

MINUTES

**MONTANA SENATE
52nd LEGISLATURE - REGULAR SESSION**

COMMITTEE ON BUSINESS & INDUSTRY

Call to Order: By Chairman J.D. Lynch, on February 6, 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)
Thomas Hager (R)
Jerry Noble (R)
Gene Thayer (R)
Bob Williams (D)

Members Excused: None

Staff Present: Bart Campbell (Legislative Council).

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

Announcements/Discussion: None

EXECUTIVE ACTION ON SENATE BILL 176

Motion:

Senator Thayer made a motion to amend the amendments.
Senator Thayer made a motion to do pass SB 176 as amended.

Discussion:

Bart Campbell went over the amendments for SB 176 (See
Exhibit 1).

Amendments, Discussion, and Votes:

The motion to amend the amendments passed unanimously.
The motion to do pass SB 176 as amended passed 7 to 2 votes.

EXECUTIVE ACTION ON SENATE BILL 137

Motion:

Senator Gage made a motion to do not pass SB 137.

Discussion:

Bruce MacKenzie, a lawyer with dorsey & whitney, spoke about his concerns on the proposed amendments to SB 137 (See Exhibit 2).

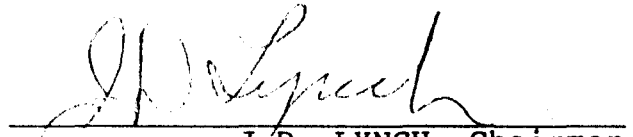
Robyn Young, deputy commissioner of securities representing the state auditor's department and Montana securities department, presented the committee with the NASAA survey of fraud and abuse in the financial planning industry (See Exhibit 3).

Amendments, Discussion, and Votes:

The motion to do not pass SB 137 passed unanimously.

ADJOURNMENT

Adjournment At: 11:10 a.m.


J.D. LYNCH, Chairman


DARA ANDERSON, Secretary

JDL/dia

ROLL CALL

Business & Industry COMMITTEE

DATE 2/6/91

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.

Amendments to Senate Bill No. 137
First Reading Copy

Requested by Senator Blaylock
For the Committee on Business and Industry

Prepared by Bart Campbell
January 23, 1991

1. Page 6, line 8.
Strike: "or"
2. Page 6, line 15.
Following: line 14
Insert: "(ii) a bank, savings institution, trust company, or insurance company;
(iii) lawyers, accountants, or engineers licensed to practice in this state or teachers certified in this state; or"
Renumber: subsequent subsection
3. Page 7, line 1.
Following: "(12)"
Strike: "(a)"
4. Page 7, line 6.
Strike: "(i)"
Insert: "(a)"
Renumber: subsequent subsections
5. Page 7, lines 13 through 15.
Strike: subsection (b) in its entirety
6. Page 11, line 6.
Following: "registered"
Insert: "as an investment adviser or as an investment adviser representative"
7. Page 11, line 10.
Following: "broker-dealers"
Insert: "and salesmen"
8. Page 11, line 11.
Following: "chapter"
Insert: ", provided that the investment advisory activities of salesmen are conducted under the supervision of a broker-dealer"
9. Page 11, lines 12 through 15.
Strike: subsections (ii) and (iii) in their entirety
Renumber: subsequent subsections
10. Page 12, line 17.
Strike: "(3)(b)(iv)"
Insert: "(3)(b)(ii)"

11. Page 24, line 10.
Following: "of"
Insert: "30-10-201 or"

Amendments to Senate Bill No. 176
First Reading Copy

Requested by Senator Brown
For the Committee on Business and Industry

Prepared by Bart Campbell
January 25, 1991

1. Title, line 6.
Following: "MANAGERS"
Strike: "AND LEASING AGENTS"
2. Title, line 8.
Strike: "OR LEASING AGENT"
3. Title, line 9.
Following: "BROKER;"
Insert: "AND"
4. Title, line 11 through line 14.
Following: "LICENSE" on line 11
Strike: remainder of line 11 through "MCA" on line 14
5. Page 1, line 16 through page 3, line 2.
Strike: the preamble and the statement of intent in their
entirety
Insert: " 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 licensing and regulation of real estate property managers. The legislature intends 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, and to set and modify fees commensurate with the costs of licensing and regulating the occupation of property manager."

