

## MINUTES

### MONTANA SENATE 51st LEGISLATURE - REGULAR SESSION

#### COMMITTEE ON JUDICIARY

Call to Order: By Chairman Bruce Crippen, on January 10, 1989, at 10:00 a.m. in Room 325.

#### ROLL CALL

Members Present: Chairman Bruce Crippen, V. Chairman Al Bishop, Senators Mike Halligan, Bob Brown, Joe Mazurek, Loren Jenkins, R. J. "Dick" Pinsoneault, John Harp and Bill Yellowtail.

Members Excused: Tom Beck.

Members Absent: None.

Staff Present: Valencia Lane, Staff Attorney and Rosemary Jacoby, Committee Secretary

Announcements/Discussion: None.

#### HEARING ON SENATE BILL 79

Presentation and Opening Statement by Sponsor: Senator Mazurek of Helena, representing District #36, opened the hearing on Senate Bill 79 stating that it would allow members of a trade or professional organization to agree to submit future controversies between members to arbitration. He said it would put in place a new mechanism for arbitrating disputes. Subject matter for arbitration would have been pre-agreed upon. He reviewed the bill. One part of the bill that renters might be concerned with was (c) on page 2, line 2. He said that some kinds of problems definitely could not be submitted for arbitration. He distributed Exhibits 1 and 2 to committee members. Exhibit 1 is an application for membership form to be sent to a board of realtors. The other (Ex. 2) was a pamphlet entitled Professionalism in Real Estate Practice. Sometimes disputes arise over commissions. He thought architects might also wish to use this tool, though he had not been contacted by them. He said there were proponents and reserved the right to close.

List of Testifying Proponents and What Group they Represent:

Tom Hopgood, Montana Association of Realtors  
Michael Sherwood, Montana Trial Lawyers Association

List of Testifying Opponents and What Group They Represent:

There were none.

Testimony:

Tom Hopgood said the bill would not force arbitration upon any trade group or association, but would be a voluntary tool at their disposal. It would not affect persons not in an association, or the seller. If two renters were having a dispute about splitting the rent, they would still be free to go to court if they didn't wish to arbitrate. Persons who are not as experienced would not be signing away their rights to go to court even if they arbitrate, he said.

Michael Sherwood said he didn't feel the bill would pre-empt the federal law. He supported the bill because he has worked on commission arbitration and it worked very well. He felt it could be an excellent tool.

Questions From Committee Members: Senator Halligan asked if this dealt specifically with written agreements. Senator Mazurek said he felt the written agreement requirement ought to stay in the bill.

Senator Crippen asked for the reason for the \$35,000 level in the bill. He commented he didn't think it was necessary. Mike Sherwood said that the people who might be using this probably wouldn't be sophisticated and might not read all the fine print. The \$35,000 was to protect the average consumer.

Closing by Sponsor: Senator Mazurek closed the hearing.

DISPOSITION OF SENATE BILL 79

Discussion: There was none.

Amendments and Votes: There were none.

Recommendation and Vote: Senator Brown MOVED that SENATE BILL 79 DO PASS. The MOTION CARRIED UNANIMOUSLY.

DISPOSITION OF SENATE BILL 22

Discussion: Senator Halligan stated that, in the county attorney's office, he did a lot of child support work. He wondered if the fiscal note accurately reflected the cost. Senator Crippen said the cost had been reviewed by the revenue oversight committee.

Amendments and Votes: There were none.

Recommendation and Vote: Senator Jenkins MOVED that SENATE BILL 22 DO PASS. The MOTION CARRIED UNANIMOUSLY.

