LC 0145/01

45th Legislature

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LC 0145/01

INTRODUCED BY BANK NELSON

A BILL FOR AN ACT ENTITLED: "AB ACT TO PROVIDE A REMEDY TO CONSUMERS OF PROFESSIONAL SERVICES WHO ARE HARMED BECAUSE OF A VIOLATION OF PROFESSIONAL STANDARDS BY LICENSEES OF THE DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING; 7 PLACING AUTHORITY IN THAT DEPARTMENT TO REQUIRE LICENSEES TO REPAIR THE HARM OR PAY DAMAGES IN REPARATION FOR SUCH HARB: 9 CREATING A FUND TO PAY AWARDS DEFAULTED UPON: AND REMOVING 10 REQUIREMENTS: AMENDING SECTIONS 66-1940, 66-2115, 11 66-2405, R.C.M. 1947; AND REPEALING SECTIONS 66-1934, 12 66-2113. 66-2609. 66-3322. 66-3323. 66-3324. 66-3325. 13 14 66-3326, AND 66-3510, R.C.H. 1947."

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16 BE IT ENACTED BY T

Section 1. Board hearing to determine injury caused by licensee. A person who suffers injury from an act or omission of a licensee performing the professional or occupational duties for which he is licensed by the department of professional and occupational licensing may file with the department a sworn statement in the nature of a complaint, stating the cause and extent of the injury and all other facts pertinent to the complaint. After receiving the complaint, the board or equivalent licensing authority

that licensed the person named in the complaint may hold a hearing in the manner provided by the Montana Administrative Procedure Act for contested cases to determine whether the licensee violated professional standards and board rules, whether injury was caused thereby, and the amount of damages. The board or equivalent licensing authority may dismiss a complaint it determines is frivolous. The board shall hold a hearing on every complaint that is not dismissed as frivolous.

Section 2. Order requiring payment or repair. If the board or equivalent licensing authority determines that a licensee caused injury in the course of his professional duties, it may enter an order requiring the licensee to make payment to the consumer or to repair the damage caused. The amount of the payment required may not exceed \$5,000 per complaint.

17 Section 3. Action in case of noncompliance. The board
18 may revoke the license of the licensee if payment or repairs
19 are not made within 30 days after the board enters its
20 order.

Section 4. Fund for hearing expenses and paying damages. In addition to the renewal fee, licensees of the department shall pay an annual fee of not less than \$5 and not more than \$20 to the department, payable with the renewal fee. The director of the department shall establish

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the annual fee, which may vary according to the occupation
or profession licensed. The department shall deposit these
fees in an earmarked revenue fund to pay:

- 4 (1) the cost of hearings provided for in [section 1];
  5 and
- 6 (2) damages awarded to a complainant which have not
  7 been paid by the licensee or former licensee within the time
  8 provided in [section 5].

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- Section 5. Payment for awards defaulted upon. If a licensee or person formerly licensed by the department fails to repair or pay damages assessed against him in an order of a board or equivalent licensing authority within 45 days after the order is entered, the department shall pay the complainant the full amount of damages awarded by the board or equivalent licensing authority from the fund created for that purpose.
- 17 Section 6. Appeal to district court. In any appeal to
  18 the district court under the provisions of the Montana
  19 Administrative Procedure Act, the board's record of hearing
  20 and order is prima facie evidence of the correctness of its
  21 contents.
- Section 7. Court enforcement. If an award has been made and no appeal has been filed, the attorney general may petition the district court to enforce the award by appropriate order.

Section 8. Remedy not exclusive — offset. The remedy
provided for in this act is in addition to any other remedy
the complainant may be entitled to, but a recovery under
this act must be offset against any additional recovery.

5 Section 9. Section 66-1940, R.C.M. 1947, is amended to 6 read as follows:

7 "66-1940. Penalties -- legal actions. (a) (1) Any 8 individual acting as a broker or salesman without a license 9 or while his license is suspended or revoked, or any person 10 who violates any provision of this act, shall be guilty of a 11 misdemeanor and upon conviction thereof by a district court 12 of this state shall be punishable by a fine of not less than 13 ene-handred-dellars (\$100,00) or more than five handred dellars (\$500,00) or by imprisonment for a term not to 14 15 exceed minety (90) days, or both. Upon conviction of a 16 second or subsequent violation, the person shall be punishable by a fine of not less than five hundred dollars 17 18 (\$500,00) or more than two thousand dellars (\$2,000,00) or by imprisonment for a term not to exceed six (6) months. or 19 20 both.

21 (b) (2) In case any person in a civil action is found
22 guilty of having received any money, or the equivalent
23 thereof, as a fee, commission, compensation, or profit by or
24 in consequence of a violation of any provision of this act,
25 he shall in addition be liable to a penalty of not less than

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the amount of the sum of money so received and not more than three times the sum so received, as may be determined by the court, which penalty may be recovered in any court of competent jurisdiction by any person aggrieved.

(c) has person sustaining damages by failure of a real estate broker or real estate salesman to comply with the provisions of this act, shall have the right to commence an

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provisions of this act, shall have the right to commonse an action in his own name against the real estate broker and his surety, or the real estate salesman and his surety, or both the broker and any calesman employed directly or indirectly by such broker and their respective cureties, for the recevery of any damages sustained as the recelt of any act specified in section 66-1937 herein or as a result of the failure of the real estate broker or real estate salesman to comply with the provisions of this act. In all cases where suit is brought against the broker or the salesman, and his surety, the court shall, upon entering judgment for the plaintiff, allow as a part of the costs of suit a reasonable amount as attermey's fees.

20 <u>All penalties provided for by this section may be</u>
21 <u>sellested from the broker's and salesman's bonds provided by</u>
22 <u>section 66-1933."</u>

23 Section 10. Section 66-2115, R.C.M. 1947, is amended 24 to read as follows:

25 #66-2115. Regulation of abstracters - violations.

(1) The board may cancel and revoke a certificate of registration issued to a person under this act for a violation of this act or on a conviction of the holder of the certificate of a crime involving moral turpitude, or if the board finds the holder to be quilty of habitual carelessness or inattention to business or of fraudulent practices. The board may also cancel and revoke a certificate of authority issued to a person, firm, or corporation under this act for failure to fermish the bond 10 or other securities required by section 66-2113, or new or additional bonds the board considers necessary or for 11 failure to maintain indices and abstract records, or for 12 13 failure to have in charge of the business a registered 14 abstracter, or for violation of this act.

