
 5 authorize the department to license a nonresident broker  
 6 without examination if he files with the department an  
 7 authorized or certified copy of the license issued to the  
 8 nonresident for conducting this business in another state  
 9 and pays to the department the same license fee as is  
 10 required for obtaining a ~~broker's~~ license in this state. The  
 11 board may in its discretion refuse to authorize the  
 12 department to issue a ~~broker's~~ license to an applicant who  
 13 is not a resident of this state.

14 (3) A nonresident broker or property manager shall file  
 15 an irrevocable written consent that legal actions arising  
 16 out of a commenced or completed transaction may be commenced  
 17 against the nonresident ~~broker~~ in a county of this state  
 18 ~~which-may-be~~ that is appropriate and designated by Title 25,  
 19 chapter 2, part 1. The consent ~~shall~~ must provide that  
 20 service of summons in this action may be served on the  
 21 department for and on behalf of the nonresident, ~~broker, and~~  
 22 ~~this~~ This service is sufficient to give the court  
 23 jurisdiction over the nonresident broker and his salesman or  
 24 agent or over the nonresident property manager and his  
 25 leasing agent conducting a transaction in a county. The

1 consent ~~shall~~ must be acknowledged and, if made by a  
 2 corporation, ~~shall~~ must be authenticated by its seal."

3 **Section 8.** Section 37-51-308, MCA, is amended to read:

4 "~~37-51-308. Broker's--office~~ Office -- notice to  
 5 department of change of address. (1) A resident ~~licensed~~  
 6 broker licensee shall maintain a fixed office in this state.  
 7 The original license of the broker or property manager and  
 8 the original license of each salesman licensee associated or  
 9 under contract with the broker ~~shall~~ or property manager  
 10 must be prominently displayed in the office. The address of  
 11 the office and any branch office ~~shall~~ must be designated on  
 12 the broker's or property manager's license.

13 (2) In case of removal from the designated address, the  
 14 licensee shall notify the department before removal or  
 15 within 10 days thereafter, designating the new location of  
 16 ~~this~~ the office and paying the required fee, whereupon a  
 17 license for the new location must be issued for the  
 18 unexpired period."

19 **Section 9.** Section 37-51-309, MCA, is amended to read:

20 "~~37-51-309. Broker-owner~~ Owner -- broker associate --  
 21 salesman -- leasing agent -- notice to department of change  
 22 of association. (1) (a) A salesman may not be associated  
 23 with or under contract to more than one licensed broker  
 24 owner, nor may he perform services for a broker other than  
 25 the one designated on the license issued to the salesman.

1 (b) A leasing agent may not be associated with or under  
 2 contract to more than one licensed broker owner or property  
 3 manager owner, nor may he perform services for a broker or  
 4 property manager other than the one designated on the  
 5 license issued to the leasing agent.

6 (2) (a) When If a licensed salesman desires to change  
 7 his association or contractual relationship from one  
 8 licensed broker to another, or if a licensed leasing agent  
 9 desires to change his association or contractual  
 10 relationship from one licensed broker or property manager to  
 11 another, he shall:

12 (i) notify the department promptly in writing of these  
 13 facts; and

14 (ii) pay the required fee, and return his license and  
 15 pocket card, and a new license and pocket card shall be  
 16 issued. No salesman shall directly or indirectly work

17 (b) A salesman may not work directly or indirectly for  
 18 or with a broker owner and a leasing agent may not work  
 19 directly or indirectly for a broker owner or property  
 20 manager until he has been issued a license to work for or  
 21 with that broker owner or manager.

22 (c) On termination of a salesman's or leasing agent's  
 23 association or contractual relationship, he shall surrender  
 24 his license and pocket card to his broker the owner, who  
 25 shall return them to the department for cancellation.

1 (d) If a licensee alters his contractual relationship,  
 2 the department shall issue a new license and a new pocket  
 3 card.

4 (3) Only one license shall may be issued to a salesman  
 5 or leasing agent to be in effect at one time.