6. Page 3, line 5, through page 27, line 22.
Strike: everything after the enacting clause
Insert: "NEW SECTION. Section 1. Definitions. As used in [sections 1 through 12], the following definitions apply:
(1) "Board" means the board of realty regulation provided for in 2-15-1867.
(2) "Department" means the department of commerce established in 2-15-1801.
(3) "Lease" means a transfer of possession of real estate without the transfer of title to the real estate and includes rent, hiring, and any similar term.

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

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

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

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

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

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

NEW SECTION. Section 2. Exemptions. The provisions of [sections 1 through 12] do not apply to:

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

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

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

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

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

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

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

(8) a person, partnership, association, trust, or corporation performing an act with respect to prospecting, leasing, drilling, or operating land for hydrocarbons and hard minerals or disposing of hydrocarbons, hard minerals, or mining rights in the land, whether upon a royalty basis or otherwise;

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

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

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

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

(2) A corporation, partnership, or association may not be licensed under [sections 1 through 12], but a corporation or a partnership may act as a property manager if each corporate officer or employee and each partner performing the functions of a property manager is licensed as a property manager or is exempt from licensure under [sections 1 through 12].

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) The license of a property manager associate must be delivered or mailed to the real estate broker or property manager with whom the property manager associate is associated and must be kept in the custody and control of the broker or property manager.

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

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

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

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

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

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

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

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

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

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

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

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

NEW SECTION. **Section 11. Penalties -- criminal -- civil.** A person acting without a license or while his license is suspended or revoked or a person who violates any provision of [sections 1 through 12] is guilty of a misdemeanor and is subject to the criminal and civil penalty provisions of 37-51-323.

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

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

Legislative Audit Committee

State of Montana



Report to the Legislature

December 1990

Sunrise Report -- 1991 Biennium

Summary of Sunrise Proposals for the Licensure of:

- **Respiratory Care Practitioners**
- **Naturopathic Physicians**
- **Midwives**
- **Auctioneers**
- **Property Managers**

Direct comments/inquiries to:
Office of the Legislative Auditor
Room 135, State Capitol
Helena, Montana 59620

90SP-45



LEGISLATIVE AUDIT COMMITTEE

MONTANA STATE LEGISLATURE

SENATE MEMBERS

Greg Jergeson
Vice Chairman
Thomas Keating
Tom Rasmussen
Mike Walker

HOUSE MEMBERS

John Cobb
Chairman
Mike Kadas
Robert Pavlovich
Bruce Simon

Room 135, State Capitol
Helena, MT 59620
(406) 444-3122

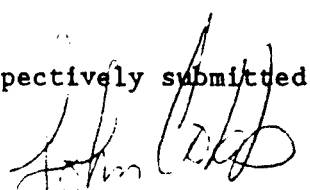
December 1990

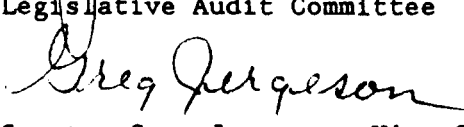
The 52nd Montana State Legislature:

This report is in response to the Sunrise law which requires the Legislative Audit Committee to evaluate qualifying proposals to establish new professional or occupational licensing programs. During the 1991 Biennium, the Committee evaluated proposals for the licensing of respiratory care practitioners, naturopathic physicians, midwives, auctioneers, and property managers.

Section 2-8-203, MCA, requires the Committee to report to the legislature on its recommendations as to whether each of the professions or occupations should be licensed by the state. The Committee is to include in the report its estimates of the costs of each of the licensing programs and a schedule of fees to recover these costs. The Committee's recommendations are shown starting on page 3. The Committee's estimates for costs and fees are shown on page 5.