- 15 (2) On a verified complaint being filed with the
  16 department charging the holder of a certificate of
  17 registration with a violation of any of the provisions of
  18 subsection (1) of this section the board shall require the
  19 holder of the certificate to appear before it on a day fixed
  20 by the board, to show cause why the certificate should not
  21 be canceled."
- 22 Section 11. Section 66-2405, R.C.M. 1947, is amended 23 to read as follows:
- 24 \*\*66-2405. Examination fee expiration of license —
  25 annual renewal fees bond required of master plumbers.

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2 the examinations prescribed by the board until he has 3 deposited with the department one-bundred dollars (\$100) as an examination fee, and no applicant for a journeyman 4 5 plumber's license may submit to the examination prescribed by the board until he has deposited with the department 7 fifty dellare-(\$50) as an examination fee. A license when 8 issued expires ene-{1} year from the date of issuance. A 9 license issued to a master plumber or a journeyman plumber 10 may be renewed annually without examination, at any time 11 prior to its expiration, by a written request for its renewal, directed to the department, and the payment of not 12 13 to exceed one hundred dellars (\$100) as set by the board 14 for a renewal of a master plumber's license, and not to 15 exceed twenty-five dellars (\$25) as set by the board for a journeyman plumber's license, and renewal is also for the 16 17 period of ene (1) year. No master plusher's license may be 18 issaed or renewed unloss the applicant - has deposited - with 19 the department a good and sufficient bond to be approved by 20 the beard, or cash is the asount of five thousand dellars 21 (\$5,000) to insure the faithful performance of his duties 22 arising out of the state plumbing sode or this chapter." 23 Section 12. Repealer. Sections 66-1934, 66-2113, 24 66-2609, 66-3322, 66-3323, 66-3324, 66-3325, 66-3326, and 25 66-3510, R.C.M. 1947, are repealed.

No applicant for a master plumber's license may submit to

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Approved by Committee on Judiciary

1	SENATE BILL NO. 125
2	INTRODUCED BY REGAN, BLAYLOCK, NELSON
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4	A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE-A-REMESYTO
5	CONSUMERS-OF-PROFESSIONAL-SERVICES-WHO-ARE-HARMED-BECAUSE-OF
5	AVIBLATIONOFPROFESSIONAL-STANDARDS-BY-LICENSEES-OF-THE
7	DEPARTMENTBFPROFESSIONALANDBECUPATIONALLICENSING
8	PLACING-AUTHORITY-IN-THAT-DEPARTMENT-TO-REQUIRE-LICENSEES-TO
9	REPAIRTHE-HARM-OR-PAY-BAMAGES-IN-REPARATION-FOR-SUCH-HARMS
10	EREATING-A-FUND-TO-PAY-AHARDS-DEFAULTED-UPONTANDREMOVING
11	ELIMINATE BOND REQUIREMENTS FOR CERTAIN PROFESSIONS AND
12	OCCUPATIONS; AMENDING SECTIONS 66-1940, 66-2115, 66-2405,
13	R.C.M. 1947; AND REPEALING SECTIONS 66-1934 66-1932.
14	66-2113, 66-2609, 66-3322, 66-3323, 66-3324, 66-3325,
15	66-3326, AND 66-3510, R.C.M. 1947.*
16	
17	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
18	Section-lwBoard-hearing-to-determine-injury-coused-by
19	licenseev Apersonwhosuffersinjuryfromanact-or
20	omissionofalicenseeperformingtheprofessionalor
21	occupationaldutiesforwhichheislicensedbythe
22	department-of-professional-andoccupationallicensingmay
23	filewith-the-department-a-sworn-statement-in-the-nature-of
24	a-complainty-stating-the-cause-and-extent-of-the-injuryand
25	allsther-facts-pertinent-to-the-complaints-After-receiving

ı	the-complainty-the-board-or-equivalentlicensingauthorit
2	thatlicensedthe-person-named-in-the-complaint-may-hold-
3	hearing-in-the-manner-provided-by-the-Montana-Administrative
4	Procedure-Act-for-contested-cases-to-determinewhetherthe
5	ticanseeviolatedprofessionalstandards-and-board-rules
6	whetherinjurywascausedtherebyyandtheamountof
7	damages=Theboardorequivalent-licensing-authority-may
8	dismiss-a-complaint-it-determines-isfrivolousTheboard
9	shallholdahearingoneverycomplaintthatisnot
10	dismissed-as-frivolous
11	Section-2*Brder-requiring-payment-or-repairs Ifth
12	boardorequivalentlicensing-authority-determines-that-
13	licensee-caused-injury-in-thecourseofhisprofessione
14	dutiesy-it-may-enter-an-order-requiring-the-licensee-to-mak
15	paymentto-the-consumer-or-to-repair-the-damage-cousedu-The
16	amount-of-the-payment-required-maynotexceed\$5y808pe
17	complaints
18	Section-3*Actionin-case-of-noncompliance: The-boar
19	may-revoke-the-license-of-the-licensee-if-payment-or-repair:
20	are-not-made-within-30daysaftertheboardentersit
51	order=
22	Section-4Fundforhearingexpensesandpayin
23	damages: In-addition-to-the-renewal-feeylicenseesofth
24	departmentshallpay-an-annual-fee-of-not-less-than-\$5-an

not-more-than--\$29--to--the--departmenty--payable--with--the

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ı	renewalfeeu-The-director-of-the-department-shall-ostablish
2	the-ensus I-feey-which-may-vary-occording-to-the-accupation
3	orprofessionlicensedThe-department-shall-deposit-these
4	fees-in-on-corrected-revenue-fund-to-pay+
5	(1)the-cost-of-hoorings-provided-for-in-[section1]:
6	and
7	(2)demagesewardedtoa-complainant-which-have-not
8	been-paid-by-the-figensee-or-former-ficensee-within-the-time
9	prov <del>ided-in-{section-5]u</del>
10	Section-Su-Payment-for-avords-defaulted-sponu Ifa
11	liconsector person formerly-licensed-by-the-department-fails
12	to-repair-or-psy-damages-assessed-against-him-in-an-order-of
13	aboardarequivalentlicensing-outhority-within-45-days
14	ofter-the-order-is-entereds-the-departmentshallpaythe
15	completnant-the-full-eseunt-of-damages-eworded-by-the-board
16	or-equivelent-licensing-authority-from-the-fund-created-for
17	thet-ourpose*
18	Section-6Appealto-district-courts In-any-appeal-to
19	the-district-courtundertheprovisionsoftheHontons
20	AdministrativeProcedure-Acty-the-board-s-record-of-hearing
21	and-order-is-prima-facie evidence-af-the-correctness-ofits
22	contents
23	Section-TeCourtenforcements Ifan-award-has-been
24	made-and-no-appeal-has-been-filed,-the-attorney-generalmay
25	potitionthedistrictcourttoenforcetheowardby

1	appropriate-orderv
2	Section-Sukemedy-not-exclusiveoffsets Theremedy
3	providedfor-in-this-act-is-in-oddition-to-sny-other-remedy
4	the-complainant-may-be-entitled-toybutorecoveryunder
5	this-act-must-be-offset-against-ony-additions}-recoverve
6	Section 1. Section 66-1940, P.C.M. 1947, is amended to
7	read as follows:
8	#66-1940. Penalties logal actions. fef[] Any
9	individual acting as a broker or salesman without a license
10	or while his license is suspended or revoked, or any person
11	who violates any provision of this act, shall be guilty of a
12	misdemeanor and upon conviction thereof by a district court
13	of this state shall be punishable by a fine of not less than
14	onehundreddollars(\$100+00) or more than five-hundred
15	d <del>ollars-(\$5</del> 00 <del>#00)</del> or by imprisonment for a term not to
16	exceed ninety(90) days, or both. Upon conviction of
17	second or subsequent violation, the person shall be
18	punishable by a fine of not less than <del>five-hundred-dollor</del> :
19	\$500+00) or more than two-thousand-dollars(12,000+00) or
20	by imprisonment for a term not to exceed six-(6) months, or
21	both.
22	<pre>tb)(2) In case any person in a civil action is found</pre>
23	guilty of having received any money, or the equivalent
24	thereof, as a fee, commission, compensation, or profit by o
25	in consequence of a violation of any provision of this act

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he shall in addition be liable to a penalty of not less than the amount of the sum of money so received and not more than three times the sum so received, as may be determined by the court, which penalty may be recovered in any court of competent jurisdiction by any person aggrieved.

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(c)--Any-person-sustaining-damages-by-feiture-of-a-real estate-broker-or-real-estate-salesman-to-comply-with-the provisions-of-this-acty-shall-have-the-right-to-commence-on action-in-his-own-name-against-the-real-estate-broker-and his-suretyy-or-the-real-estate-salesman and his-suretyy-or both-the-broker-and-any-salesman-employed-directly-or-indirectly-by-such-broker-and-their-respective suretiesy-for the-recovery-of-any-damages-sustained-as-the-result-of-any act-specified-in-section-66-1937-herein-or-as-a-result-of-the-foilure-of-the-real-estate-broker-or-real-estate salesman-to-comply-with-the-provisions-of-this-acty-in-all esses-where-suit--is-brought-against--the-broker-or-the salesmany-and-his-suretyy-the-court-shally-upon-entering judgment--for-the-plaintiffy-allow-as-a-part-of-the-costs-of-suit--y-reasonable-amount-as-attorney\*s-feesy

#11-pensities-provided--for--by--this--section--may--be
collected-from-the-broker\*s-and-salesman\*s-bonds-provided-by
section-66-1933\*\*

Section 2. Section 66-2115, R.C.M. 1947, is amended to read as follows:

1 \*66-2115. Regulation of abstracters -- violations. (1) The board may cancel and revoke a certificate of 3 registration issued to a person under this act for a violation of this acts or on a conviction of the holder of the certificate of a crime involving moral turpitude, or if 5 the board finds the holder to be quilty of habitual carelessness or inattention to business or of fraudulent practices. The board may also cancel and revoke a certificate of authority issued to a person, firm, or 10 corporation under this act for-failure-to-furnish--the--bond 11 or--other--securities-required-by-section-66-2113y-or-new-or additional-bonds-the-board-considers-necessaryy--or for 12 13 failure to maintain indices and abstract records or for 14 failure to have in charge of the business a registered 15 abstractery or for violation of this act.

16 (2) On a verified complaint being filed with the
17 department charging the holder of a certificate of
18 registration with a violation of any of the provisions of
19 subsection (1) of this section the board shall require the
20 holder of the certificate to appear before it on a day fixed
21 by the boardy to show cause why the certificate should not
22 be canceled.\*\*

23 Section 3. Section 66-2405, R.C.M. 1947, is amended to read as follows:

25 \*66-2405. Examination fee -- expiration of license --

1 annual renewal -- fees ---bond-required-of-master-plumbers. 2 No applicant for a master plumber's license may submit to the examinations prescribed by the board until he has 3 deposited with the department one number of the state of 5 an examination feet and no applicant for a journeymen plumber's license may submit to the examination prescribed by the board until he has deposited with the department 7 fifty dotters-(\$50) as an examination feet. A license when issued expires one -fly year from the date of issuance. A license issued to a master plumber or a journeyman plumber may be renewed annually without examinations at any time prior to its expiration, by a written request for its 12 13 renewaly directed to the departmenty and the payment of not to exceed one hundred dollars (\$100) as set by the board for a renewal of a master plumber's licensey and not to exceed twenty-five dollars-(\$25) as set by the board for a journeyman plumber's license, and renewal is also for the period of ohe-{1} year. No-master-plumber-s-license--may--be issued-or-renewed-unless-the-applicant-has-deposited-with the-department-a-qbod-and-sufficient-bond-to-be-approved--by 21 the-poordy--or--cash-in-the-amount-of-five-thousand-doilers 22 f\$5y808}-to-insure-the-faithful-performance-of-his -daties arising-out-of-the-state-plumbing-code-or-this-chapters\* Section 4. Repealer. Sections 65-1934 66-1933+ 66-2113, 66-2609, 66-3322, 66-3323, 66-3324, 66-3325,

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66-3326, and 66-3510, R.C.M. 1947, are repealed. -End-

ı	SEMAIC DILL NO. 123
2	INTRODUCED BY REGAN, BLAYLOCK, NELSON
à	
4	A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE-A-REMEBYTO
ל	CONSUMERS-OF-PROFESSIONAL-SERVICES-WHO-ARE-MARMED-BECAUSE-OF
5	AVIBLATIONOFPROFESSIONAL-STANDARDS-BY-LICENSEES-OF-THE
7	GEPARTMENTOFPROFESSIONALANDOCCUPATIONALLICENSING!
ä	FEASING-AUTHORITY-IN-THAT-DEPARTMENT-TO-REQUIRE-LICENSEES-TO
9	REPAIRTHE-HARM-OR-PAY-DAMAGES-IN-REPARATION-FOR-SUCH-HARM;
10	GREATING-A-FUND-TO-PAY-AHARDS-BEFAULTED-UPONTANDREMOVING
11	ELIMINATE BOND REQUIREMENTS FOR CERTAIN PROFESSIONS AND
12	OCCUPATIONS; AMENDING SECTIONS 66-1940, 66-2115, 66-2405,
13	R.C.M. 1947; AND REPEALING SECTIONS 66-1934 66-1933+
14	66-2113, 66-2609, 66-3322, 66-3323, 66-3324, 66-3325,
15	66-3326, AND 66-3510, K.C.M. 1947.M
16	
17	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HONTANA:
14	Section-twSoard-hearing-to-determine-injury-coused-by
19	licensee* Apersonwhosuffersinjuryfromenect-or
20	omission-ofa-licenseeperformingtheprofessionalor
٤١	occupationaldutiesforwhichheislicensedbythe
22	department-of-professional-andoccupationallicensingmay
23	filewith-the-department-a-sworm-statement-in-the-nature-of
24	a-complsinty-stating-the-cause-and-extent-of-the-injuryand

mil--ather-facts-pertinent-to-the-complaints-After-receiving

the-complainty-the-moord-or-equivalentlicensingauthor	r <del>it</del>
tnotlicensedthe-person-named-in-the-complaint-may-ho	łd-
hearing-in-the-manner-provided-by-the-Montana-Administra	t <del>i v</del>
Procedure-Act-for-contested-cases-to-determinewhether-	-th
licensesviolatedprofessionalstandards-and-board-ru	les.
whetherinjurywascausedtherebyandtheemount	
damagesvTheboardorequivalent-licensing-authority	-ma
dismiss-a-complaint-it-determines-isfrivolousTheb	er:
shallholdahearingoneverycomplaintthatis-	- <del>no</del> 1
dismissed-as-frivolous#	
Section-2*Order-requiring-payment-or-repairs If-	-th
boardorequivalentlicensing-authority-determines-th	a <b>t</b> -
licensee-caused-injury-in-thecourseofhisprofessi	ona
dutiesy-it-may-enter-an-order-requiring-the-licenses-to-	m <del>ak</del>
paymentto-the-consumer-or-to-repair-the-damage-coused*	- <del>Th</del>
amount-of-the-payment-required-maynotexceed\$5.000-	- <del>pe</del>
compleints	
Section-3wActionin-case-of-noncompliancew The-b	<del>Dar</del>
may-revoke-the-license-of-the-licensee-if-payment-or-rep	eir
are-not-made-within-30daysaftertheboordenters-	-it
orders	
Gestion-4*Fundforhearing-rexpensesandpa	y÷n
damagasw In-addition-to-the-renewal-facylicensessof-	-th
departmentshallpay-an-annual-fee-of-not-less-than-%5	- <del>an</del>

25 not-more-thon--\$20--to--the--departmenty--payable--with--the

renewałfeew-The-director-of-the-department-shall-establish
the-annual-feev-which-may-vary-according-to-theaccupation
orprofessionlicensedw-The-department-shalt-deposit-these
fees-in-en-earmorked-revenue-fund-to-pay+
(1)the-cost-of-hearings-provided-for-in-[section1];
and
(£)damagesawardedtoo-complainant-which-have-not
$been  \hbox{$\tt paid-by-the-licensee-or-former-licensee-within-the-time}$
provided-in-[section-5]*
Section-5:Payment-for-awardsdefaultedupon: Ifa
licensee-or-person-formerly-licensed-by-the-department-fails
to-repair-or-pay-damages-assessed-against-him-in-an-order-of
aboardorequivatentlicensing-authority-within-45-days
after-the-order-is-enteredy-thedepartmentshallpaythe
compleinantthe-full-amount-of-damages-awarded-by-the-board
or-equivalent-licensing-authority-from-the-fund-createdfor
that-ourposes
Section-6wApoestto-district-courtw in-any-appeal-to
the-district-courtundertheprovisionsoftheMontana
AdministrativeProcedure-Acty-the-board*s-record-of-heoring
and-order-is-prima-facie-evidence-of-the-correctness-ofits
contents
Section-7*Courtenforcement* Ifanaward-has-been
mode-and-no-appeal-has-been-filedy-the-attorney-generalmay

petition---the--district--court--to--enforce--the--award--by

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Ż	bection-8wRemedy-not-exclusiveoffsetw Theremedy
3	provided-for-in-this-act-is-in-addition-to-ony-other-remedy
4	the-complainant-may-be-entitled-toybutarecoveryunder
5	this-oct-must-be-offset-adainst-any-additional-recoverys
6	Section 1. Section 66-1940, R.C.M. 1947, is amended to
7	read as follows:
8	#66-1940. Penalties legal actions. (**)(1) Any
9	individual acting as a broker or salesman without a license
10	or while his license is suspended or revoked, or any person
11	who violates any provision of this act, shall be quilty of a
12	misdemeanor and upon conviction thereof by a district court
13	of this state shall be punishable by a fine of not less than
14	onehundreddollars(\$100±00) or more than five-hundred
15	dollars-(\$500#00) or by imprisonment for a term not to
16	exceed ninety(90) days, or both. Upon conviction of a
17	second or subsequent violation, the person shall be
18	punishable by a fine of not less than <del>five-hundred dollars</del>
19	$\pm $500 \pm 80$ or more than $\pm 80 \pm 100 \pm 100$ or
20	by imprisonment for a term not to exceed six-(6) months, or
21	both.
22	(6)(2) In case any person in a civil action is found
23	guilty of having received any money, or the equivalent
24	thereof, as a fee, commission, compensation, or profit by or

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1 appropriate-orders

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he shall in addition be liable to a penalty of not less than the amount of the sum of money so received and not more than three times the sum so received, as may be determined by the court, which penalty may be recovered in any court of competent jurisdiction by any person aggrieved.

