

SENATE BILL NO. 250

INTRODUCED BY MAZUREK, H. HAMMOND, HARP, HARPER, FULLER,
KOEHNKE, MANNING, KEATING, STORY

BY REQUEST OF THE BOARD OF REALTY REGULATION

IN THE SENATE

January 26, 1985	Introduced and referred to Committee on Business and Industry.
January 31, 1985	Fiscal Note requested.
February 6, 1985	Fiscal Note returned.
February 13, 1985	Committee recommend bill do not pass. Report adopted. Ayes, 35; Noes, 14.
February 14, 1985	On motion, Senate reconsider its action taken on adverse committee report on SB 250 and placed on second reading. Motion adopted.
February 15, 1985	Bill printed and placed on members' desks.
February 16, 1985	Motion pass consideration.
February 18, 1985	Second reading, do pass as amended.
February 19, 1985	Correctly engrossed.
February 20, 1985	Third reading, passed. Ayes, 37; Noes, 12.

IN THE HOUSE

February 27, 1985	Introduced and referred to Committee on Business and Labor.
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March 29, 1985 Committee recommend bill be
 concurred in as amended. Report
 adopted.

April 3, 1985 Second reading, concurred in as
 amended.

April 5, 1985 Third reading, concurred in.
 Returned to Senate.

IN THE SENATE

April 15, 1985 Received from House.

April 16, 1985 Sent to enrolling.

April 22, 1985 Correctly enrolled.
 Signed by President.

April 23, 1985 Signed by Speaker.

April 24, 1985 Delivered to Governor.
 Returned from Governor with
 recommended amendments.

 Second reading, Governor's
 amendments concurred in.

April 25, 1985 Third reading, Governor's
 amendments concurred in.
 Governor's amendments
 transmitted to House.

IN THE HOUSE

April 25, 1985 Received from Senate.
 Second reading, Governor's
 amendments concurred in.

April 25, 1985

Third reading, Governor's
amendments concurred in.

Returned to Senate.

IN THE SENATE

April 25, 1985

Received from House.

Sent to enrolling.

Reported correctly enrolled.

Senate BILL NO. **250**

INTRODUCED BY *Marybeth Williams* *ARE*

BY REQUEST OF THE BOARD OF REALTY REGULATION

Fuller *Forner* *Richard Manning* *Stacy*

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING A REAL ESTATE RECOVERY ACCOUNT FOR PAYMENT OF UNSATISFIED JUDGMENTS AGAINST REAL ESTATE SALESMEN AND BROKERS; PROVIDING FOR THE MAKING, ADJUDICATION, AND PAYMENT OF CLAIMS AGAINST THE ACCOUNT; PROVIDING FOR SUBROGATION OF RIGHTS OF THE BOARD OF REALTY REGULATION TO JUDGMENTS PAID FROM THE ACCOUNT; COORDINATING DISCIPLINARY PROVISIONS WITH OTHER POWERS OF THE BOARD; AMENDING SECTIONS 37-51-102 AND 37-51-311, MCA; REPEALING SECTION 37-51-304, MCA; AND PROVIDING AN EFFECTIVE DATE."

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) "Account" means the real estate recovery account established in [section 3].

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

(3) "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 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.

(4) "Broker associate" means a broker who associates with a broker owner and does not own an interest in a real estate firm.

(5) "Broker owner" means a broker who owns or has a financial interest in a real estate firm.



-2- INTRODUCED BILL
SB 250

1 †5†(6) "Department" means the department of commerce
2 provided for in Title 2, chapter 15, part 18.

3 †6†(7) "Franchise agreement" means a contract or
4 agreement by which:

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

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

12 (c) the franchisee is required to pay, directly or
13 indirectly, a fee for the right to operate under the
14 agreement.

15 †7†(8) "Person" includes individuals, partnerships,
16 associations, and corporations, foreign and domestic, except
17 that when referring to a person licensed under this chapter,
18 it means an individual.