6 (4) A broker or property manager associate may not be  
 7 associated with more than one broker owner."

8 **Section 10.** Section 37-51-312, MCA, is amended to read:

9 "37-51-312. No taxation by municipality. No A license  
 10 fee or tax may not be imposed on a real-estate-broker-or  
 11 salesman licensee under this chapter by a municipality or  
 12 any other political subdivision of the state."

13 **Section 11.** Section 37-51-321, MCA, is amended to read:

14 "37-51-321. Revocation or suspension of license --  
 15 initiation of proceedings -- grounds. The board may on its  
 16 own motion and shall on the sworn complaint in writing of a  
 17 person investigate the actions of a real-estate-broker-or-a  
 18 real-estate-salesman licensee, subject to 37-1-101 and  
 19 37-1-121, and may revoke or suspend a license issued under  
 20 this chapter when the broker-or-salesman licensee has been  
 21 found guilty by a majority of the board of any of the  
 22 following practices:

23 (1) intentionally misleading, untruthful, or inaccurate  
 24 advertising, whether printed or by radio, display, or other  
 25 nature, which advertising in any material particular or in

1 any material way misrepresents any property, terms, values,  
 2 policies, or services of the business conducted. A broker or  
 3 property manager who operates under a franchise agreement  
 4 engages in misleading, untruthful, or inaccurate advertising  
 5 if in using the franchise name he does not incorporate his  
 6 own name in the franchise name or logotype or does not  
 7 conspicuously display, on his letterhead and other printed  
 8 materials available to the public, a statement that his  
 9 office is independently owned and operated. The board may  
 10 not adopt advertising standards more stringent than those  
 11 set forth in this subsection.

12 (2) making any false promises of a character likely to  
 13 influence, persuade, or induce;

14 (3) pursuing a continued and flagrant course of  
 15 misrepresentation or making false promises through agents,  
 16 or salesmen, or leasing agents or any medium of advertising  
 17 or otherwise;

18 (4) use of the term "realtor" by a person not  
 19 authorized to do so or using use of another trade name or  
 20 insignia of membership in a real estate organization of  
 21 which the licensee is not a member;

22 (5) failing to account for or to remit money coming  
 23 into his possession belonging to others;

24 (6) accepting, giving, or charging an undisclosed  
 25 commission, rebate, or profit on expenditures made for a

1 principal;

2 (7) acting in a dual capacity of broker or property  
 3 manager and undisclosed principal in a transaction;

4 (8) guaranteeing, authorizing, or permitting a person  
 5 to guarantee future profits which that may result from the  
 6 resale or lease of real property;

7 (9) offering real property for sale or lease without  
 8 the knowledge and consent of the owner or his authorized  
 9 agent or on terms other than those authorized by the owner  
 10 or his authorized agent;

11 (10) inducing a party to a contract of sale or lease to  
 12 break the contract for the purpose of substituting a new  
 13 contract with another principal;

14 (11) accepting employment or compensation for appraising  
 15 real property contingent on the reporting of a predetermined  
 16 value or issuing an appraisal report on real property in  
 17 which he has an undisclosed interest;

18 (12) negotiating a sale, exchange, or lease of real  
 19 property directly with an owner or lessee if he knows that  
 20 the owner has a written, outstanding contract in connection  
 21 with the property granting an exclusive agency to another  
 22 broker or property manager;

23 (13) soliciting, selling, or offering for sale or lease  
 24 real property by conducting lotteries for the purpose of  
 25 influencing a purchaser or prospective purchaser or lessee

1 of real property;

2 (14) representing or attempting to represent a real  
3 estate broker or property manager other than the employer  
4 without the express knowledge or consent of the employer;

5 (15) failing voluntarily to furnish a copy of a written  
6 instrument to a party executing it at the time of its  
7 execution;

8 (16) paying a commission in connection with a real  
9 estate sale, lease, or transaction to a person who is not  
10 licensed ~~as a real-estate-broker-or-real-estate-salesman~~  
11 under this chapter;

12 (17) intentionally violating a rule adopted by the board  
13 in the interests of the public and in conformity with this  
14 chapter;

15 (18) failing, if a salesman or leasing agent, to place,  
16 as soon after receipt as is practicably possible, in the  
17 custody of his registered broker or property manager,  
18 deposit money or other money entrusted to him ~~as salesman~~ by  
19 a person;

20 (19) demonstrating his unworthiness or incompetency to  
21 act as a ~~broker-or-salesman~~ licensee; or

22 (20) conviction of a felony."

23 **Section 12.** Section 37-51-322, MCA, is amended to read:

24 "37-51-322. Right to notice and hearing. When If the  
25 board has investigated an application for a ~~real-estate~~

1 ~~broker's-or-salesman's~~ license or, subject to 37-1-101 and  
2 37-1-121, investigated the actions of ~~a-real-estate-broker~~  
3 ~~or-salesman~~ an applicant or a licensee on the sworn  
4 complaint in writing of a person or on its own motion and  
5 the investigation has revealed reasonable grounds for  
6 denying the application or reasonable indication of a  
7 violation of this chapter as cause for revoking or  
8 suspending a license issued to a ~~real-estate-broker-or~~  
9 ~~salesman~~ licensee, the board shall, before denying the  
10 application or revoking or suspending the license, give  
11 notice and set the matter for hearing."

12 **Section 13.** Section 37-51-323, MCA, is amended to read:

13 "37-51-323. Penalties -- criminal -- civil. (1) Any  
14 individual A person acting ~~as-a-broker-or-salesman~~ without a  
15 license or while his license is suspended or revoked or any  
16 a person who violates any provision of this chapter ~~shall-be~~  
17 is guilty of a misdemeanor and upon conviction thereof by a  
18 district court of this state shall be punishable by a fine  
19 of not less than \$100 or more than \$500 or by imprisonment  
20 for a term not to exceed 90 days, or both. Upon conviction  
21 of a second or subsequent violation, the person shall be  
22 punishable by a fine of not less than \$500 or more than  
23 \$2,000 or by imprisonment for a term not to exceed 6 months,  
24 or both.

25 (2) In case any a person in a civil action is found

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1 guilty of having received any money or the equivalent  
2 thereof of money as a fee, commission, compensation, or  
3 profit by or in consequence of a violation of any provision  
4 of this chapter, he shall in addition be liable to a penalty  
5 of not less than the amount of the sum of money so received  
6 and not more than three times the sum so received, as may be  
7 determined by the court. ~~7-which~~ This civil penalty may be  
8 recovered in any court of competent jurisdiction by any  
9 person aggrieved."

10 **Section 14.** Section 37-51-401, MCA, is amended to read:

11 "37-51-401. **Action for compensation limited to licensed**  
12 ~~broker--or--salesman~~ licensee. **Any** A person engaged in the  
13 business of or acting in the capacity of a ~~real--estate~~  
14 ~~broker--or--real--estate-salesman~~ licensee within this state  
15 ~~shall-not-be permitted-to~~ may not bring or maintain any  
16 action in the courts for the collection of compensation for  
17 the sale or lease or otherwise disposing of real estate  
18 without first alleging and proving that such ~~the~~ person was  
19 a duly licensed ~~real-estate-broker-or-real--estate--salesman~~  
20 or authorized to act ~~as-a-broker~~ under the provisions of  
21 this chapter at the time the alleged cause of action or  
22 claim arose."

-End-

STATE OF MONTANA - FISCAL NOTE  
Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB0176, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act providing for licensure and regulation of property managers and leasing agents; allowing a person to become licensed as a property manager or leasing agent under qualifications other than those required of a real estate broker; allowing licensed real estate brokers to act as property managers without securing an additional license; and amending existing laws.