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tel--Any-person-sustaining-damages-by-feiture-of-a-real estate-broker-or-real-estate-salesman--to--comply--with--tha provisions--of-this-acty-shall-have-the-right-to-commence-on action-in-his-own-name-against-the-real-estate--broker--and his--suretyy--or-the-real-estate-salesman-and-his-suretyy-or both-the--broker--and--any--salesman--employed--directly--or indirectly-by-such-broker-and-their-respective-suretiesy-for the--recovery--of-any-damages-sustained-as-the-result-of-any act--saccified-in-section-66-1937-herein-or-as--a--result--of the--failure--of--the--real--estate--broker--or--real-estate salesman-to-comply-with-the-provisions-of-this-acty--in--all cases--where--suit--is--brought--against--the--broker-or-the salesmany-and-his-suretyy-the--court--shally--upon--entering judgment--for-the-plaintiffy-allow-as-a-part-of-the-costs-of suit-a-reasonable-amount-as-attorney\*s-feess

#11-penalties-provided-for-by-this--section--may--be collected-from-the-broker\*s-and-salesmon\*s-bonds-provided-by section-66-1933\*\*

Section 2. Section 66-2115, R.C.N., 1947, is amended to read as follows:

1 #66-2115. Regulation of abstracters -- violations. 2 (1) The board may cancel and revoke a certificate of 3 registration issued to a person under this act for a violation of this acty or on a conviction of the holder of the certificate of a crime involving moral turpitudew or if 5 the board finds the holder to be quilty of habitual carelessness or inattention to business or of fraudulent practices. The board may also cancel and revoke a certificate of authority issued to a person, firm, or 10 corporation under this act for-failure-to-furnish--the--bond 11 or--other--securities-required-by-section-66-2113y-or-new-or 12 additional-bands--the--board--considers--necessary---or for 13 failure to maintain indices and abstract records or for 14 failure to have in charge of the business a registered 15 abstracter, or for violation of this act.

(2) On a verified complaint being filed with the department charging the holder of a certificate of registration with a violation of any of the provisions of subsection (1) of this section the board shall require the holder of the certificate to appear before it on a day fixed by the boardy to show cause why the certificate should not be canceled."

23 Section 3. Section 66-2405, R.C.M. 1947, is amended to read 3s follows:

25 \*66-2405. Examination fee -- expiration of license --

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1 annual renewal -- fees ---bond-required-of-master-plumbers. No applicant for a master plumber's license may submit to 2 3 the examinations prescribed by the board until he has deposited with the department one-hundred-dollars-(\$100) as 5 an examination fee, and no applicant for a journeyman plumber's license may submit to the examination prescribed 7 by the board until he has deposited with the department fifty-dollars-(\$50) as an examination fee. A license when issued expires one--(1) year from the date of issuance. A 9 10 license issued to a master plumber or a journeyman plumber 11 may be renewed annually without examination, at any time 12 prior to its expiration, by a written request for its 13 renewaly directed to the departmenty and the payment of not 14 to exceed one-hundred-dollars-(\$100) as set by the board 15 for a renewal of a master plumber's licensey and not to 16 exceed twenty-five-dollars-(\$25) as set by the board for a 17 journeyman plumber's license, and renewal is also for the 18 period of one-(1) year. No-master-plumber\*s-license--may--be 19 issued--or--renewed--unless-the-applicant-has-deposited-with 20 the-department-a-good-and-sufficient-bond-to-be-approved--by 21 the--boardy--or--cash-in-the-amount-of-five-thousand-dollars 22 (\$5y898)-to-insure-the-faithful-performance--of--his--duties arising-out-of-the-state-plumbing-code-or-this-chapter\*\* Section 4. Repealer. Sections 66-1934 66-1933. 66-2113, 66-2609, 66-3322, 66-3323, 66-3324, 66-3325,

-7-

66-3326, and 66-3510, R.C.M. 1947, are repealed. -End-

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## HOUSE OF REPRESENTATIVES

April 6, 1977

COMMITTEE ON BUSINESS AND INDUSTRY AMENDMENTS TO SENATE BILL 125

1. Amend title, line 13.
Following: "66-1934" Insert: "41-2005,"

2. Amend page 7, section 4, line 24.
Following: "66-1934"
Insert: "41-2005,"

AS AMENDED BE CONCURRED IN

ì	SENATE BILL NO. 125
2	INTRODUCED BY REGAN, BLAYLOCK, NELSON
3	·
4	A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE-A-REMEDYTO
5	GBNSUMERS-BF-PROFESSIONAL-SERVICES-WHO-ARE-HARMED-BECAUSE-OF
6	AVIOLATIONDFPROFESSIONAL-STANDARDS-BY-LICENSEES-OF-THE
7	DEPARTMENTOFPROFESSIONALANDOCCUPATIONALLICENSING
8	PEACING-AUTHORITY-IN-THAT-DEPARTMENT-TO-REQUIRE-LICENSEES-TO
9	REPAIRTHE-HARH-BR-PAY-BAMAGES-IN-REPARATION-FOR-SUCH-HARM)
10	GREATING-A-FUND-TO-PAY-AHARDS-DEFAULTED-UPON;AND-REMOVING
11	ELIMINATE BOND REQUIREMENTS FOR CERTAIN PROFESSIONS AND
12	OCCUPATIONS; AMENOING SECTIONS 66-1940, 66-2115, 66-2405,
13	R-C-M- 1947; AND REPEALING SECTIONS 66-1934 41-2005.
14	<u>66-1933</u> , 66-2113, 66-2609, 66-3322, 66-3323, 66-3324,
15	66-3325, 66-3326, AND 66-3510, R.C.M. 1947.*
16	
17	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
18	Section-laBoard-hearing-to-determine-injury-caused-by
19	licenseev Apersonwhosuffersinjuryfromenect-or
20	omissionofalicenseeperformingtheprofessionalor
21	occupationaldutiesforwhichheislicensedbythe
22	department-of-professional-andoccupationallicensingmay
23	filewith-the-department-a-sworn-statement-in-the-nature-of
24	a-complainty-stating-the-cause-and-extent-of-the-injuryand
25	allother-facts-pertinent-to-the-complaintw-After-receiving

1	the-complainty-the-board-or-equivalentlicensingauthorit
2	thatlicensedthe-person-named-in-the-complaint-may-hold-
3	hearing-in-the-manner-provided-by-the-Montana-Administrativ
4	Procedure-Act-for-contested-cases-to-determinewhetherth
5	licenseeviolotedprofessionalstandards-and-board-rules
6	whetherinjurywascausedtherebyandtheamounto
7	damageswTheboardorequivalent-licensing-authority-ma
8	dismiss-a-complaint-it-determines-isfrivolousTheboar
9	shall-hold-a-hearing-on-every-complaint-that-is-no
10	d <del>ismissed-as-frivolous</del>
11	Section-2* Brder-requiring-payment-or-repair* Ifth
12	boardorequivalentlicensing-authority-determines-that-
13	licensee-coused-injury-in-the-course-of-his-professione
14	dutiesy-it-may-enter-an order-requiring-the-licensee-to-mak
15	paymentto-the-consumer-or-to-repair-the-damage-causeds-Th
16	amount-of-the-payment-required-maynotexceed\$5y000pe
17	comploint.
18	Section-3wActionin-case-of-noncompliancew The-boar
19	may-revoke-the-license-of-the-licensee-if-payment-or-repair
20	are-not-made-within-30daysaftertheboardentersit
21	orderv
22	Section-4Fundforhearingexpensesandpayin
23	damages: In-addition-to-the-renewal-feevlicenseesofth
24	departmentshallpay-on-annual-fee-of-not-less-than-\$5-an

not-more-than--\$20--to--the--departmenty--payable--with--the

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$\textbf{renewalfeew-The-} \\ \textbf{director-of-the-department-shall-establish}$
the-annual-feey-which-may-vary-according-to-theaccupation
orprofessionlicensedw-The-department-shall-deposit-these
feas-in-an-earmarked-revenue-fund-to-pay+
(1)the-cost-of-hearings-provided-for-in-[section1];
and
(2)damagesawardedtoa-complainant-which-have-not
been-paid-by-the-licensee-or-former-licensee-within-the-time
provided-in-[section-5]*
Section-SePayment-for-awardsdefaultedupone Ifa
licensee-or-person-formerly-licensed-by-the-department-fails
to-repair-or-pay-damages-assessed-against-him-in-an-o der-of
aboardorequivalentlicensing-authority-within-45-days
after-the-order-is-enteredy-thedepartmentshallpaythe
complainantthe-full-amount-of-domages-awarded-by-the-board
or-equivalent-licensing-authority-from-the-fund-createdfor
that-purpose*
Section-6Appealto-district-courte In-any-appeal-to
the-district-courtundertheprovisionsoftheHontons
AdministrativeProcedure-Acty-the-board*s-record-of-hearing
and-order-is-prime-facie-evidence-of-the-correctness-ofits
contents.
Section-7Courtenforcements Ifanaward-has-been
made-and-no-appeal-has-been-filedy-the-attorney-generalmay

petition---the--district--court--to--enforce--the--award--by

1	appropriate-order.
2	Section-8vRemedy-not-exclusiveoffset# Theremed
3	providedfor-in-this-act-is-in-addition-to-any-other-remed
4	the-complainant-may-be-entitled-tovbutarecoveryunde
5	this-act-must-be-offset-against-any-additional-recovery.
6	Section 1. Section 66-1940, R.C.M. 1947, is amended t
7	read as follows:
8	#66-1940. Penalties legal actions. <del>(a)</del> [1] An
9	individual acting as a broker or salesman without a licens
0.	or while his license is suspended or revoked, or any perso
.1	who violates any provision of this act, shall be guilty of
2	misdemeanor and upon conviction thereof by a district cour
3	of this state shall be punishable by a fine of not less tha
4	onehundreddollars{\$100 <del>v00}</del> or more than five-hundre
5	<del>dollars-(</del> \$500 <del>+00)</del> or by imprisonment for a term not t
6	exceed minety t90+ days. or both. Upon conviction of
7	second or subsequent violation, the person shall b
8	punishable by a fine of not less than five-hundred-dollar
9	(\$500 <del>±00)</del> or more than two-thousand-dollars(\$2+000 <del>±00)</del> o
0	by imprisonment for a term not to exceed <del>six-(6)</del> months, o
1	both.
2	(b)(2) In case any person in a civil action is foun
3	guilty of having received any money, or the equivalen
4	thereof, as a fee, commission, compensation, or profit by o
5	in consequence of a violation of any provision of this act

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he shall in addition be liable to a penalty of not less than the amount of the sum of money so received and not more than three times the sum so received, as may be determined by the court. which penalty may be recovered in any court of competent jurisdiction by any person aggrieved.

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tc}--Any-person-sustaining damages by faiture of-a-reat estate-broker-or-real-estate-salesman--to--comply--with--the provisions--of-this-acty-shall-have-the-right-to-commence-on action-in-his-own-name-against-the-real--estate--broker--and his--suretyy--or-the-real-estate-salesman-and-his-suretyy-or both-the--broker--and--ony--salesman--employed--directly--or indirectly-by-such-broker-and-their-respective-suretiesy-for the--recovery--of-any-damages-sustained-as-the-result-of-any act-specified-in-section-66-1937-herein-or-as--a-result--of the--failure--of--the--res}--estate--broker--or--res1-estate salesman-to-comply-with-the-provisions-of-this-octu--In--all cases--where--suit--is--brought--against--the--broker-or-the salesmony-end-his-suretyy-the-court-shally-upon-entering iudament--for-the-plaintiffy-allow-as-a-part-of-the-costs-of suit-a-reasonable-amount-as-attorney\*s-feesv

All-penalties-provided--for--by--this--section--may--be collected-from-the-broker\*s-end-salesman\*s-bonds-provided-by section-66-1933\*\*

Section 2. Section 66-2115, R.C.M. 1947, is amended to read as follows:

1 \*66-2115. Regulation of abstracters -- violations. 2 (1) The board may cancel and revoke a certificate of registration issued to a person under this act for a violation of this acty or on a conviction of the holder of the certificate of a crime involving moral turnitudes or if the board finds the holder to be quilty of habitual carelessness or inattention to business or of fraudulent practices. The board may also cancel and revoke a certificate of authority issued to a person. firm or corporation under this act for-failure-to-furnish-the-bond or--other--securities-required-by-section-66-2113y-or-new-or additional bonds the board-considers necessary or for failure to maintain indices and abstract records or for failure to have in charge of the business a registered abstractery or for violation of this act.

- (2) On a verified complaint being filed with the department charging the holder of a certificate of registration with a violation of any of the provisions of subsection (1) of this section the board shall require the holder of the certificate to appear before it on a day fixed by the boardy to show cause why the certificate should not be canceled."
- 23 Section 3. Section 66-2405, R.C.M. 1947, is amended to 24 read as follows:
- 25 "66-2405. Examination fee -- expiration of license --

1 annual renewal -- fees ---bond-required-of-master-plumbers. 2 No applicant for a master plumber's license may submit to 3 the examinations prescribed by the board until he has 4 deposited with the department one-hundred-dellars-(\$100) as 5 an examination fee, and no applicant for a journeyman 6 plumber's license may submit to the examination prescribed 7 by the board until he has deposited with the department fifty-dollars-1\$50) as an examination fee. A license when 8 9 issued expires one---(1) year from the date of issuance. A 10 license issued to a master plumber or a journeyman plumber may be renewed annually without examination, at any time 11 12 prior to its expiration, by a written request for its 13 renewaly directed to the departmenty and the payment of not to exceed one-hundred-dollars-(\$100) as set by the board 14 15 for a renewal of a master plumber's licensew and not to 16 exceed twenty-five-dollars-f\$25) as set by the board for a 17 journeyman plumber's license, and renewal is also for the 18 period of one-(1) year. No-master-plumber\*s-license--may--be issued--or--renewed--unless-the-applicant-has-deposited-with 19 20 the-department-a-good-and-sufficient-bond-to-be-approved--by 21 the--boardy--or--cash-in-the-amount-of-five-thousand-dollars 22 (45y888)-to-insure-the-faithful-performance-of--his--duties 23 erising-out-of-the-state-plumbing-code-or-this-chapters" 24 Section 4. Repealer. Sections <del>66-1934</del> 41-2005. 25 66-1933, 66-2113, 66-2609, 66-3322, 66-3323, 66-3324,

1 66-3325, 66-3326, and 66-3510, R.C.N. 1947, are repealed.
-End-

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45th Legislature

SB 0125/04

1	SENATE BILL NO. 125
2	INTRODUCED BY REGAN, BLAYLOCK, NELSON
3	
4	A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE-A-REMEBYTO
5	CONSUMERS-OF-PROFESSIONAL-SERVICES-WHO-ARE-HARMED-BECAUSE-OF
6	AVIOLATIONOFPROFESSIONAL-STANDARDS-BY-LIGENSEES-OF-THE
7	DEPARTHENTBFPROFESSIONALANDOCCUPATIONALETCENSING+
8	PLACING-AUTHORITY-IN-THAT-DEPARTMENT-TO-REQUIRE-LICENSEES-TO
9	REPAIRTHE-HARM-OR-PAY-DAMAGES-IN-REPARATION-FOR-SUCH-HARM;
10	EREATING-A-FUND-TO-PAY-AWARDS-BEFAULTED-UPGN;ANDREMBYING
11	ELIMINATE BOND REQUIREMENTS FOR CERTAIN PROFESSIONS AND
12	OCCUPATIONS; AMENDING SECTIONS 66-1940, 66-2115, 66-2405,
13	R.C.M. 1947; AND REPEALING SECTIONS 66-1934 41-2885
14	<u>66-1933</u> ♥ 66-2113, <del>66-2689,</del> 66-3322, 66-3323, 66-3324,
15	66-3325, 66-3326, AND 66-3510, R.C.M. 1947.W
16	
17	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
18	Section-laBoard-hearing-to-determine-injury-caused-by
19	licensees Apersonwhosuffersinjuryfromanact-or
20	omission-of-a-licensee-performing-the-professional-or
21	occupationaldutiesforwhichheislicensedbythe
22	department-of-professional-andoccupationallicensingmay
23	filewith-the-department-a-sworn-statement-in-the-nature-of
24	a-complainty-stating-the-cause-and-extent-of-the-injuryand
25	allother-facts-pertinent-to-the-complainty-After-receiving

	ene-comprarincy the board of equivalent free sing suchoffs
2	thatlicensedthe-person-nemed-in-the-complaint-may-hold-c
3	hearing-in-the-manner-provided-by-the-Montana-Administrative
4	Procedure-Act-for-contested-cases-to-determine-whetherthe
5	licenseeviolatedprofessionalstandards-and-board-rules
6	whetherinjurywascausedtherebyandtheamountof
7	damagesTheboardorequivalent-licensing-authority-may
8	d <del>ismiss-a-complaint-it-determines-isfriv</del> olousTheboard
9	shall-hold-a-hearing-on-every-complaint-that-is-not
10	d <del>ismissed os-frivolous</del>
11	Section-2Brder-requiring-payment-or-repair- Ifthe
12	boardorequivalentlicensing-authority-determines-that-s
13	licensee coused injury in the course of his professional
14	d <del>utiesy-it-may-enter-an-order-requiring-the-licensee-to-mak</del> e
15	payment to the consumer or to repair the damage coused. The
16	amount-of-the-payment-required-maynotexceed45+800per
17	c <del>omplei</del> nt*
18	Section-3wActionin-case of moncompliancew The board
19	may-revoke-the-license-of-the-licensee-if-payment-or-repairs
20	are-not-made-within-30-daysafter-theboardentersits
21	<del>order*</del>
22	Section-4xFundforhearingexpensesandpaying
23	damages* In-addition-to-the-renewal-feeylicenseesofthe
24	departmentshallpay-an-annual-fee-of-not-less-then-\$5-and
25	not-more-than\$20tothedepartmentypayablewiththe

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SR 0125/04 SP 0125/04

renewal--feev-The-director of the-department-shall-establish
the-annual-feev-which-may-very-according-to--the--occupation
or--profession--licensedw-The-department-shall-deposit-these
fees-in-on-cormarked-revenue-fund-to-pays

