

SENATE BILL NO. 427

INTRODUCED BY TURNAGE, STORY, R. SMITH, PETERSON  
BY REQUEST OF THE ADMINISTRATIVE CODE COMMITTEE

IN THE SENATE

February 9, 1979	Introduced and referred to Committee on Business and Industry.
February 15, 1979	Committee recommend bill do pass. Report adopted.
February 16, 1979	Printed and placed on members' desks.
February 17, 1979	Second reading, do pass.
February 19, 1979	Considered correctly engrossed.
February 20, 1979	Third reading, passed. Transmitted to second house.

IN THE HOUSE

February 21, 1979	Introduced and referred to Committee on Business and Industry.
March 6, 1979	Committee recommend bill be concurred in. Report adopted.
March 7, 1979	Second reading, concurred in.
March 9, 1979	Third reading, concurred in.

IN THE SENATE

March 10, 1979	Returned from second house. Concurred in. Sent to enrolling.  Reported correctly enrolled.
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*Senate* BILL NO. *427*  
INTRODUCED BY *Turnage Terry R. Smith Peterson*  
BY REQUEST OF THE ADMINISTRATIVE CODE COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT TO SET STANDARDS FOR ADVERTISING BY A REAL ESTATE BROKER OPERATING UNDER A FRANCHISE AGREEMENT; CLARIFYING RESTRICTIONS ON THE BOARD OF REAL ESTATE'S AUTHORITY TO REGULATE ADVERTISING; AMENDING SECTIONS 37-51-102 AND 37-51-321, MCA."

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

Section 1. Section 37-51-102, MCA, is amended to read:

"37-51-102. Definitions. Unless the context requires otherwise, in this Chapter the following definitions apply:  
(1) "Board" means the board of real estate provided for in 2-15-1642.

(2) "Broker" includes an individual who for another or for a fee, commission, or other valuable consideration or who with the intent or expectation of receiving the same negotiates or attempts to negotiate the listing, sale, purchase, rental, exchange, or lease of real estate or of the improvements thereon or collects rents or attempts to collect rents or advertises or holds himself out as engaged in any of the foregoing activities. The term "broker" also includes an individual employed by or on behalf of the owner

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or lessor of real estate to conduct the sale, leasing, subleasing, or other disposition thereof at a salary or for a fee, commission, or any other consideration. The term "broker" also includes an individual who 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 primarily to promote the sale, lease, or other disposition of real estate in this state through its listing in a publication issued primarily for this purpose or for referral of information concerning real estate to brokers, or both, and any person who aids, attempts, or offers to aid, for a fee, any person in locating or obtaining any real estate for purchase or lease.

(3) "Department" means the department of professional and occupational licensing provided for in Title 2, chapter 15, part 16.

~~(4) "Franchise agreement" means a contract or agreement by which:~~

~~(a) a franchisee is granted the right to engage in business under a marketing plan prescribed in substantial part by the franchisor;~~

~~(b) the operation of the franchisee's business is substantially associated with the franchisor's trademark, trade name, logotype, or other commercial symbol or advertising designating the franchisor; and~~

1 ~~(c) the franchisee is required to pay, directly or~~  
 2 ~~indirectly, a fee for the right to operate under the~~  
 3 ~~agreement.~~

4 ~~(4)(5)~~ "Person" includes individuals, partnerships,  
 5 associations, and corporations, foreign and domestic, except  
 6 that when referring to a person licensed under this chapter,  
 7 it means an individual.

8 ~~(5)(6)~~ "Real estate" includes leaseholds as well as  
 9 any other interest or estate in land, whether corporeal,  
 10 incorporeal, freehold, or nonfreehold and whether the real  
 11 estate is situated in this state or elsewhere.

12 ~~(6)(7)~~ "Salesman" includes an individual who for a  
 13 salary, commission, or compensation of any kind is employed,  
 14 either directly, indirectly, regularly, or occasionally, by  
 15 a real estate broker to sell, purchase, or negotiate for the  
 16 sale, purchase, exchange, or renting of real estate."