DISPOSITION OF SENATE BILL 55

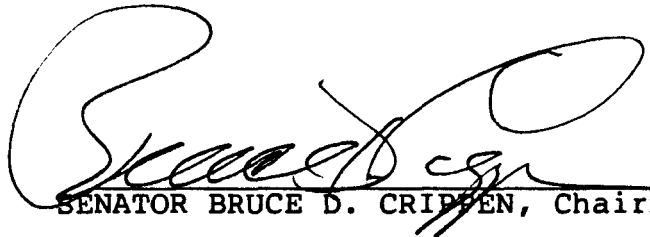
Discussion: Senator Bishop asked how Senate Bill 55 would affect federal law. Senator Harp said the federal government has greater priorities as to the collection of the taxes. This bill will put Montana on an equal footing with the federal government.

Amendments and Votes: There were none.

Recommendation and vote: Senator Harp MOVED that Senate Bill 55 DO PASS. The MOTION CARRIED UNANIMOUSLY.

ADJOURNMENT

Adjournment At: 11 a.m.

  
SENATOR BRUCE D. CRIPPEN, Chairman

BDC/rj

minrj.110

ROLL CALL

JUDICIARY

COMMITTEE

51st LEGISLATIVE SESSION -- 1989

Date 1-10-89

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NAME	PRESENT	ABSENT	EXCUSED
SENATOR CRIPPEN	✓		
SENATOR BECK			✓
SENATOR BISHOP	✓		
SENATOR BROWN	✓		
SENATOR HALLIGAN	✓		
SENATOR HARP	✓		
SENATOR JENKINS	✓		
SENATOR MAZUREK	✓		
SENATOR PINSONEAULT	✓		
SENATOR YELLOWTAIL	✓		

Each day attach to minutes.

STANDING COMMITTEE REPORT

January 10, 1969

MR. PRESIDENT:

We, your committee on Judiciary, having had under consideration SB 79 (first reading copy -- white), respectfully report that SB 79 do pass.

DO PASS

Signed:

  
Bruce D. Crippen, Chairman

STANDING COMMITTEE REPORT

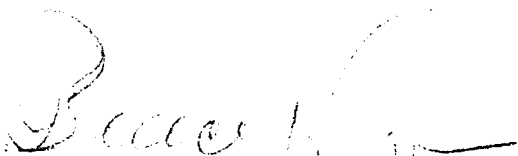
January 10, 1989

MR. PRESIDENT:

We, your committee on Judiciary, having had under consideration SB 22 (first reading copy - white), respectfully report that SB 22 do pass.

DO PASS

Signed:



Bruce D. Crippen, Chairman

H.C.  
11/16/89  
11:50  
A.M.

SB18B22.110

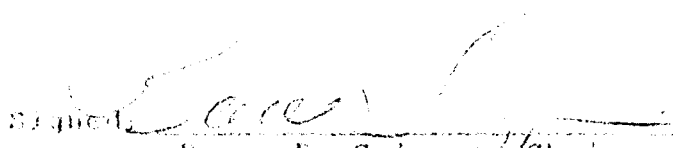
STANDING COMMITTEE REPORT

January 10, 1989

MR. PRESIDENT:

We, your committee on Judiciary, having had under consideration SB 55 (first reading copy -- white), respectfully report that SB 55 do pass.

DO PASS

Signed: 

Bruce D. Crippen/Chairman



SENATE JUDICIARY  
 EXHIBIT NO. \_\_\_\_\_  
 DATE 1-10-89  
 BILL NO. SB 79

APPLICATION FOR MEMBERSHIP\*

To: \_\_\_\_\_  
 (A Board of REALTORS®)