19 †8†(9) "Real estate" includes leaseholds as well as
20 any other interest or estate in land, whether corporeal,
21 incorporeal, freehold, or nonfreehold and whether the real
22 estate is situated in this state or elsewhere.

23 †9†(10) "Salesman" includes an individual who for a
24 salary, commission, or compensation of any kind is
25 associated, either directly, indirectly, regularly, or

1 occasionally, with a real estate broker to sell, purchase,
2 or negotiate for the sale, purchase, exchange, or renting of
3 real estate."

4 Section 2. Section 37-51-311, MCA, is amended to read:

5 "37-51-311. Fees -- deposit of fees. (1) The fees
6 prescribed by the board shall be charged by the department
7 and paid into the earmarked revenue fund for the use of the
8 board, subject to 37-1-101(6).

9 (2) The board shall charge an annual fee from a
10 licensee who wishes to be placed in an inactive status. A
11 licensee who is placed in an inactive status by the board
12 and who has paid the required fee need not ~~file a bond with~~
13 ~~the department as provided in 37-51-304~~ pay any fee assessed
14 by the board for the purpose of funding the real estate
15 recovery account during the period the licensee remains in
16 inactive status.

17 (3) The board shall adopt a schedule of fees. However,
18 a fee once set for one of the items for which a fee is
19 charged cannot be increased or decreased until at least 1
20 year has passed since the fee for that particular item was
21 last increased or decreased."

22 NEW SECTION. Section 3. Real estate recovery account
23 established -- minimum balance -- interest. (1) There is
24 established in the state special revenue fund for the use of
25 the board a real estate recovery account. The account is

1 used to provide payment of claims based on unsatisfied
2 judgments against persons licensed under the provisions of
3 this chapter.

4 (2) The board shall maintain a minimum balance of
5 \$100,000 in the account. The board may in its discretion
6 transfer any money in excess of that amount from the account
7 to the state special revenue fund for the use of the board
8 in accordance with the purposes provided in 37-51-204.

9 (3) Money earned on the investment of funds in the
10 account must be credited to the account annually.

11 NEW SECTION. Section 4. Initial licensure and renewal
12 assessment. (1) A person initially licensed under the
13 provisions of this chapter in 1986 or thereafter shall, in
14 addition to paying any license fee required under this
15 chapter, be assessed the sum of \$35 at the time of
16 licensure, to be credited to the real estate recovery
17 account.

18 (2) If on June 30 of any year, beginning in 1986, the
19 balance in the real estate recovery account is less than
20 \$100,000, every person licensed under this chapter shall,
21 when renewing his license, pay a sum not to exceed \$35 in
22 addition to the annual renewal fee, which sum is determined
23 by the board to be sufficient to maintain the balance of the
24 account at a minimum of \$100,000.

25 NEW SECTION. Section 5. Claims against fund --

1 orders for payment. (1) Whenever a person obtains a final
2 judgment in any court of competent jurisdiction against any
3 person licensed under this chapter for the conversion of
4 trust funds or arising directly out of any act or
5 transaction occurring on or after July 1, 1985, for which a
6 license is required under this chapter, he may after
7 executing on such final judgment file an application, in
8 accordance with this section and [section 6], in the court
9 in which the judgment was entered for an order directing
10 payment out of the account for any actual and direct loss
11 unpaid on the judgment.

12 (2) No application or order for payment from the
13 account may be made for:

- 14 (a) a judgment which has been satisfied;
- 15 (b) any amount in excess of \$25,000 for any one
16 licensee, regardless of the number of persons injured by
17 acts of the licensee or number of parcels of real estate
18 involved in the transaction or transactions;
- 19 (c) attorney fees and exemplary or punitive damages;
- 20 or
- 21 (d) amounts remaining unpaid on any judgment rendered
22 more than 2 years prior to the date of application.