ASSUMPTIONS:

1. The Board of Realty Regulation will perform the additional duties and responsibilities created by the proposed act. The board will need three additional meetings in FY92 and two additional meetings in FY93. Total travel costs are approximately \$585 per meeting.
2. Approximately 250 property managers will be licensed during the first year and approximately 30 new licenses issued in each subsequent year.
3. The additional meetings and responsibilities will increase board expenses for per diem, travel, supplies, communications, postage, printing, and administrative overhead charges.
4. The Professional and Occupational Licensing Bureau (POL Bureau) will collect license fees and process the adoption of rules, applications and licenses, examinations, registry of licensees, administrative support for disciplinary procedures, reciprocity licenses, and board meetings. These additional services will require an additional 0.20 FTE in the POL Bureau. Administrative overhead charges for the above services must be reflected in the POL Bureau.
5. Current law is represented by the executive budget recommendation for the Board of Realty Regulation in the Department of Commerce.

FISCAL IMPACT:

Brd of Realty:

	FY 92			FY 93		
	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
<u>Expenditures:</u>						
FTE	1.50	1.50	0.00	1.50	1.50	0.00
Personal Services	46,039	46,789	750	46,053	46,553	500
Operating Costs	<u>202,457</u>	<u>222,289</u>	<u>19,832</u>	<u>201,419</u>	<u>209,797</u>	<u>8,378</u>
Total	248,496	269,078	20,582	247,472	256,350	8,878
<u>Funding:</u>						
State Special	248,496	269,078	20,582	247,472	256,350	8,878
<u>Revenues:</u>						
POL License Fees (02)	263,950	285,700	21,750	263,950	275,310	11,360

  
ROD SUNDSTED, BUDGET DIRECTOR  
Office of Budget and Program Planning

DATE

  
BOB BROWN, PRIMARY SPONSOR

DATE

Fiscal Note for SB0176, as introduced.

**SB 176**



APPROVED BY COMM. ON BUSINESS & INDUSTRY

SENATE BILL NO. 176

INTRODUCED BY B. BROWN

BY REQUEST OF THE DEPARTMENT OF COMMERCE

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR LICENSURE AND REGULATION OF PROPERTY MANAGERS AND LEASING AGENTS; ALLOWING A PERSON TO BECOME LICENSED AS A PROPERTY MANAGER OR LEASING AGENT UNDER QUALIFICATIONS OTHER THAN THOSE REQUIRED OF A REAL ESTATE BROKER; AND ALLOWING LICENSED REAL ESTATE BROKERS TO ACT AS PROPERTY MANAGERS WITHOUT SECURING AN ADDITIONAL LICENSE; AND AMENDING SECTIONS 37-51-102, 37-51-103, 37-51-301, 37-51-302, 37-51-303, 37-51-305, 37-51-306, 37-51-308, 37-51-309, 37-51-312, 37-51-321, 37-51-322, 37-51-323, AND 37-51-401, MCA."

WHEREAS, the legislature of the State of Montana finds that a person who manages real estate for rent or lease for others is presently required to be licensed as and meet the qualifications of a real estate broker, and

WHEREAS, the legislature finds that the qualifications for licensure as a real estate broker include and concentrate on experience and knowledge in sales of real estate for others, and

WHEREAS, the legislature finds that persons who manage real estate for rent or lease for others are not involved in

the sales of real estate for others,

THEREFORE, the legislature finds it appropriate to allow persons who manage real estate for rent or lease for others to become licensed under qualifications other than those presently required of a real estate broker or salesman and to continue to allow real estate brokers to manage real estate for rent or lease for others without an additional license.

STATEMENT OF INTENT

A statement of intent is required for this bill because it delegates rulemaking authority to the board of realty regulation to provide for the licensure and regulation of real estate property managers and leasing agents.

It is the intent of the legislature that the board have general authority to adopt rules to implement and enforce the licensing procedure, including specific authority to adopt rules regarding the procedure for processing license applications and issuing licenses, administering examinations, setting criteria for grading examinations, establishing disciplinary standards for licensees, and establishing procedures for investigating complaints against licensees.