Respectively submitted,


Representative John Cobb, Chairman
Legislative Audit Committee


Senator Greg Jergeson, Vice Chairman
Legislative Audit Committee

Legislative Audit Committee
SUNRISE -- 1991 BIENNIUM

Introduction

The intent of the Sunrise Law (Chapter 266, Laws of Montana 1987) was to improve the Legislature's ability to evaluate the need for new professional and occupation licensing programs. Under this law, the Legislative Audit Committee is required to evaluate any qualifying proposal to: 1) establish a new licensing board; 2) add another occupation or profession to an existing board; or 3) consolidate any existing licensing boards.

In order for a proposal to qualify for review, the applicant must submit the proposal in the form of a report to the Legislative Audit Committee at least 180 days before the start of the legislative session. The report must provide information to the Committee related to the need for licensure and how the proposed board will operate. An application fee is also required.

After the Legislative Audit Committee receives the completed report and application fee, the Committee will hold a public meeting to consider the report. The Committee hears testimony from the applicant and any other interested parties. The Committee considers information presented in the applicant's report and testimony given at the public hearing to make its recommendation as to whether the profession or occupation should be licensed. Section 2-8-203, MCA, requires the Committee to make its recommendation in a report to the legislature for its next regular session. The report must also include an estimate of the cost to the state for each of the licensing programs along with a proposed schedule of fees that will recover the costs of each program.

October 1, 1990 Hearings

On October 1, 1990 the Legislative Audit Committee heard testimony concerning proposals for three new licensing programs: respiratory care practitioners, naturopathic physicians, and midwives. The public was notified of the meeting through an August 23, 1990 press release. In addition, each applicant was asked to identify groups that would be interested in their proposal. Based on the above information, and contacts made by the Legislative Auditor, a mailing list was developed. Individuals and groups on this list were informed of the public hearings.

There was a large turnout for the October meeting. The Committee heard from several proponents and opponents for each proposal. Other individuals offered suggestions for the regulation of the affected professions or discussed their experiences related to the professions. Staff for the Department of Commerce offered suggestions related to each proposed licensing bill. Department officials also presented information on projected costs to run the new licensing programs.

The Committee members had numerous questions for the applicants and for others who presented testimony. After Committee discussion, the members voted on whether to recommend state licensure for each of the involved professions. They

Respiratory Care Practitioners

A motion was made by Senator Keating that the Committee recommend licensure for respiratory care practitioners. The Committee voted as follows on the motion:

Senator Jergeson	- Yes	Representative Cobb	- Yes
Senator Keating	- Yes	Representative Kadas	- Yes
Senator Rasmussen	- Yes	Representative Pavlovich	- Yes
Senator Walker	- Yes	Representative Simon	- No

The motion carried seven to one.

Naturopathic Physicians

A motion was made by Representative Kadas that the Committee recommend licensure for naturopathic physicians. The Committee voted as follows on the motion:

Senator Jergeson	- Yes	Representative Cobb	- No
Senator Keating	- No	Representative Kadas	- Yes
Senator Rasmussen	- Yes	Representative Pavlovich	- Yes
Senator Walker	- Yes	Representative Simon	- No

The motion carried five to three.

Midwives

A motion was made by Senator Jergeson that the Committee recommend licensure for midwives. The Committee voted as follows on the motion:

Senator Jergeson	- Yes	Representative Cobb	- No
Senator Keating	- Yes	Representative Kadas	- Yes
Senator Rasmussen	- Yes	Representative Pavlovich	- Yes
Senator Walker	- Yes	Representative Simon	- Yes

The motion carried seven to one.

Auctioneers.

A motion was made by Senator Keating that the Committee recommend licensure for auctioneers. The Committee voted as follows on the motion:

Senator Jergeson	- No	Representative Cobb	- No
Senator Keating	- Yes	Representative Kadas	- No
Senator Rasmussen	- Yes	Representative Pavlovich	- Yes
Senator Walker	- Absent	Representative Simon	- No

The motion failed three to four.