23 (3) The application must be:

- 24 (a) served by certified mail, return receipt
25 requested, upon the board, the licensee, and any other party

1 to the transaction referred to in the application; and
2 (b) filed with the court along with an affidavit of
3 service.

4 NEW SECTION. Section 6. Form of application. The
5 person making application for payment from the account must
6 show in the application:

7 (1) that he is not the spouse of the judgment debtor
8 or the personal representative of such spouse;

9 (2) that he has obtained a judgment which satisfies
10 the requirements of [section 5], stating the amount of the
11 judgment and the amount unpaid on the date of the
12 application;

13 (3) that he has, on the dates and at the times shown
14 by the applicant, diligently pursued the remedies of
15 execution and proceedings in aid of execution provided in
16 Title 25, chapters 13 and 14, respectively;

17 (4) the amount of any money obtained as a result of
18 the proceedings required to be shown in subsection (3) and
19 the balance of the judgment remaining unpaid for which
20 application is made; and

21 (5) that he has diligently pursued his remedies
22 against any other persons liable to him in the transaction
23 for which he seeks recovery from the account.

24 NEW SECTION. Section 7. Motion to dismiss
25 application. The board may move the court at any time to

1 dismiss the application if it appears that the application
2 is without merit. The motion may be supported by the
3 affidavit of any person having knowledge of the facts and
4 may be made on the basis that the application and the
5 judgment referred to therein do not form the basis for a
6 payable claim under [sections 5 and 6]. The board shall give
7 the applicant at least 10 days' written notice of any motion
8 to dismiss.

9 NEW SECTION. Section 8. Hearing on application. (1)
10 Within 30 days of the filing of the affidavit of service,
11 the court shall conduct a hearing upon the application. Upon
12 the motion of either party, the court shall continue the
13 hearing up to 60 days and upon a showing of good cause may
14 continue the hearing such further period as the court
15 considers appropriate.

16 (2) At the hearing the court shall determine by a
17 preponderance of the evidence the truth of any allegations
18 made in the application and supporting documents that are
19 challenged by the board.

20 NEW SECTION. Section 9. Payment from account. (1) If
21 the court finds after the hearing that an applicant has
22 proved a valid claim against the account, the court shall
23 enter an order directed to the board requiring payment from
24 the account of whatever sum it finds to be due under the
25 provisions of [sections 3 through 15].

1 (2) The board may, subject to court approval,
2 compromise and pay any application made under [sections 5
3 and 6]. The board is not bound by any prior compromise,
4 admission, or stipulation of the judgment debtor.

5 NEW SECTION. Section 10. Limitation of payment --
6 pro rata distribution. (1) The liability of the account may
7 not exceed \$25,000 for any one licensee until that licensee
8 has repaid the account as provided in [section 11]. If the
9 \$25,000 liability of the account is insufficient to pay in
10 full the valid claims of all applications that have been
11 filed against any one licensee and ordered to be paid, the
12 \$25,000 must be distributed among those claimants in the
13 ratio that the amount ordered to be paid to any one claimant
14 bears to the total amounts ordered to be paid or in such
15 other manner as the court considers equitable; and upon such
16 a distribution, all claims are considered satisfied by the
17 amount so distributed. Distribution of such money must, at
18 any time, be among the persons ordered to receive the same,
19 without regard to the order or priority in which their
20 respective judgments were obtained or their applications
21 filed.

22 (2) Upon petition of the board, the court may require
23 all existing applications for payment of claims against one
24 licensee to be joined in one proceeding for the purpose of a
25 timely determination of their respective rights to the money

1 in the account.

2 (3) An application for payment of a claim against a
3 licensee filed after the distribution of the full amount for
4 which the account is liable for that licensee and before
5 full repayment of the account under [section 11] must be
6 denied by the court.