It is the intent of the legislature that the board have authority to set and modify fees commensurate with the costs of licensing and regulating the occupations of property

SECOND READING



1 ~~manager-and-leasing-agent.~~

2 STATEMENT OF INTENT

3 A STATEMENT OF INTENT IS REQUIRED FOR THIS BILL BECAUSE  
 4 IT DELEGATES RULEMAKING AUTHORITY TO THE BOARD OF REALTY  
 5 REGULATION TO PROVIDE FOR THE LICENSING AND REGULATION OF  
 6 REAL ESTATE PROPERTY MANAGERS. THE LEGISLATURE INTENDS THAT  
 7 THE BOARD HAVE GENERAL AUTHORITY TO ADOPT RULES TO IMPLEMENT  
 8 AND ENFORCE THE LICENSING PROCEDURE, INCLUDING SPECIFIC  
 9 AUTHORITY TO ADOPT RULES REGARDING THE PROCEDURE FOR  
 10 PROCESSING LICENSE APPLICATIONS AND ISSUING LICENSES,  
 11 ADMINISTERING EXAMINATIONS, SETTING CRITERIA FOR GRADING  
 12 EXAMINATIONS, ESTABLISHING DISCIPLINARY STANDARDS FOR  
 13 LICENSEES, AND ESTABLISHING PROCEDURES FOR INVESTIGATING  
 14 COMPLAINTS AGAINST LICENSEES, AND TO SET AND MODIFY FEES  
 15 COMMENSURATE WITH THE COSTS OF LICENSING AND REGULATING THE  
 16 OCCUPATION OF PROPERTY MANAGER.

17  
 18 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

19 (Refer to Introduced Bill)

20 Strike everything after the enacting clause and insert:

21 NEW SECTION. Section 1. Definitions. As used in  
 22 [sections 1 through 12], the following definitions apply:

23 (1) "Board" means the board of realty regulation  
 24 provided for in 2-15-1867.

25 (2) "Department" means the department of commerce

1 established in 2-15-1801.

2 (3) "Lease" means a transfer of possession of real  
 3 estate without the transfer of title to the real estate and  
 4 includes rent, hiring, and any similar term.

5 (4) "Property management firm" means a property  
 6 management business operated by a property manager.

7 (5) "Property manager" means an individual who:

8 (a) for or with the intent or expectation of receiving  
 9 a fee, commission, or other valuable consideration  
 10 negotiates or attempts to negotiate for another person the  
 11 lease of real estate or the improvements on real estate,  
 12 collects or attempts to collect rents, or advertises or  
 13 holds himself out as engaged in any of these activities;

14 (b) is employed by or on behalf of the owner or lessor  
 15 of real estate to conduct the leasing of real estate for a  
 16 salary; or

17 (c) engages in the business of charging an advance fee  
 18 or contracting for collection of a fee in connection with a  
 19 contract by which he undertakes to promote leasing in this  
 20 state through listing in a publication or by referral of  
 21 information concerning real estate to a property manager.

22 (6) "Property manager associate" means a property  
 23 manager who associates with a property manager owner and  
 24 does not own an interest in a property management firm.

25 NEW SECTION. Section 2. Exemptions. The provisions of

1 [sections 1 through 12] do not apply to:

2 (1) a person, partnership, association, trust, or  
3 corporation that, as owner or lessor, performs any of the  
4 acts of a property manager with reference to property owned  
5 or leased by himself;

6 (2) a spouse, child, parent, brother, or sister of the  
7 owner of real estate under lease or available for lease;

8 (3) a person who leases out no more than four  
9 residential real estate units;

10 (4) a person acting as attorney-in-fact under the duly  
11 executed power of attorney from the owner of real estate  
12 authorizing the final consummation of any contract for the  
13 renting or leasing of real estate;

14 (5) an attorney in the performance of his duty as an  
15 attorney;

16 (6) a receiver, trustee in bankruptcy, personal  
17 representative, person selling real estate under order of a  
18 court, or trustee under a trust agreement, deed of trust, or  
19 will;

20 (7) a public official in the conduct of his official  
21 duties;