I, \_\_\_\_\_<sup>(Name of Applicant)</sup> hereby apply for  
 (REALTOR®, REALTOR-ASSOCIATE®, Nonresident Membership) in the above named Board, and enclose my  
 check in the amount of \$ \_\_\_\_\_<sup>(Circle One)</sup>, which I understand will be returned to me in the event I am not  
 accepted to membership. In the event my application is approved, I agree as a condition to membership to complete  
 the indoctrination course of the above named Board, if any, and otherwise on my own initiative to thoroughly familiarize  
 myself with the Code of Ethics of the NATIONAL ASSOCIATION OF REALTORS®, including the duty to arbitrate  
 business disputes in accordance with the Code of Ethics and Arbitration Manual of the Board and the Constitutions,  
 Bylaws, and Rules and Regulations of the above named Board, the State Association and the National Association,  
 and I further agree to complete satisfactorily a reasonable and nondiscriminatory written examination covering such  
 Code, Constitutions, Bylaws, Rules and Regulations, and duty to arbitrate. I further agree that my act of paying dues  
 shall evidence my initial and continuing commitment to abide by the aforementioned Code of Ethics, Constitutions,  
 Bylaws, Rules and Regulations, and duty to arbitrate, all as from time to time amended. Finally, I consent that and  
 authorize the Board, through its Membership Committee or otherwise to invite and receive information and comment  
 about me from any Member or other person, and I agree that any information and comment furnished to the Board  
 by any Member or other person in response to any such invitation shall be conclusively deemed to be privileged and  
 not form the basis of any action by me for slander, libel, or defamation of character.

NOTE: Applicant acknowledges that if accepted as a Member and he/she subsequently resigns or is expelled from  
 membership in the Board with an ethics complaint or arbitration request pending, the Board of Directors may condition  
 renewal of membership upon applicant's verification that he/she will submit to the pending ethics or arbitration  
 proceeding and will abide by the decision of the Hearing Panel; or if applicant resigns or is expelled from membership  
 without having complied with an award in arbitration, the Board of Directors may condition renewal of membership  
 upon his/her payment of the award, plus any costs that have previously been established as due and payable in relation  
 thereto, provided that the award and such costs have not, in the interim, been otherwise satisfied.

I hereby submit the following information for your consideration:

Name as shown on license \_\_\_\_\_  
 (Please Print)

- Ms.
- Miss
- Mrs.
- Mr.

License No. \_\_\_\_\_  (Broker) Office in Business Zone?  Yes  
 (Salesman)  No

Office Address \_\_\_\_\_  
 (Street) (Suite or Other)

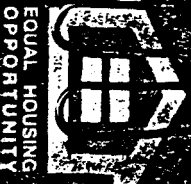
(City) (State) (Zip Code) (Area Code) (Phone)

Does your office comply with zoning requirements for its location?  Yes  
 No

Residence Address \_\_\_\_\_  
 (Street) (Apartment)

(City) (State) (Zip Code) (Area Code) (Phone)





# PROFESSIONALISM IN REAL ESTATE PRACTICE

(A Ready Reference to the Code of Ethics  
and Standards of Practice of the  
NATIONAL ASSOCIATION OF REALTORS®)

Second Edition, 1988

This publication is based upon the Code of  
Ethics, Standards of Practice and Case Inter-  
pretations in effect following the 1988 Mid-Year  
Meeting.

As an agent, the best interests of your client must  
always come before any contemplated interest you  
may have in the property. (Refer to Case Interpretation  
#13-7)

## Article 14

In the event of a controversy between REALTOR®  
associated with different firms, arising out of the  
relationship as REALTORS®, the REALTORS® shall  
submit the dispute to arbitration in accordance with  
the regulations of their Board or Boards rather than  
litigate the matter."

Generally, arbitration is used to settle disputes  
between principal brokers of two different real estate  
firms concerning entitlement to a commission or to  
subagency compensation. Entitlement is determined  
on the basis of determining the "procuring cause." In  
most instances, the decision awards the disputed  
amount to one party or the other. In certain cases,  
and if not precluded by state law, the disputed  
amount may be divided between the parties if the ar-  
bitrators determine that both parties contributed,  
without interruption, to the successful transaction.