17 Section 2. Section 37-51-321, MCA, is amended to read:

18 "37-51-321. Revocation or suspension of license --  
 19 initiation of proceedings -- grounds. The board may on its  
 20 own motion and shall on the sworn complaint in writing of a  
 21 person investigate the actions of a real estate broker or a  
 22 real estate salesman, subject to 37-1-101 and 37-1-102, and  
 23 may revoke or suspend a license issued under this chapter  
 24 when the broker or salesman has been found guilty by a  
 25 majority of the board of any of the following practices:

1 (1) intentionally misleading, untruthful, or  
 2 inaccurate advertising, whether printed or by radio,  
 3 display, or other nature, which advertising in any material  
 4 particular or in any material way misrepresents any  
 5 property, terms, values, policies, or services of the  
 6 business conducted; ~~A broker who operates under a~~  
 7 ~~franchise agreement engages in misleading, untruthful, or~~  
 8 ~~inaccurate advertising if in using the franchise name he~~  
 9 ~~does not incorporate his own name in the franchise name or~~  
 10 ~~logo type or does not conspicuously display, on his~~  
 11 ~~letterhead and other printed materials available to the~~  
 12 ~~public, a statement that his office is independently owned~~  
 13 ~~and operated. The board may not adopt advertising standards~~  
 14 ~~more stringent than those set forth in this subsection.~~

15 (2) making any false promises of a character likely to  
 16 influence, persuade, or induce;

17 (3) pursuing a continued and flagrant course of  
 18 misrepresentation or making false promises through agents or  
 19 salesmen or any medium of advertising or otherwise;

20 (4) use of the term "realtor" by a person not  
 21 authorized to do so or using another trade name or insignia  
 22 of membership in a real estate organization of which the  
 23 licensee is not a member;

24 (5) failing to account for or to remit money coming  
 25 into his possession belonging to others;

1 (6) accepting, giving, or charging an undisclosed  
2 commission, rebate, or profit on expenditures made for a  
3 principal;

4 (7) acting in a dual capacity of broker and  
5 undisclosed principal in a transaction;

6 (8) guaranteeing, authorizing, or permitting a person  
7 to guarantee future profits which may result from the resale  
8 of real property;

9 (9) offering real property for sale or lease without  
10 the knowledge and consent of the owner or his authorized  
11 agent or on terms other than those authorized by the owner  
12 or his authorized agent;

13 (10) inducing a party to a contract of sale or lease to  
14 break the contract for the purpose of substituting a new  
15 contract with another principal;

16 (11) accepting employment or compensation for  
17 appraising real property contingent on the reporting of a  
18 predetermined value or issuing an appraisal report on real  
19 property in which he has an undisclosed interest;

20 (12) negotiating a sale, exchange, or lease of real  
21 property directly with an owner or lessee if he knows that  
22 the owner has a written, outstanding contract in connection  
23 with the property granting an exclusive agency to another  
24 broker;

25 (13) soliciting, selling, or offering for sale real

1 property by conducting lotteries for the purpose of  
2 influencing a purchaser or prospective purchaser of real  
3 property;

4 (14) representing or attempting to represent a real  
5 estate broker other than the employer without the express  
6 knowledge or consent of the employer;

7 (15) failing voluntarily to furnish a copy of a written  
8 instrument to a party executing it at the time of its  
9 execution;

10 (16) paying a commission in connection with a real  
11 estate sale or transaction to a person who is not licensed  
12 as a real estate broker or real estate salesman under this  
13 chapter;

14 (17) intentionally violating a rule adopted by the  
15 board in the interests of the public and in conformity with  
16 this chapter;

17 (18) failing, if a salesman, to place, as soon after  
18 receipt as is practicably possible, in the custody of his  
19 registered broker, deposit money or other money entrusted to  
20 him as salesman by a person;

21 (19) demonstrating his unworthiness or incompetency to  
22 act as a broker or salesman; or

23 (20) conviction of a felony."

-End-

1 *Senate* BILL NO. *427*  
 2 INTRODUCED BY *Furnage Steve R. Dick Peterson*  
 3 BY REQUEST OF THE ADMINISTRATIVE CODE COMMITTEE  
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5 A BILL FOR AN ACT ENTITLED: "AN ACT TO SET STANDARDS FOR  
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 7 FRANCHISE AGREEMENT; CLARIFYING RESTRICTIONS ON THE BOARD OF  
 8 REAL ESTATE'S AUTHORITY TO REGULATE ADVERTISING; AMENDING  
 9 SECTIONS 37-51-102 AND 37-51-321, MCA."  
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11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12 Section 1. Section 37-51-102, MCA, is amended to read:  
 13 "37-51-102. Definitions. Unless the context requires  
 14 otherwise, in this chapter the following definitions apply:

15 (1) "Board" means the board of real estate provided  
 16 for in 2-15-1642.