SUNRISE PROPOSALS -- PROJECTED EXPENDITURES AND REVENUES

Profession	---Expenditures---		-----Revenues-----					
	1st Year	2nd Year	Fee Types	Fee Amounts	# of 1st yr	Amount 1st yr	# of 2nd Yr	Amount 2nd Yr
*****	*****	*****	*****	*****	*****	*****	*****	*****
Respiratory Care Practitioners	\$16,765	\$13,900	Applic & Lic Examination Renewal Temp. Permit Late Renewal Inactive	\$70 \$80 \$50 \$50 \$20 \$20	300 10 0 30 0 5	\$21,000 \$800 \$0 \$1,500 \$0 \$100	30 10 150 30 10 5	\$2,100 \$800 \$7,500 \$1,500 \$200 \$100
					Total	\$23,400		\$12,200
Naturopathic Physicians	\$6,072	\$4,387	Application Examination License Renewal	\$300 \$350 \$350 \$350	14 3 14 0	\$4,200 \$1,050 \$4,900 \$0	3 3 2 14	\$900 \$1,050 \$700 \$4,900
					Total	\$10,150		\$7,550
Midwives	\$8,625	\$8,000	Application Examination License Renewal Prov. License	\$150 \$300 \$300 \$300 \$200	0 0 0 0 25	\$0 \$0 \$0 \$0 \$5,000	15 15 15 0 0	\$2,250 \$4,500 \$4,500 \$0 \$0
					Total	\$5,000		\$11,250
Auctioneers	\$15,757	\$10,200	Applic & Exam License Renewal	\$25 \$100 \$100	150 150 0	\$3,750 \$15,000 \$0	0 0 150	\$0 \$0 \$15,000
					Total	\$18,750		\$15,000
Property Managers	\$20,582	\$8,878	Applic & Exam License(assoc) License(mgr) Renewal(assoc) Renewal(mgr)	\$40 \$35 \$65 \$25 \$50	250 150 100 0 0	\$10,000 \$5,250 \$6,500 \$0 \$0	30 18 12 150 100	\$1,200 \$630 \$780 \$3,750 \$5,000
					Total	\$21,750		\$11,360

EXHIBIT NO. 2DATE 2/6/91BILL NO. SB137

DORSEY & WHITNEY

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

201 DAVIDSON BUILDING
8 THIRD STREET NORTH
GREAT FALLS, MONTANA 59401
(406) 727-3632
FAX (406) 727-3638

350 PARK AVENUE
NEW YORK, NEW YORK 10022
(212) 415-9200

1330 CONNECTICUT AVENUE, N.W.
WASHINGTON, D. C. 20036
(202) 857-0700

3 GRACECHURCH STREET
LONDON EC3V 0AT, ENGLAND
01-929-3334

36 RUE TRONCHET
75009 PARIS, FRANCE
01-42-66-59-49

February 5, 1991

BRUCE A. MACKENZIE

2200 FIRST BANK PLACE EAST
MINNEAPOLIS, MINNESOTA 55402
(612) 340-2600

201 FIRST AVENUE S. W., SUITE 340
ROCHESTER, MINNESOTA 55902
(507) 288-3156

1200 FIRST INTERSTATE CENTER
BILLINGS, MONTANA 59103
(406) 252-3800

127 EAST FRONT STREET
MISSOULA, MONTANA 59802
(406) 721-6025

Senator J. D. Lynch
Chairman
Senate Business and Industry Committee
State Capitol
Helena, Montana 59620

Re: Senate Bill 137 Amendment

Dear Senator Lynch and Members of the Committee:

We have reviewed facsimile copies of the proposed amendments suggested by the Deputy Commissioner of Securities to Senate Bill 137 and copies of the Deputy's amended testimony showing a section-by-section analysis of the bill dated January 29, 1991. We are encouraged by the amendments which remove banks, savings and loans, trust companies, registered broker dealers, engineers, lawyers and certified public accountants (collectively "regulated entities") from the definition of an "Investment Advisor". The additional clarifications the Commissioner has provided with respect to Financial Planners who would be included under the Act as Investment Advisors appear appropriate and we defer to their experience as to whether these individuals are avoiding the registration requirements of the Act by using the term "Financial Planner".