22 (8) a person, partnership, association, trust, or  
23 corporation performing an act with respect to prospecting,  
24 leasing, drilling, or operating land for hydrocarbons and  
25 hard minerals or disposing of hydrocarbons, hard minerals,

1 or mining rights in the land, whether upon a royalty basis  
2 or otherwise;

3 (9) a person, partnership, association, or corporation  
4 acting as the manager of low-income housing complexes that  
5 are subsidized, directly or indirectly, by this state or an  
6 agency or subdivision of this state or by the government of  
7 or an agency of the government of the United States; or

8 (10) a person who is a full-time salaried employee of  
9 the owner of the property being managed.

10 NEW SECTION. **Section 3.** License required -- limited to  
11 persons. (1) (a) A person may not engage in or conduct,  
12 directly or indirectly, or advertise or hold himself out as  
13 engaging in or conducting the business or acting in the  
14 capacity of a property manager or property manager associate  
15 without a license or without otherwise complying with  
16 [sections 1 through 12].

17 (b) A real estate broker may act as a property manager  
18 for all purposes of [sections 1 through 12] without being  
19 licensed as a property manager and without meeting any  
20 qualifications in addition to those required for licensure  
21 as a real estate broker.

22 (2) A corporation, partnership, or association may not  
23 be licensed under [sections 1 through 12], but a corporation  
24 or a partnership may act as a property manager if each  
25 corporate officer or employee and each partner performing

1 the functions of a property manager is licensed as a  
2 property manager or is exempt from licensure under [sections  
3 1 through 12].

4 NEW SECTION. **Section 4.** License -- qualifications of  
5 applicant. (1) (a) Licenses may be granted only to  
6 individuals considered by the board to be of good repute and  
7 competent to transact the business of a property manager or  
8 property manager associate in a manner to safeguard the  
9 interests of the public.

10 (b) The board shall require from an applicant  
11 information that it considers necessary to determine his  
12 honesty, trustworthiness, and competency.

13 (2) An applicant for a property manager's license:

14 (a) must be at least 18 years of age;

15 (b) must have graduated from an accredited high school  
16 or completed an equivalent education, as determined by the  
17 board;

18 (c) must have been actively engaged as a property  
19 manager associate for 2 years or have had experience or  
20 continuing education equivalent to that a property manager  
21 associate ordinarily would receive during 2 years, as  
22 determined by the board. The board may waive this experience  
23 requirement if it finds that an applicant could not obtain  
24 employment as a property manager associate because of  
25 conditions existing in the area where he resides.

1 (d) shall file an application for license with the  
2 department; and

3 (e) shall furnish written evidence that he has  
4 completed 20 classroom or equivalent hours (in addition to  
5 those required to secure a property manager associate's  
6 license) in a course of study approved by the board and  
7 taught by instructors approved by the board and has  
8 satisfactorily completed an examination dealing with the  
9 material taught in each course. The course of study must  
10 include the subjects of real estate leasing principles, real  
11 estate leasing law, and related topics.

12 (3) (a) An applicant for a property manager associate's  
13 license:

14 (i) must be at least 18 years of age;

15 (ii) must have received credit for completion of 2 years  
16 of full curriculum study at an accredited high school or  
17 completed an equivalent education, as determined by the  
18 board;

19 (iii) shall file an application for a license with the  
20 department; and

21 (iv) shall furnish written evidence that he has  
22 completed 20 classroom or equivalent hours in a course of  
23 study approved by the board and taught by instructors  
24 approved by the board and has satisfactorily completed an  
25 examination dealing with the material taught in each course.

1 The course of study must include the subjects of real estate  
2 leasing principles, real estate leasing law, and related  
3 topics.

4 (b) The application must be accompanied by the  
5 recommendation of the real estate broker or property manager  
6 who will employ or contract with the applicant and who shall  
7 certify that the applicant is of good repute and that the  
8 real estate broker or property manager will actively  
9 supervise and train the applicant during the period the  
10 license remains in effect.