17 (2) "Broker" includes an individual who for another or  
 18 for a fee, commission, or other valuable consideration or  
 19 who with the intent or expectation of receiving the same  
 20 negotiates or attempts to negotiate the listing, sale,  
 21 purchase, rental, exchange, or lease of real estate or of  
 22 the improvements thereon or collects rents or attempts to  
 23 collect rents or advertises or holds himself out as engaged  
 24 in any of the foregoing activities. The term "broker" also  
 25 includes an individual employed by or on behalf of the owner

1 or lessor of real estate to conduct the sale, leasing,  
 2 subleasing, or other disposition thereof at a salary or for  
 3 a fee, commission, or any other consideration. The term  
 4 "broker" also includes an individual who engages in the  
 5 business of charging an advance fee or contracting for  
 6 collection of a fee in connection with a contract by which  
 7 he undertakes primarily to promote the sale, lease, or other  
 8 disposition of real estate in this state through its listing  
 9 in a publication issued primarily for this purpose or for  
 10 referral of information concerning real estate to brokers,  
 11 or both, and any person who aids, attempts, or offers to  
 12 aid, for a fee, any person in locating or obtaining any real  
 13 estate for purchase or lease.

14 (3) "Department" means the department of professional  
 15 and occupational licensing provided for in Title 2, chapter  
 16 15, part 16.

17 (4) "Franchise agreement" means a contract or  
 18 agreement by which:

19 (a) a franchisee is granted the right to engage in  
 20 business under a marketing plan prescribed in substantial  
 21 part by the franchisor;

22 (b) the operation of the franchisee's business is  
 23 substantially associated with the franchisor's trademark,  
 24 trade name, logotype, or other commercial symbol or  
 25 advertising designating the franchisor; and

1 (c) the franchisee is required to pay, directly or  
 2 indirectly, a fee for the right to operate under the  
 3 agreement.

4 ~~(4)~~(5) "Person" includes individuals, partnerships,  
 5 associations, and corporations, foreign and domestic, except  
 6 that when referring to a person licensed under this chapter,  
 7 it means an individual.

8 ~~(5)~~(6) "Real estate" includes leaseholds as well as  
 9 any other interest or estate in land, whether corporeal,  
 10 incorporeal, freehold, or nonfreehold and whether the real  
 11 estate is situated in this state or elsewhere.

12 ~~(6)~~(7) "Salesman" includes an individual who for a  
 13 salary, commission, or compensation of any kind is employed,  
 14 either directly, indirectly, regularly, or occasionally, by  
 15 a real estate broker to sell, purchase, or negotiate for the  
 16 sale, purchase, exchange, or renting of real estate."

17 Section 2. Section 37-51-321, MCA, is amended to read:

18 "37-51-321. Revocation or suspension of license —  
 19 initiation of proceedings — grounds. The board may on its  
 20 own motion and shall on the sworn complaint in writing of a  
 21 person investigate the actions of a real estate broker or a  
 22 real estate salesman, subject to 37-1-101 and 37-1-102, and  
 23 may revoke or suspend a license issued under this chapter  
 24 when the broker or salesman has been found guilty by a  
 25 majority of the board of any of the following practices:

1 (1) intentionally misleading, untruthful, or  
 2 inaccurate advertising, whether printed or by radio,  
 3 display, or other nature, which advertising in any material  
 4 particular or in any material way misrepresents any  
 5 property, terms, values, policies, or services of the  
 6 business conducted; A broker who operates under a  
 7 franchise agreement engages in misleading, untruthful, or  
 8 inaccurate advertising if in using the franchise name he  
 9 does not incorporate his own name in the franchise name or  
 10 logotype or does not conspicuously display, on his  
 11 letterhead and other printed materials available to the  
 12 public, a statement that his office is independently owned  
 13 and operated. The board may not adopt advertising standards  
 14 more stringent than those set forth in this subsection.

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 16 influence, persuade, or induce;

17 (3) pursuing a continued and flagrant course of  
 18 misrepresentation or making false promises through agents or  
 19 salesmen or any medium of advertising or otherwise;

20 (4) use of the term "realtor" by a person not  
 21 authorized to do so or using another trade name or insignia  
 22 of membership in a real estate organization of which the  
 23 licensee is not a member;

24 (5) failing to account for or to remit money coming  
 25 into his possession belonging to others;

1 (6) accepting, giving, or charging an undisclosed  
2 commission, rebate, or profit on expenditures made for a  
3 principal;

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5 undisclosed principal in a transaction;

6 (8) guaranteeing, authorizing, or permitting a person  
7 to guarantee future profits which may result from the resale  
8 of real property;

9 (9) offering real property for sale or lease without  
10 the knowledge and consent of the owner or his authorized  
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13 (10) inducing a party to a contract of sale or lease to  
14 break the contract for the purpose of substituting a new  
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24 broker;

25 (13) soliciting, selling, or offering for sale real

1 property by conducting lotteries for the purpose of  
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-End-

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20 him as salesman by a person;

21 (19) demonstrating his unworthiness or incompetency to  
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23 (20) conviction of a felony."

-End-