We do not, however, agree with the Commissioner's assessment with respect to the changes in the liability provisions of the state's Security Act proposed by Senate Bill 137. On page 6 of the Deputy Commissioner's summary of the bill dated January 29, 1991, there is an assertion that the proposed language is in compliance with amendments to the Uniform Securities Act which have been adopted by over twenty states. This is not accurate.

The language suggested by Section 4 of Senate Bill 137 is taken from amendments which were proposed to the Uniform Securities Act in 1981 and 1986 by the North American Securities Administrators Association ("NASAA"). This language was not adopted by the National Conference of Uniform State

DORSEY & WHITNEY

Senator J. D. Lynch
Senate Business and
Industry Committee

-2-

February 5, 1991

Laws after being criticized by the American Bar Association, the Securities Industry Association and other industry and regulatory authorities. Attached as Exhibit A to this letter is a copy of the Uniform Securities Act Civil Liability section together with annotations showing the NASAA proposed amendments in 1981 and 1986. The NASAA proposals do not appear in the Uniform Securities Act. The language of Section 4 of Senate Bill 137 conforms to the proposed 1986 amendment by NASAA. It is not the language of the Uniform Securities Act as adopted by the National Conference of Uniform State Laws.

Similarly, we must dispute the statement by the Commissioner's office that these amendments have been adopted in over twenty states. While our time was limited, our review of all fifty state laws reveals only ten states have adopted specific provisions imposing liability on those providing investment advisory services. Attached as Exhibit B to this testimony is a listing of those state statutes with a summary of the liability imposed by those statutes. We would note that the liability suggested by the Commissioner's Office is significantly broader than any other states reviewed with the exception of Alabama. We note that a number of the states have significantly limited the liability of investment advisors solely to registration violations and intentional untrue statements or fraudulent acts. In addition, Ohio and Pennsylvania require that the violations occur in connection with the purchase and sale of securities while some states restrict liability solely to contracts which violate specific provisions of the investment advisor provisions of the Securities Act.

We agree with the amendment to the liability provision which would impose strict liability for failure to register as an Investment Advisor. Such a change is in conformance with the Uniform Securities Act and has long been missing from Montana securities laws. We do not, however, concur in the remaining amendments to Montana Code Annotated Sections 30-10-301 and 307 as proposed by Sections 3 and 4 of Senate Bill 137. The proposed amendments would significantly expand the liability provisions under the Securities Act and do not conform to the provisions of the Uniform Act or many other state securities laws. Instead they adopt the proposed amendments to the Uniform Securities Act which have been rejected by the National Conference on Uniform State Laws, the

DORSEY & WHITNEY

Senator J. D. Lynch
Senate Business and
Industry Committee

-3-

February 5, 1991

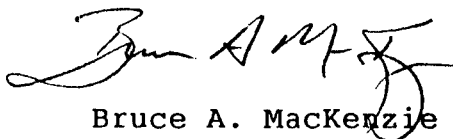
American Bar Association and industry groups knowledgeable in the area.

We respectfully request the Committee to approve only the amendments restoring the definition of Investment Advisors to exclude regulated entities and to restrict the change in the liability provision solely to the inclusion of liability to Investment Advisors for failure to register.

Thank you for your attention to this matter.

With best regards.

Sincerely,

A handwritten signature in black ink, appearing to read "Bruce A. MacKenzie", with a stylized flourish at the end.

Bruce A. MacKenzie

BAM:dk-g
Encs.
1032b

of the rule or order. [No indictment or information may be returned under this act more than five years after the alleged violation.]

(b) The [Administrator] may refer such evidence as is available concerning violations of this act or of any rule or order hereunder to the [attorney general or the proper district attorney], who may, with or without such a reference, institute the appropriate criminal proceedings under this act.

(c) Nothing in this act limits the power of the state to punish any person for any conduct which constitutes a crime by statute or at common law.

