

MINUTES

MONTANA SENATE 52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS & INDUSTRY

Call to Order: By Chairman J.D. Lynch, on January 21, 1991, at 10:00 a.m.

ROLL CALL

Members Present:

J.D. Lynch, Chairman (D)
John Jr. Kennedy, Vice Chairman (D)
Betty Bruski (D)
Eve Franklin (D)
Delwyn Gage (R)
Jerry Noble (R)
Gene Thayer (R)
Bob Williams (D)

Members Excused: Thomas Hager (R)

Staff Present: Bart Campbell (Legislative Council).

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Announcements/Discussion: None

HEARING ON SENATE BILL 89

Presentation and Opening Statement by Sponsor:

Senator Bob Brown, sponsor of the bill, stated that this bill was done on request by the board of realty regulations. This bill is an act including in the definition of "broker" one who, for a fee, refers a person to another to buy or sell real estate; and amending section 37-51-102. In 1988 the attorney general issued an opinion that the state law doesn't cover a certain for sale by owner operation for real estate. There was an attempt in the 1989 session to cover that loop hole, by B and E of the law on page two. This closes the last remaining loop hole by clarifying that the definition of a broker is one who for a fee refers a person to another to buy or sell real estate.

Proponents' Testimony:

Marcia Allen, a member of the board of realty regulation, spoke in favor of the bill. The board of realty regulation supports this piece of legislation as a result of the attorney

generals opinion that allows referral fees to be paid to a non licensee. The detriment to this activity comes from the creation of a ransom situation. 'I'll give you the name of a perspective purchaser if you pay me a fee to do so' or it creates a bidding situation that allows a name to be recommended to the licensee that's going to pay the highest price to get it. The bill is not intended or designed to affect the token of appreciation, such as a dinner out that is often expressed to those who have been instrumental in the successful conclusion to a sale.

Tom Hopgood, on behalf of the Montana association of realtors, spoke in favor of the bill. In the 1989 session they were active in getting the bill that inserted sub sections B and E into this particular law passed. Sub section F is also a section that they are supporting having that inserted into the law as well, and to make it perfectly clear that this situation is covered by the real estate licensing laws.

Opponents' Testimony:

None.

Questions From Committee Members:

Senator Gage asked what the penalty is for a person who receives compensation for referral.

Marcia Allen replied the board of reality regulations requires that a real estate broker's license must be obtained or sales person license to conduct real estate activities. In 1988 when the attorney general rendered his opinion it excluded the section that allows referring people and receiving compensation to do so.

Senator Gage asked if it did happen what would happen to that broker or the person who makes the referral.

Marcia Allen replied that there is no penalty for this. The brokers are not currently doing it now, but the way the law is currently written the public is going to perceive that they can call with a name and expect a fee.

Grace Berger, administrative assistance to the board of real estate, commented that if this were to pass and be incorporated into the licensing act, to do this activity would be a violation of the licensing act which is a misdemeanor.

Senator Gage commented that according to the bill, a broker also deals in leasing and subleasing. A person could do that according to this with a broker would there be a problem with that.

Steve Maloy introduced himself. He is the chief of the professional occupational licensing bureau which houses the board of real estate regulations.

Grace Berger stated that leasing property is not the problem that buying and selling is.

Marcia Allen commented that when leasing property is concerned they are doing it for a commission and that is stated in the contract that they have with their client.

Senator Gage commented that it would look as though this

would fit under 'broker associate' rather than 'broker owner'.

Grace Berger replied that one refers to the person that owns the agency and the other refers to a person that works for the agency. Broker owner and broker associate requirement and licensing wise there is no difference.

Senator Brown commented that F modifies paragraph three and precedes paragraph four on page two of the bill.

Senator Gage asked if there is no penalty for these people to be doing this what is going to stop it from happening.

Tom Hopgood responded by saying that sub section three defines what a broker is. Sub section four defines a broker associate as a broker that works with somebody that owns an agency. This loop hole that is being proposed would apply to both broker associate or a broker owner. It would also apply to the salesmen.

Senator Gage asked if someone does this, they are considered to be a broker and are subject to the same fines as a broker would be subject to.

Tom Hopgood replied yes.

Senator Lynch asked if this would prohibit someone from voluntarily after the fact giving someone a gift of fifty dollars if a referral was made.

Tom Hopgood replied that there is definitely a distinction between a fee and a gift. If the board were attempting to force this regulation against a real estate salesman were to give a gift for a referral then they would be exceeding the intent that they are trying to do here.

Senator Gage asked if this was crucial enough that it would be effective on passage on approval, or is October 1st okay.

Senator Lynch replied that the effective date would automatically be October 1st unless it is crucial.

Marcia Allen replied that October 1 is fine.

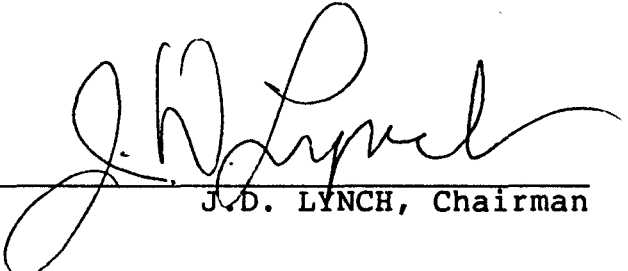
Closing by Sponsor:

Senator Brown closed.

Senator Lynch commented that since there was a few questions and not everyone could attend the meeting today, they would hold executive action on Tuesday, January 22, 1991.

ADJOURNMENT

Adjournment At: 10:20 a.m.



J.D. LYNCH, Chairman

SENATE BUSINESS & INDUSTRY COMMITTEE

January 21, 1991

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DARA ANDERSON, Secretary

JDL/dia

ROLL CALL

Business&IndustryCOMMITTEE

DATE 1/21/91

LEGISLATIVE SESSION

NAME	PRESENT	ABSENT	EXCUSED
Senator Bruski	X		
Senator Franklin	X		
Senator Gage	X		
Senator Hager		X	
Senator Noble	X		
Senator Thayer	X		
Senator Williams	X		
Senator Kennedy	X		
Senator Lynch	X		

Each day attach to minutes.

1/21/91

BUSINESS & INDUSTRY

VISITORS' REGISTER

[illegible]

(Please leave prepared statement with Secretary)

WITNESS STATEMENT

To be completed by a person testifying or a person who wants their testimony entered into the record.

Dated this 21ST day of Jan, 1991.

Name: Marcia Allen

Address: 629 Helena Ave

Telephone Number: 442-3333

Representing whom?

Board of Realty Regulation

Appearing on which proposal?

SB 89

Do you: Support? ✓ Amend? Oppose?

Comments:

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PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY