

1 *Senate* BILL NO. *125*
 2 INTRODUCED BY *Byron Blaylock Nelson*
 3

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE A REMEDY TO
 5 CONSUMERS OF PROFESSIONAL SERVICES WHO ARE HARMED BECAUSE OF
 6 A VIOLATION OF PROFESSIONAL STANDARDS BY LICENSEES OF THE
 7 DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING;
 8 PLACING AUTHORITY IN THAT DEPARTMENT TO REQUIRE LICENSEES TO
 9 REPAIR THE HARM OR PAY DAMAGES IN REPARATION FOR SUCH HARM;
 10 CREATING A FUND TO PAY AWARDS DEFAULTED UPON; AND REMOVING
 11 BOND REQUIREMENTS; AMENDING SECTIONS 66-1940, 66-2115,
 12 66-2405, R.C.M. 1947; AND REPEALING SECTIONS 66-1934,
 13 66-2113, 66-2609, 66-3322, 66-3323, 66-3324, 66-3325,
 14 66-3326, AND 66-3510, R.C.M. 1947."
 15

16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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

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

10 Section 2. Order requiring payment or repair. If the
 11 board or equivalent licensing authority determines that a
 12 licensee caused injury in the course of his professional
 13 duties, it may enter an order requiring the licensee to make
 14 payment to the consumer or to repair the damage caused. The
 15 amount of the payment required may not exceed \$5,000 per
 16 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.

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

1 the annual fee, which may vary according to the occupation
2 or profession licensed. The department shall deposit these
3 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].

9 Section 5. Payment for awards defaulted upon. If a
10 licensee or person formerly licensed by the department fails
11 to repair or pay damages assessed against him in an order of
12 a board or equivalent licensing authority within 45 days
13 after the order is entered, the department shall pay the
14 complainant the full amount of damages awarded by the board
15 or equivalent licensing authority from the fund created for
16 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.

22 Section 7. Court enforcement. If an award has been
23 made and no appeal has been filed, the attorney general may
24 petition the district court to enforce the award by
25 appropriate order.

1 Section 8. Remedy not exclusive — offset. The remedy
2 provided for in this act is in addition to any other remedy
3 the complainant may be entitled to, but a recovery under
4 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 ~~one hundred dollars (\$100.00)~~ or more than ~~five hundred~~
14 ~~dollars (\$500.00)~~ or by imprisonment for a term not to
15 exceed ~~ninety (90)~~ days, or both. Upon conviction of a
16 second or subsequent violation, the person shall be
17 punishable by a fine of not less than ~~five hundred dollars~~
18 ~~(\$500.00)~~ or more than ~~two thousand dollars (\$2,000.00)~~ or
19 by imprisonment for a term not to exceed ~~six (6)~~ months, or
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

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

5 ~~(c) Any person sustaining damages by failure of a real~~
 6 ~~estate broker or real estate salesman to comply with the~~
 7 ~~provisions of this act, shall have the right to commence an~~
 8 ~~action in his own name against the real estate broker and~~
 9 ~~his surety, or the real estate salesman and his surety, or~~
 10 ~~both the broker and any salesman employed directly or~~
 11 ~~indirectly by such broker and their respective sureties, for~~
 12 ~~the recovery of any damages sustained as the result of any~~
 13 ~~act specified in section 66-1937 herein or as a result of~~
 14 ~~the failure of the real estate broker or real estate~~
 15 ~~salesman to comply with the provisions of this act. In all~~
 16 ~~cases where suit is brought against the broker or the~~
 17 ~~salesman, and his surety, the court shall, upon entering~~
 18 ~~judgment for the plaintiff, allow as a part of the costs of~~
 19 ~~suit a reasonable amount as attorney's fees.~~

20 ~~All penalties provided for by this section may be~~
 21 ~~collected from the broker's and salesman's bonds provided by~~
 22 ~~section 66-1933."~~

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

1 No applicant for a master plumber's license may submit to
2 the examinations prescribed by the board until he has
3 deposited with the department ~~one hundred dollars~~ (\$100) as
4 an examination fee, and no applicant for a journeyman
5 plumber's license may submit to the examination prescribed
6 by the board until he has deposited with the department
7 ~~fifty dollars~~ (\$50) as an examination fee. A license when
8 issued expires ~~one~~ (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
12 renewal, directed to the department, and the payment of not
13 to exceed ~~one hundred dollars~~ (\$100) as set by the board
14 for a renewal of a master plumber's license, and not to
15 exceed ~~twenty five dollars~~ (\$25) as set by the board for a
16 journeyman plumber's license, and renewal is also for the
17 period of ~~one~~ (1) year. ~~No master plumber's license may be~~
18 ~~issued or renewed unless the applicant has deposited with~~
19 ~~the department a good and sufficient bond to be approved by~~
20 ~~the board, or cash in the amount of five thousand dollars~~
21 ~~(\$5,000) to insure the faithful performance of his duties~~
22 ~~arising out of the state plumbing code 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.

-End-

Approved by Committee on Judiciary

SENATE BILL NO. 125

INTRODUCED BY REGAN, BLAYLOCK, NELSON

A BILL FOR AN ACT ENTITLED: "AN 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; PLACING AUTHORITY IN THAT DEPARTMENT TO REQUIRE LICENSEES TO REPAIR THE HARM OR PAY DAMAGES IN REPARATION FOR SUCH HARM; CREATING A FUND TO PAY AWARDS DEFAULTED UPON; AND REMOVING ELIMINATE BOND REQUIREMENTS FOR CERTAIN PROFESSIONS AND OCCUPATIONS; AMENDING SECTIONS 66-1940, 66-2115, 66-2405, R.C.M. 1947; AND REPEALING SECTIONS 66-1934, 66-1933, 66-2113, 66-2609, 66-3322, 66-3323, 66-3324, 66-3325, 66-3326, AND 66-3510, R.C.M. 1947."

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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 repairs. 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.

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

Section 4. Fund for hearing expenses and paying damages. In addition to the renewal fees 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

SECOND READING

1 ~~renewal fees. The director of the department shall establish~~
2 ~~the annual fee which may vary according to the occupation~~
3 ~~or profession licensee. The department shall deposit these~~
4 ~~fees in an earmarked revenue fund to pay:~~

- 5 ~~(1) the cost of hearings provided for in [section 1];~~
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19 ~~the district court under the provisions of the Montana~~
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24 ~~made and no appeal has been filed, the attorney general may~~
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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 ~~one hundred dollars--(\$100.00)~~ or more than ~~five hundred~~
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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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 2 the amount of the sum of money so received and not more than
 3 three times the sum so received, as may be determined by the
 4 court, which penalty may be recovered in any court of
 5 competent jurisdiction by any person aggrieved.

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 12 additional bonds the board considers necessary, or for
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 14 failure to have in charge of the business a registered
 15 abstracter, 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
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 22 be canceled."

23 Section 3. Section 66-2405, R.C.M. 1947, is amended to
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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-dollars-(\$100)~~ as
 5 an examination fee, and no applicant for a journeyman
 6 plumber's license may submit to the examination prescribed
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 8 ~~fifty-dollars-(\$50)~~ as an examination fee. A license when
 9 issued expires ~~one-11~~ 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
 13 renewal directed to the department, and the payment of not
 14 to exceed ~~one-hundred-dollars-(\$100)~~ as set by the board
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 17 journeyman plumber's license, and renewal is also for the
 18 period of ~~one-11~~ 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-board-or-cash-in-the-amount-of-five-thousand-dollars~~
 22 ~~(\$5,000)-to-insure-the-faithful-performance-of-his-duties~~
 23 ~~arising-out-of-the-state-plumbing-code-or-this-chapter."~~

24 Section 4. Repealer. Sections 66-1934 66-1933,
 25 66-2113, 66-2609, 66-3322, 66-3323, 66-3324, 66-3325,

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1 ~~renewal--fees--The--director--of--the--department--shall--establish~~
 2 ~~the--annual--fees--which--may--vary--according--to--the--occupation~~
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5 ~~(1)--the--cost--of--hearings--provided--for--in--[section--1]--}~~
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 8 ~~been--paid--by--the--licensee--or--former--licensee--within--the--time~~
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10 ~~Section--5--Payment--for--awards--defaulted--upon-- If--a~~
 11 ~~licensee--or--person--formerly--licensed--by--the--department--fails~~
 12 ~~to--repair--or--pay--damages--assessed--against--him--in--an--order--of~~
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 20 ~~Administrative--Procedure--Act,--the--board's--record--of--hearing~~
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 22 ~~contents--}~~

23 ~~Section--7--Court--enforcement-- If--an--award--has--been~~
 24 ~~made--and--no--appeal--has--been--filed,--the--attorney--general--may~~
 25 ~~petition--the--district--court--to--enforce--the--award--by~~