(1)—the-cost of hearings provided for in {section -1}1

tz)--damages-- owarded--to--a-comptethent which-have-not
been-poid-by-the-licensee-or-former-ticensee-within-the-time
provided-in-[section-5]\*

Section—50—Payment—for—awards—defaulted—upone Iff—a licensee or person formerly licensed by the department fails to repair or pay damages assessed against him in an order of a—board—or—equivalent—licensing authority within 45-days after the order is onteredy the department—shall—pay—the complainant—the full amount—of damages awarded by the board or—equivalent—licensing authority from the fund created—for that—purposev

5ection-6w-Appeal--to-district-courts In-any-appeal-to
the-district-court--under--the--provisions--of--the--Hontana
Administrative--Procedure-Acty-the-board\*s-record-of-hearing
and-order-is-prime-facie-evidence-of-the-correctness-of--its
contents\*

Section-7w--Court--enforcementw If--an--award has been made and no appeal has been filedy the attorney general--may petition--the--district--court--to--enforce--the--award-by

-3-

1 appropriate-orders

Section-8w-Remedy-not-exclusive----offsetw The-remedy

provided--for-in-this-act-is-in-addition-to-any-other-remedy

the-complainant-may-be-entitled-tow--but--o--recovery--under

this-act-must-be-affset-against-any-additional-recoveryw

Section 1. Section 66-1940, R.C.M. 1947, is amended to read as follows:

m66-1940. Penalties — legal actions. (a)(1) Any individual acting as a broker or salesman without a license or while his license is suspended or revoked, or any person who violates any provision of this act, shall be guilty of a misdemeanor and upon conviction thereof by a district court of this state shall be punishable by a fine of not less than one—hundred—dollars—(\$100+00) or more than five-hundred dollars—(\$500+00) or by imprisonment for a term not to exceed ninety—(90) days, or both. Upon conviction of a second or subsequent violation, the person shall be punishable by a fine of not less than five-hundred-dollars (\$500+60) or more than two-thousand-dollars—(\$2,000+00) or by imprisonment for a term not to exceed six—(6) months, or both.

(b)(2) In case any person in a civil action is found guilty of having received any money, or the equivalent thereof, as a fee, commission, compensation, or profit by or in consequence of a violation of any provision of this act,

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he shall in addition be liable to a penalty of not less than the amount of the sum of money so received and not more than three times the sum so received, as may be determined by the court, which penalty may be recovered in any court of competent jurisdiction by any person aggrieved.

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(c)—Any-person-sustaining-damages-by-faiture-of-o-real
estate-broker-or-real-estate-salesman—to—comply—with—the
provisions—of-this-octy-shall-have-the-right-to-commence-an
action—in—his-own—name-against—the-real—estate—broker—and
his—suretyy—or-the-real-estate-salesman—and—his-suretyy—or
both—the—broker—and—any—salesman—employed—directly—or
indirectly—by-such—broker—and—their-respective-suretiesy—for
the—recovery—of-any-damages-sustained—as—the—result—of-any
act—specified—in—section—66—1937—herein—or—as—a—result—of
the—failure—of—the—real—estate—broker—or—real-estate
salesman—to—comply—with—the—provisions—of—this—acty——in—all
cases—where—suit—is—brought—against—the—broker—or—the
salesmany—and—his—suretyy—the—court—shally—upon—entering
judament—for—the—plaintiffy—allow—as—o-part—of—the—costs—of
suit—a-reasonable—amount—as—attorney\*s—fees»

All-penalties-provided-for-by-this-section-may-be
collected-from-the-broker\*s-and-solesman\*s-bonds-provided-by
section-66-1933\*\*

Section 2. Section 66-2115, R.C.M. 1947, is amended to read as follows:

-5-

1 "66-2115. Regulation of abstracters -- violations. 2 (1) The board may cancel and revoke a certificate of 3 registration issued to a person under this act for a violation of this act, or on a conviction of the holder of 5 the certificate of a crime involving moral turpitude or if the board finds the holder to be quilty of habitual 7 carelessness or inattention to business or of fraudulent practices. The board may also cancel and revoke a 9 certificate of authority issued to a person, firm, or corporation under this act' for failure to furnish the bond 10 11 or-other-securities-required by section-66-2113y-or-new-or 12 additional-bonds-the-board-considers-necessaryy-or for 13 failure to maintain indices and abstract records or for failure to have in charge of the business a registered 14 15 abstractery or for violation of this act.

(2) On a verified complaint being filed with the department charging the holder of a certificate of registration with a violation of any of the provisions of subsection (1) of this section the board shall require the holder of the certificate to appear before it on a day fixed by the boardy to show cause why the certificate should not be canceled."

23 Section 3. Section 66-2405, R.C.M. 1947, is amended to read as follows:

25 #66-2405. Examination fee -- expiration of license --

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1 annual renewal -- fees ---bond-required of mester-plumbers. 2 No applicant for a master plumber's license may submit to 3 the examinations prescribed by the board until he has deposited with the department one-hundred dollars (\$100) as 4 5 an examination fee, and no applicant for a journeyman 6 plumber's license may submit to the examination prescribed 7 by the board until he has deposited with the department fifty-dollars-(\$50) as an examination fee. A license when 8 9 issued expires one--fly year from the date of issuance. A 10 license issued to a master plumber or a journeyman plumber 11 may be renewed annually without examination, at any time 12 prior to its expiration, by a written request for its renewaly directed to the departmenty and the payment of not 13 to exceed one-hundred-dollars-(\$100) as set by the board 14 15 for a renewal of a master plumber's licensey and not to 16 exceed twenty-five-dollars-f\$25) as set by the board for a 17 journeyman plumber's license, and renewal is also for the 18 period of one-(1) year. No-master-plumber's license--may--be 19 issued--or--renewed--unless-the-applicant-has-deposited-with 20 the-department-a-good-and-sufficient-bond-to-be-approved--by 21 the-boardy-or-cash-in the amount-of-five-thousand-dollars 22 (\$5y888)-to-insure-the-f6ithful-performance-of-his-duties 23 orising-out-of-the-state\*#lumbing-tode-or"this-chapter\* 66-1934 41-2005v 24 Section 4. Repealer. Sections 25 66-1933 66-2113, 66-2609, 66-3322, 66-3323, 66-3324,

1 66-3325, 66-3326, and 66-3510, R.C.M. 1947, are repealed. -End-