Official Code Comment

.01 [Sec. 409—Criminal penalties].—On the meaning of "willfully," see the comment under § 204(a)(2)(B). The sentence in brackets in § 409(a) is an optional provision for any state which does not have a general criminal statute of limitations.

[§ 5550]

Sec. 410. [Civil liabilities.] (a) Any person who

(1) offers or sells a security in violation of section 201(a), 301, or 405(b), or of any rule or order under section 403 which requires the affirmative approval of sales literature before it is used, or of any condition imposed under section 304(d), 305(g), or 305(h), or

(2) offers or sells a security by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading (the buyer not knowing of the untruth or omission), and who does not sustain the burden of proof that he did not know, and in the exercise of reasonable care could not have known, of the untruth or omission, is liable to the person buying the security from him, who may sue either at law or in equity to recover the consideration paid for the security, together with interest at six percent per year from the date of payment, costs, and reasonable attorneys' fees, less the amount of any income received on the security, upon the tender of the security, or for damages if he no longer owns the security.

(b) Every person who directly or indirectly controls a seller liable under subsection (a), every partner, officer, or director of such a seller, every person occupying a similar status or performing similar functions, every employee of such a seller who materially aids in the sale, and every broker-dealer or agent who materially aids in the sale are also liable jointly and severally with and to the same extent as the seller, unless the non-seller who is so liable sustains the burden of proof that he did not know, and in exercise of reasonable care could not have known, of the existence of the facts by reason of which the liability is alleged to exist. There is contribution as in cases of contract among the several persons so liable.

(c) Any tender specified in this section may be made at any time before entry of judgment.

(d) Every cause of action under this statute survives the death of any person who might have been a plaintiff or defendant.

§ 5549

EXHIBIT B

<u>STATE</u>	<u>SECTION</u>	<u>LIABILITY IMPOSED</u>
Alabama	8-6-19 (Effective 1-1-91)	Investment advisor registration and investment advisor unlawful acts including regulation violations
Connecticut	36-498	Limited to investment advisor registration provisions and specific unlawful practices of investment advisors
Georgia	10-5-14	Relates solely to investment advisor contracts made in violation of the Act
Indiana	23-2-1-19	Limited to registration violations and specific investment advisor responsibility provisions
Maryland	11-703(3) (Effective 10-1-90)	Limited to making of untrue statements and registration violations
Ohio	1707.42	Limited to advice in connection with the <u>purchase</u> or <u>sale</u> of security. Separate liability for advisors from other civil liability provisions
Oklahoma	408(c)	Registration violations or engages in fraudulent activity
Pennsylvania	407(f) (Effective 2-16-91)	Registration violation, unlawful activity in connection with the <u>purchase</u> of securities
South Dakota	47-31A-410(b) (Effective 7-1-89)	Limited to untrue statements, contracts which provide for (1) share of capital gains, (2) assign the contract without consent, and registration violations
Virginia	13.1-522(B)	Limited to willful and material violations of investment advisor unlawful provisions, registration provisions and fraudulent activity

NASAA

Report to the Subcommittee on Consumer
Affairs, Committee on Banking, Housing
and Urban Affairs, U.S. Senate

SENATE BUSINESS & INDUSTRY

EXHIBIT NO. 3

DATE 2/6/91

BILL NO. SB137

July 1988

THE NASAA SURVEY OF FRAUD AND ABUSE IN THE FINANCIAL PLANNING INDUSTRY

30-State Survey of Recent State Enforcement Actions Reveals \$400 Million in Investor Losses; Scale of Fraud Up Sharply From \$91 Million in Earlier Survey