7 NEW SECTION. Section 11. Repayment of fund --
8 suspension of license required. Upon the payment of any
9 amount from the account, the license of the licensee on
10 whose behalf the claim was paid is automatically suspended,
11 effective upon the date of the order of the court for
12 payment from the account. No licensee on whose behalf a
13 claim is paid may be granted reinstatement until he has
14 repaid in full, plus interest at the judgment rate, the
15 amount paid from the account on his behalf. A discharge in
16 bankruptcy does not relieve a licensee from the penalty of
17 suspension required by this section.

18 NEW SECTION. Section 12. Claims satisfied in order of
19 filing. If account funds are insufficient to satisfy any
20 claim or portion of a claim ordered to be paid on behalf of
21 a licensee for whom the account liability of \$25,000 has not
22 been exceeded, the board shall, when sufficient money has
23 been deposited in the account, satisfy such unpaid claims or
24 portions of them in the order that the applications for such
25 claims were originally filed pursuant to [section 5]. The

1 board shall pay accumulated interest beginning on the date
2 of the order to pay at the judgment rate on each such
3 unpaid claim.

4 NEW SECTION. Section 13. Deposits by board. Money
5 received by the board under [sections 11 and 14] must be
6 deposited in the account and allocated exclusively for the
7 purposes provided in [sections 3 through 15].

8 NEW SECTION. Section 14. Subrogation rights of board.
9 Upon payment of money from the account, the board is
10 subrogated to all of the rights of the judgment creditor to
11 the extent of the amount so paid and the judgment creditor
12 is considered to have assigned to the board all of his
13 right, title, and interest in the judgment to the extent of
14 the amount paid from the account. Any amount and interest
15 recovered by the board on the judgment must be deposited in
16 the account.

17 NEW SECTION. Section 15. Other disciplinary powers
18 unimpaired -- effect of repayment to fund. Nothing
19 contained in [sections 3 through 15] limits the authority of
20 the board to take disciplinary action against any licensee
21 under other provisions of this chapter, nor does the
22 repayment in full of all obligations to the account by any
23 licensee nullify or modify the effect of any other
24 disciplinary action taken by the board under the provisions
25 of this chapter.

1 NEW SECTION. Section 16. Repealer. Section 37-51-304,
2 MCA, is repealed.

3 NEW SECTION. Section 17. Initial transfer of funds
4 -- assessment of all licensees -- retransfer. (1) The
5 amount of \$100,000 is transferred from the state special
6 revenue fund to the real estate recovery account for the use
7 of the board.

8 (2) Notwithstanding the provisions of 37-51-311, the
9 board shall charge a fee of \$35 in addition to any other fee
10 due under the provisions of Title 37, chapter 51, to all
11 licensees paying a renewal fee for the 1986 calendar year.

12 (3) Notwithstanding the provisions of [section 3],
13 \$100,000 is transferred from the real estate recovery
14 account on March 1, 1986, or when the total balance of the
15 account exceeds \$200,000, whichever occurs last, to the
16 state special revenue fund for the use of the board.

17 NEW SECTION. Section 18. Codification instruction.
18 Sections 3 through 15 are intended to be codified as an
19 integral part of Title 37, chapter 51, and the provisions
20 of Title 37, chapter 51, apply to sections 3 through 15.

21 NEW SECTION. Section 19. Extension of authority. Any
22 existing authority of the board of realty regulation to make
23 rules on the subject of the provisions of this act is
24 extended to the provisions of this act.

25 NEW SECTION. Section 20. Effective date. This act is

LC 0192/01

1 effective July 1, 1985.

-End-

STATE OF MONTANA
FISCAL NOTE

REQUEST NO. FNN 295-85

Form BD-15

In compliance with a written request received January 31, 19 85, there is hereby submitted a Fiscal Note for Senate Bill 250 pursuant to Title 5, Chapter 4, Part 2 of the Montana Code Annotated (MCA). Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION:

To create a real estate recovery fund for payment of unsatisfied judgments against real estate salesmen and brokers; providing for the making adjudication, and payment of claims against the account; providing for subrogation of rights of the Board of Realty Regulation to judgments paid from the account, coordinating disciplinary provisions with other powers of the board and amending certain sections of Title 37, Chapter 51.

ASSUMPTIONS:

1. Assume \$100,000 from Board of Realty Regulation earmarked revenue fund to establish Recovery Fund.
2. At time of license renewal all active licensees will be assessed a fee of \$35 to repay funds withdrawn from earmarked revenue fund.
3. There are approximately 5,000 active licensees. Assume only 4,000 active licensees will renew and pay the \$35 assessment fee.
4. Assume Board expenditures will remain at current level.
5. Approximately 1,700 to 2,000 applicants take the licensing examination each year with a pass ratio of 50%. (1,700 X .50 = 805 new licensees per year).

FISCAL IMPACT ON STATE SPECIAL REVENUES:

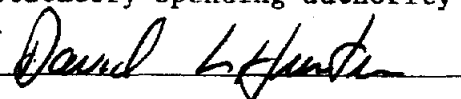
Revenue:	FY 86			FY 87		
	Current	Proposed	Difference	Current	Proposed	Difference
Impact on Fees	\$ 198,374	\$238,374	\$40,000	\$238,374	\$268,124	\$ 40,000

Expenditures:

It is not possible to determine the amount of claims that would be paid from this account, but all claims made after July 1, 1985 are eligible for payment providing they meet the requirements set forth in the bill.

TECHNICAL NOTE:

This bill does not provide statutory spending authority to allow any claims to be paid. Because these are state special revenues, the budget amendment process could not be used. If statutory spending authority is added, it must also be coordinated with HB 12 to be a valid statutory appropriation.


BUDGET DIRECTOR
Office of Budget and Program Planning

Date: Feb 6, 1985
C R 2 7

LC 0192/01
COMM. ON
BUSINESS & INDUSTRY
RECOMMEND DO NOT PASS
ON MOTION RECONSIDER
ADVERSE COMMITTEE REPORT

1 *Senate* BILL NO. *250*
2 INTRODUCED BY *Marybeth Williams HARP*
3 BY REQUEST OF THE BOARD OF REALTY REGULATION
4 *Fuller Furbush Richard Hamming*

5 A BILL FOR AN ACT ENTITLED: "AN ACT CREATING A REAL ESTATE
6 RECOVERY ACCOUNT FOR PAYMENT OF UNSATISFIED JUDGMENTS
7 AGAINST REAL ESTATE SALESMEN AND BROKERS; PROVIDING FOR THE
8 MAKING, ADJUDICATION, AND PAYMENT OF CLAIMS AGAINST THE
9 ACCOUNT; PROVIDING FOR SUBROGATION OF RIGHTS OF THE BOARD OF
10 REALTY REGULATION TO JUDGMENTS PAID FROM THE ACCOUNT;
11 COORDINATING DISCIPLINARY PROVISIONS WITH OTHER POWERS OF
12 THE BOARD; AMENDING SECTIONS 37-51-102 AND 37-51-311, MCA;
13 REPEALING SECTION 37-51-304, MCA; AND PROVIDING AN EFFECTIVE
14 DATE."

15
16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

17 Section 1. Section 37-51-102, MCA, is amended to read:
18 "37-51-102. Definitions. Unless the context requires
19 otherwise, in this chapter the following definitions apply:

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21 established in [section 3].

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

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25 or for a fee, commission, or other valuable consideration or

1 who with the intent or expectation of receiving the same
2 negotiates or attempts to negotiate the listing, sale,
3 purchase, rental, exchange, or lease of real estate or of
4 the improvements thereon or collects rents or attempts to
5 collect rents or advertises or holds himself out as engaged
6 in any of the foregoing activities. The term "broker" also
7 includes an individual employed by or on behalf of the owner
8 or lessor of real estate to conduct the sale, leasing,
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12 business of charging an advance fee or contracting for
13 collection of a fee in connection with a contract by which
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15 disposition of real estate in this state through its listing
16 in a publication issued primarily for this purpose or for
17 referral of information concerning real estate to brokers,
18 or both, and any person who aids, attempts, or offers to
19 aid, for a fee, any person in locating or obtaining any real
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9 substantially associated with the franchisor's trademark,
10 trade name, logotype, or other commercial symbol or
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13 indirectly, a fee for the right to operate under the
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18 it means an individual.

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20 any other interest or estate in land, whether corporeal,
21 incorporeal, freehold, or nonfreehold and whether the real
22 estate is situated in this state or elsewhere.

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24 salary, commission, or compensation of any kind is
25 associated, either directly, indirectly, regularly, or

1 occasionally, with a real estate broker to sell, purchase,
2 or negotiate for the sale, purchase, exchange, or renting of
3 real estate."

4 Section 2. Section 37-51-311, MCA, is amended to read:
5 "37-51-311. Fees -- deposit of fees. (1) The fees
6 prescribed by the board shall be charged by the department
7 and paid into the earmarked revenue fund for the use of the
8 board, subject to 37-1-101(6).

9 (2) The board shall charge an annual fee from a
10 licensee who wishes to be placed in an inactive status. A
11 licensee who is placed in an inactive status by the board
12 and who has paid the required fee need not ~~file a bond with~~
13 ~~the department as provided in 37-51-304~~ pay any fee assessed
14 by the board for the purpose of funding the real estate
15 recovery account during the period the licensee remains in
16 inactive status.

17 (3) The board shall adopt a schedule of fees. However,
18 a fee once set for one of the items for which a fee is
19 charged cannot be increased or decreased until at least 1
20 year has passed since the fee for that particular item was
21 last increased or decreased."

22 NEW SECTION. Section 3. Real estate recovery account
23 established -- minimum balance -- interest. (1) There is
24 established in the state special revenue fund for the use of
25 the board a real estate recovery account. The account is

1 used to provide payment of claims based on unsatisfied
2 judgments against persons licensed under the provisions of
3 this chapter.

4 (2) The board shall maintain a minimum balance of
5 \$100,000 in the account. The board may in its discretion
6 transfer any money in excess of that amount from the account
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8 in accordance with the purposes provided in 37-51-204.

9 (3) Money earned on the investment of funds in the
10 account must be credited to the account annually.

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12 assessment. (1) A person initially licensed under the
13 provisions of this chapter in 1986 or thereafter shall, in
14 addition to paying any license fee required under this
15 chapter, be assessed the sum of \$35 at the time of
16 licensure, to be credited to the real estate recovery
17 account.

18 (2) If on June 30 of any year, beginning in 1986, the
19 balance in the real estate recovery account is less than
20 \$100,000, every person licensed under this chapter shall,
21 when renewing his license, pay a sum not to exceed \$35 in
22 addition to the annual renewal fee, which sum is determined
23 by the board to be sufficient to maintain the balance of the
24 account at a minimum of \$100,000.

25 NEW SECTION. Section 5. Claims against fund --

1 orders for payment. (1) Whenever a person obtains a final
2 judgment in any court of competent jurisdiction against any
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4 trust funds or arising directly out of any act or
5 transaction occurring on or after July 1, 1985, for which a
6 license is required under this chapter, he may after
7 executing on such final judgment file an application, in
8 accordance with this section and [section 6], in the court
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10 payment out of the account for any actual and direct loss
11 unpaid on the judgment.

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13 account may be made for:

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- 19 (c) attorney fees and exemplary or punitive damages;
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22 more than 2 years prior to the date of application.

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24 (a) served by certified mail, return receipt
25 requested, upon the board, the licensee, and any other party

1 to the transaction referred to in the application; and

2 (b) filed with the court along with an affidavit of
3 service.