The *Code of Ethics and Arbitration Manual* ad-  
vises Boards and State Associations to determine  
whether (1) state law authorizes prior agreements to  
arbitrate future disputes; or (2) if the law does not  
recognize and enforce prior agreements to arbitrate,  
but only recognizes agreements to arbitrate made af-  
ter a dispute arises; or (3) if state law does not recog-  
nize binding arbitration at all. In the latter case,  
Boards can only offer arbitration and cannot require  
REALTORS® and REALTOR-ASSOCIATE®s to  
participate in it.

The *Code of Ethics and Arbitration Manual* also  
specifies three circumstances under which  
REALTORS® must submit to arbitration.

- (1) Arbitration of a controversy between  
REALTOR® or nonresident principals of different  
firms;
- (2) Arbitration between REALTORS® or  
nonresident members (other than principals) or  
REALTOR-ASSOCIATE®s in different firms, pro-  
vided the REALTOR® or nonresident principals join  
in the arbitration;
- (3) Arbitration between REALTORS® or non-  
resident members and their clients when the client in-  
vokes the arbitration and agrees to be bound by the  
decision.

The Manual also specifies three circumstances  
under which the REALTOR®'s participation in ar-  
bitration is voluntary:

- (1) Arbitration between REALTORS®,  
REALTOR-ASSOCIATE®s and Nonresident Mem-  
bers affiliated with the same firm, provided each par-  
ty voluntarily agrees to the arbitration in writing.  
This applies to disputes arising when the parties are,  
or were, affiliated with the same firm, irrespective of  
the time the request is made for such arbitration.
- (2) Arbitration between a REALTOR® or a  
nonresident member who is a principal broker with  
a nonmember broker, provided each party agrees in  
writing to be bound by the decision. However, it is the  
Member's choice whether he will submit to arbitra-  
tion with a nonmember broker. A nonmember  
broker is not entitled to invoke the arbitration  
facilities of a Board of REALTORS®.
- (3) Arbitration between a REALTOR® or a  
nonresident member and his customer if a written  
contractual relationship has been created by the  
REALTOR® or a nonresident member between a  
customer and a client, and provided each party agrees  
in writing to arbitrate the dispute.

For more detailed information on arbitration  
procedures, refer to the *Code of Ethics and Arbitra-  
tion Manual*, the *Interpretations of the Code of  
Ethics*, and the *Professional Standards Training  
Manual*.

Remember that Article 14 requires REALTORS®  
to arbitrate their disputes. If you file suit against a  
REALTOR® when a properly arbitrable matter exists  
and refuse to withdraw the suit and participate in ar-  
bitration when requested, you may be subject to dis-  
ciplinary action. (Refer to Standard of Practice 14-1 and  
Case Interpretation #14-2)

Article 14 requires a REALTOR® to arbitrate  
disputes with clients, if the client requests the arbitra-  
tion and agrees to be bound by the decision. (Refer to  
Standard of Practice 14-2)

Parties to an otherwise arbitrable matter may  
agree not to use the Board's arbitration facility  
without becoming subject to a charge of violating  
Article 14 provided they advise the Board in writing  
of their decision. (Refer to Standard of Practice #14-3)

- Case Interpretation #14-1: Deleted - May, 1988.
- Case Interpretation #14-3: Deleted - May, 1988.
- Case Interpretation #14-4: Deleted - May, 1988.

NAME: Michael Sherwood

ADDRESS: 401 N. Washington, MS 16, MT

PHONE: 721-2729

REPRESENTING WHOM? MTLA

APPEARING ON WHICH PROPOSAL: 79

DO YOU: SUPPORT?  AMEND?  OPPOSE?

COMMENTS: I) Arbitration in such instances is

highly desirable if the parties so consent:

1) It avoids undue judicial delay;

2) It arises between parties knowledgeable in their trade or profession;

3) It subjects the dispute to review by someone probably more knowledgeable than a district court judge in the specific custom and usage in the profession or trade

II Arbitration permitted by this section of law seems to be working well in the commercial and professional fields among sophisticated parties.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