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 13 renewal, directed to the department, 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 license, 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--board,--or--cash-in-the-amount-of-five-thousand-dollars~~
 22 ~~(\$5,000)-to-insure-the-faithful-performance--of--his--duties~~
 23 ~~arising-out-of-the-state-plumbing-code-or-this-chapter."~~
 24 Section 4. Repealer. Sections ~~66-1934~~ 66-1933,
 25 66-2113, 66-2609, 66-3322, 66-3323, 66-3324, 66-3325,

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

-End-

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

SENATE BILL NO. 125

INTRODUCED BY REGAN, BLAYLOCK, NELSON

A BILL FOR AN ACT ENTITLED: "AN 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; PLACING AUTHORITY IN THAT DEPARTMENT TO REQUIRE LICENSEES TO REPAIR THE HARM OR PAY DAMAGES IN REPARATION FOR SUCH HARM; CREATING A FUND TO PAY AWARDS DEFAULTED UPON; AND REMOVING ELIMINATE BOND REQUIREMENTS FOR CERTAIN PROFESSIONS AND OCCUPATIONS; AMENDING SECTIONS 66-1940, 66-2115, 66-2405, R.C.M. 1947; AND REPEALING SECTIONS 66-1934 41-2005, 66-1933, 66-2113, 66-2609, 66-3322, 66-3323, 66-3324, 66-3325, 66-3326, AND 66-3510, R.C.M. 1947."

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

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 repairs. 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.

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

1 ~~renewal fees. The director of the department shall establish~~
 2 ~~the annual fee, which may vary according to the occupation~~
 3 ~~or profession licensed. The department shall deposit these~~
 4 ~~fees in an earmarked revenue fund to pay:~~

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

10 ~~Section 5. Payment for awards defaulted upon. If a~~
 11 ~~licensee or person formerly licensed by the department fails~~
 12 ~~to repair or pay damages assessed against him in an order of~~
 13 ~~a board or equivalent licensing authority within 45 days~~
 14 ~~after the order is entered, the department shall pay the~~
 15 ~~complainant the full amount of damages awarded by the board~~
 16 ~~or equivalent licensing authority from the fund created for~~
 17 ~~that purpose.~~

18 ~~Section 6. Appeal to district courts. In any appeal to~~
 19 ~~the district court under the provisions of the Montana~~
 20 ~~Administrative Procedure Act, the board's record of hearing~~
 21 ~~and order is prima facie evidence of the correctness of its~~
 22 ~~contents.~~

23 ~~Section 7. Court enforcement. If an award has been~~
 24 ~~made and no appeal has been filed, the attorney general may~~
 25 ~~petition the district court to enforce the award by~~

1 ~~appropriate orders.~~

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

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

8 ~~"66-1940. Penalties -- legal actions. (a)(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 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 ~~one hundred dollars--{\$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 five hundred dollars~~
 19 ~~-\$500.00} or more than two thousand dollars--{\$2,000.00} or~~
 20 ~~by imprisonment for a term not to exceed six--(6) months, or~~
 21 ~~both.~~

22 ~~(b)(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~~
 25 ~~in consequence of a violation of any provision of this act,~~

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

6 ~~{c} Any person sustaining damages by failure of a real
 7 estate broker or real estate salesman to comply with the
 8 provisions of this act, shall have the right to commence an
 9 action in his own name against the real estate broker and
 10 his surety, or the real estate salesman and his surety, or
 11 both the broker and any salesman employed directly or
 12 indirectly by such broker and their respective sureties, for
 13 the recovery of any damages sustained as the result of any
 14 act specified in section 66-1937 herein or as a result of
 15 the failure of the real estate broker or real estate
 16 salesman to comply with the provisions of this act, in all
 17 cases where suit is brought against the broker or the
 18 salesman and his surety, the court shall, upon entering
 19 judgment for the plaintiff, allow as a part of the costs of
 20 suit a reasonable amount as attorney's fees.~~

21 ~~All penalties provided for by this section may be
 22 collected from the broker's and salesman's bonds provided by
 23 section 66-1933.~~"

24 Section 2. Section 66-2115, R.C.M. 1947, is amended to
 25 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
 4 violation of this act, or on a conviction of the holder of
 5 the certificate of a crime involving moral turpitude, or if
 6 the board finds the holder to be guilty of habitual
 7 carelessness or inattention to business or of fraudulent
 8 practices. The board may also cancel and revoke a
 9 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 66-2113, or new or
 12 additional bonds 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.

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 board to show cause why the certificate should not
 22 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-dollars-(\$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
 8 ~~fifty-dollars-(\$50)~~ as an examination fee. A license when
 9 issued expires ~~one-(\$1)~~ 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
 13 renewal, directed to the department, 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 license, 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-board-or-cash-in-the-amount-of-five-thousand-dollars~~
 22 ~~(\$5,000)-to-insure-the-faithful-performance-of-his-duties~~
 23 ~~arising-out-of-the-state-plumbing-code-or-this-chapter."~~

24 Section 4. Repealer. Sections ~~66-1934~~ 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.M. 1947, are repealed.

-End-

SENATE BILL NO. 125

INTRODUCED BY REGAN, BLAYLOCK, NELSON

A BILL FOR AN ACT ENTITLED: "AN 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; PLACING AUTHORITY IN THAT DEPARTMENT TO REQUIRE LICENSEES TO REPAIR THE HARM OR PAY DAMAGES IN REPARATION FOR SUCH HARM; CREATING A FUND TO PAY AWARDS DEFAULTED UPON; AND REMOVING ELIMINATE BOND REQUIREMENTS FOR CERTAIN PROFESSIONS AND OCCUPATIONS; AMENDING SECTIONS 66-1940, 66-2115, 66-2405, R.C.M. 1947; AND REPEALING SECTIONS 66-1934, ~~66-1933~~, 66-2113, 66-2609, 66-3322, 66-3323, 66-3324, 66-3325, 66-3326, AND 66-3510, R.C.M. 1947."

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

~~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~~

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~~Section 3 - Action in case of noncompliance. The board may revoke the license of the licensee if payment or repairs are not made within 30 days after the board enters its orders.~~

~~Section 4 - Fund for hearing expenses and paying damages. In addition to the renewal fees, 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~~

REFERENCE BILL: Includes Free Joint
Conference Committee Report
Dated 4-18-99

1 ~~renewal fees. The director of the department shall establish~~
 2 ~~the annual fee which may vary according to the occupation~~
 3 ~~or profession licensed. The department shall deposit these~~
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5 ~~{1} the cost of hearings provided for in {section 1}~~
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 17 ~~that purpose.~~

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 19 ~~the district court under the provisions of the Montana~~
 20 ~~Administrative Procedure Act, the board's record of hearing~~
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 24 ~~made and no appeal has been filed, the attorney general may~~
 25 ~~petition the district court to enforce the award by~~

1 appropriate orders.

2 ~~Section 8. Remedy not exclusive --- offset. The remedy~~
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6 Section 1. Section 66-1940, R.C.M. 1947, is amended to
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8 "66-1940. Penalties -- legal actions. (a)(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 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 ~~one hundred dollars~~ ~~{100}~~ or more than ~~five hundred~~
 15 ~~dollars~~ ~~{500}~~ 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 ~~five hundred dollars~~
 19 ~~{500}~~ or more than ~~two thousand dollars~~ ~~{2,000}~~ or
 20 by imprisonment for a term not to exceed ~~six~~ ~~{6}~~ months, or
 21 both.

22 (b)(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
 25 in consequence of a violation of any provision of this act,

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

6 ~~(c) Any person sustaining damages by failure of a real~~
7 ~~estate broker or real estate salesman to comply with the~~
8 ~~provisions of this act, shall have the right to commence an~~
9 ~~action in his own name against the real estate broker and~~
10 ~~his surety or the real estate salesman and his surety or~~
11 ~~both the broker and any salesman employed directly or~~
12 ~~indirectly by such broker and their respective sureties for~~
13 ~~the recovery of any damages sustained as the result of any~~
14 ~~act specified in section 66-1937 herein or as a result of~~
15 ~~the failure of the real estate broker or real estate~~
16 ~~salesman to comply with the provisions of this act in all~~
17 ~~cases where suit is brought against the broker or the~~
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19 ~~judgment for the plaintiff, allow as a part of the costs of~~
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9 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 66-2113, or new or
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18 registration with a violation of any of the provisions of
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20 holder of the certificate to appear before it on a day fixed
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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
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 5 an examination fee, and no applicant for a journeyman
 6 plumber's license may submit to the examination prescribed
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 10 license issued to a master plumber or a journeyman plumber
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 12 prior to its expiration, by a written request for its
 13 renewal, directed to the department, 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 license, 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 board, or cash in the amount of five thousand dollars~~
 22 ~~(\$5,000) to insure the faithful performance of his duties~~
 23 ~~arising out of the state plumbing code or this chapter."~~

24 Section 4. Repealer. Sections 66-1934, ~~66-2005~~
 25 ~~66-1933~~, 66-2113, 66-2609, 66-3322, 66-3323, 66-3324,

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-End-