ROLL CALL VOTE

SENATE COMMITTEE Business and Industry

Date 2/6/91 Bill No. SB137 Time 10:00

NAME	YES	NO
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

Dara Anderson

Secretary

JD Lynch

Chairman

Motion: GAGE Do Not Pass -

ROLL CALL VOTE

SENATE COMMITTEE Business and Industry

Date 2/6/91 Bill No. SB176 Time 10:00

NAME	YES	NO
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	

Dara Anderson

Secretary

JD Lynch

Chairman

Motion: DO PASS AS AMENDED

ROLL CALL VOTE

SENATE COMMITTEE Business and Industry

Date 2/6/91 Bill No. SB176 Time 10:00

NAME	YES	NO
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	

Dara Anderson

Secretary

JD Lynch

Chairman

Motion: TO CAG AMENDMENT FROM 2 TO 4

ROLL CALL VOTE

SENATE COMMITTEE Business and Industry

Date 2/6/91 Bill No. SB 176 Time 10:00

NAME	YES	NO
Senator Bruski	✓	
Senator Franklin	✓	
Senator Gage	✓	
Senator Hager	✓	
Senator Noble	✓	
Senator Thayer	✓	
Senator Williams	✓	
Senator Kennedy	✓	
Senator Lynch	✓	

Dara Anderson
Secretary

JD Lynch
Chairman

Motion: SB AMENDMENTS TO 176

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
February 6, 1991

MR. PRESIDENT:

We, your committee on Business and Industry having had under consideration Senate Bill No. 137 (first reading copy -- white), respectfully report that Senate Bill No. 137 do not pass.

Signed: _____


John "J.D." Lynch, Chairman

AB 2/6/91
Amd. Coord.

SB 2/6
Sec. of Senate

11:50

SENATE STANDING COMMITTEE REPORT

Page 1 of 6
February 6, 1991

MR. PRESIDENT:

We, your committee on Business and Industry having had under consideration Senate Bill No. 176 (first reading copy -- white), respectfully report that Senate Bill No. 176 be amended and as so amended do pass:

1. Title, line 6.

Following: "MANAGERS"

Strike: "AND LEASING AGENTS"

2. Title, line 8.

Strike: "OR LEASING AGENT"

3. Title, line 9.

Following: "BROKER,"

Insert: "AND"

4. Title, line 11 through line 14.

Following: "LICENSE" on line 11

Strike: remainder of line 11 through "MCA" on line 14

5. Page 1, line 16 through page 3, line 2.

Strike: the preamble and the statement of intent in their entirety

Insert: " 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 licensing and regulation of real estate property managers. The legislature intends 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, and to set and modify fees commensurate with the costs of licensing and regulating the occupation of property manager."

6. Page 3, line 5, through page 27, line 22.

Strike: everything after the enacting clause

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

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

(2) "Department" means the department of commerce established in 2-15-1801.

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

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

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

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

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

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

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

NEW SECTION. Section 2. Exemptions. The provisions of [sections 1 through 12] do not apply to:

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

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

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

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

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

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

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

(8) a person, partnership, association, trust, or corporation performing an act with respect to prospecting, leasing, drilling, or operating land for hydrocarbons and hard minerals or disposing of hydrocarbons, hard minerals, or mining rights in the land, whether upon a royalty basis or otherwise;

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

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

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

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

(2) A corporation, partnership, or association may not be licensed under [sections 1 through 12], but a corporation or a partnership may act as a property manager if each corporate officer or employee and each partner performing the functions of a property manager is licensed as a property manager or is exempt from licensure under [sections 1 through 12].

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) The license of a property manager associate must be delivered or mailed to the real estate broker or property manager with whom the property manager associate is associated and must be kept in the custody and control of the broker or property manager.

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

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

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

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

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

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

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

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

- (1) is guilty of fraud or deceit in procuring or attempting to procure a license;
- (2) is unfit or incompetent by reason of negligence, habit, or other causes;
- (3) is guilty of unprofessional conduct as defined by rules of the board;
- (4) has willfully or repeatedly violated provisions of [sections 1 through 12].

NEW SECTION. Section 11. Penalties -- criminal -- civil. A person acting without a license or while his license is suspended or revoked or a person who violates any provision of [sections 1 through 12] is guilty of a misdemeanor and is subject to the criminal and civil penalty provisions of 37-51-323.

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

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

Signed, _____

John "J.D." Lynch, Chairman

44-2-6-9
Ad. Coord.

SB 2-6 1:10
Sec. of Senate