11 NEW SECTION. Section 5. Examinations. (1) The  
12 examinations required of applicants in [section 4(2)(e) and  
13 (3)(a)(iv)] must be in written form and prepared and  
14 administered by or under the supervision of the board. The  
15 examinations must be given at least once each 6 months at  
16 times and places the board prescribes within the state.

17 (2) The board shall establish by rule the content of  
18 the examinations and the requirements to satisfactorily  
19 complete the examinations.

20 NEW SECTION. Section 6. License -- form -- delivery --  
21 display -- pocket card. (1) The board shall prescribe the  
22 form of the license that must bear the seal of the board.

23 (2) The license of a property manager associate must be  
24 delivered or mailed to the real estate broker or property  
25 manager with whom the property manager associate is

1 associated and must be kept in the custody and control of  
2 the broker or property manager.

3 (3) A property manager shall display his own license  
4 conspicuously in his place of business.

5 (4) The department shall annually prepare and deliver  
6 to each licensee a pocket card in a form prescribed by the  
7 board.

8 NEW SECTION. Section 7. Transactions with nonlicensed  
9 persons. A property manager may not employ or compensate,  
10 directly or indirectly, a person for performing the acts  
11 regulated by [sections 1 through 12] who is not a licensed  
12 property manager or property manager associate.

13 NEW SECTION. Section 8. Property manager associate --  
14 notice to department of change of association. (1) A  
15 property manager associate may not be associated with or  
16 under contract to more than one real estate broker or  
17 property manager and may not perform services for a real  
18 estate broker or property manager other than the one  
19 designated on the license issued to the property manager  
20 associate.

21 (2) Before a licensed property manager associate  
22 changes his association or contractual relationship from one  
23 broker owner or property manager to another, he shall notify  
24 the department and obtain from the department a license to  
25 work for or with that broker owner or property manager.

1 (3) A property manager associate, on termination of his  
2 association or contractual relationship, shall surrender his  
3 pocket card to the broker owner or property manager, who  
4 shall return the property manager associate's license and  
5 pocket card to the department for cancellation.

6 NEW SECTION. Section 9. No taxation by municipality. A  
7 license fee or tax may not be imposed on a licensee under  
8 [sections 1 through 12] by a municipality or any other  
9 political subdivision of the state.

10 NEW SECTION. Section 10. Revocation or suspension of  
11 license -- initiation of proceedings -- grounds. The board  
12 may on its own motion and shall on the sworn complaint in  
13 writing of a complainant investigate the actions of a  
14 licensee, subject to 37-1-101 and 37-1-121, and may revoke  
15 or suspend a license on the grounds that the licensee:

16 (1) is guilty of fraud or deceit in procuring or  
17 attempting to procure a license;

18 (2) is unfit or incompetent by reason of negligence,  
19 habit, or other causes;

20 (3) is guilty of unprofessional conduct as defined by  
21 rules of the board;

22 (4) has willfully or repeatedly violated provisions of  
23 [sections 1 through 12].

24 NEW SECTION. Section 11. Penalties -- criminal --  
25 civil. A person acting without a license or while his

1 license is suspended or revoked or a person who violates any  
2 provision of [sections 1 through 12] is guilty of a  
3 misdemeanor and is subject to the criminal and civil penalty  
4 provisions of 37-51-323.

5 NEW SECTION. Section 12. Action for compensation  
6 limited to licensee. A person engaged in the business of or  
7 acting in the capacity of a licensee under [sections 1  
8 through 12] may not bring or maintain any action in the  
9 courts for the collection of compensation for the lease of  
10 real estate without first alleging and proving that he was  
11 duly licensed or authorized to act under the provisions of  
12 [sections 1 through 12] at the time the alleged cause of  
13 action or claim arose.

14 NEW SECTION. Section 13. Codification instruction.  
15 [Sections 1 through 12] are intended to be codified as an  
16 integral part of Title 37, chapter 51, and the provisions of  
17 Title 37, chapter 51, apply to [sections 1 through 12].

-End-