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5 person making application for payment from the account must
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8 or the personal representative of such spouse;

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10 the requirements of [section 5], stating the amount of the
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15 execution and proceedings in aid of execution provided in
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5 judgment referred to therein do not form the basis for a
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21 the court finds after the hearing that an applicant has
22 proved a valid claim against the account, the court shall
23 enter an order directed to the board requiring payment from
24 the account of whatever sum it finds to be due under the
25 provisions of [sections 3 through 15].

1 (2) The board may, subject to court approval,
2 compromise and pay any application made under [sections 5
3 and 6]. The board is not bound by any prior compromise,
4 admission, or stipulation of the judgment debtor.

5 NEW SECTION. Section 10. Limitation of payment --
6 pro rata distribution. (1) The liability of the account may
7 not exceed \$25,000 for any one licensee until that licensee
8 has repaid the account as provided in [section 11]. If the
9 \$25,000 liability of the account is insufficient to pay in
10 full the valid claims of all applications that have been
11 filed against any one licensee and ordered to be paid, the
12 \$25,000 must be distributed among those claimants in the
13 ratio that the amount ordered to be paid to any one claimant
14 bears to the total amounts ordered to be paid or in such
15 other manner as the court considers equitable; and upon such
16 a distribution, all claims are considered satisfied by the
17 amount so distributed. Distribution of such money must, at
18 any time, be among the persons ordered to receive the same,
19 without regard to the order or priority in which their
20 respective judgments were obtained or their applications
21 filed.

22 (2) Upon petition of the board, the court may require
23 all existing applications for payment of claims against one
24 licensee to be joined in one proceeding for the purpose of a
25 timely determination of their respective rights to the money

1 in the account.

2 (3) An application for payment of a claim against a
3 licensee filed after the distribution of the full amount for
4 which the account is liable for that licensee and before
5 full repayment of the account under [section 11] must be
6 denied by the court.

7 NEW SECTION. Section 11. Repayment of fund --
8 suspension of license required. Upon the payment of any
9 amount from the account, the license of the licensee on
10 whose behalf the claim was paid is automatically suspended,
11 effective upon the date of the order of the court for
12 payment from the account. No licensee on whose behalf a
13 claim is paid may be granted reinstatement until he has
14 repaid in full, plus interest at the judgment rate, the
15 amount paid from the account on his behalf. A discharge in
16 bankruptcy does not relieve a licensee from the penalty of
17 suspension required by this section.

18 NEW SECTION. Section 12. Claims satisfied in order of
19 filing. If account funds are insufficient to satisfy any
20 claim or portion of a claim ordered to be paid on behalf of
21 a licensee for whom the account liability of \$25,000 has not
22 been exceeded, the board shall, when sufficient money has
23 been deposited in the account, satisfy such unpaid claims or
24 portions of them in the order that the applications for such
25 claims were originally filed pursuant to [section 5]. The

1 board shall pay accumulated interest beginning on the date
2 of the order to pay at the judgment rate on each such
3 unpaid claim.

4 NEW SECTION. Section 13. Deposits by board. Money
5 received by the board under [sections 11 and 14] must be
6 deposited in the account and allocated exclusively for the
7 purposes provided in [sections 3 through 15].

8 NEW SECTION. Section 14. Subrogation rights of board.
9 Upon payment of money from the account, the board is
10 subrogated to all of the rights of the judgment creditor to
11 the extent of the amount so paid and the judgment creditor
12 is considered to have assigned to the board all of his
13 right, title, and interest in the judgment to the extent of
14 the amount paid from the account. Any amount and interest
15 recovered by the board on the judgment must be deposited in
16 the account.

17 NEW SECTION. Section 15. Other disciplinary powers
18 unimpaired -- effect of repayment to fund. Nothing
19 contained in [sections 3 through 15] limits the authority of
20 the board to take disciplinary action against any licensee
21 under other provisions of this chapter, nor does the
22 repayment in full of all obligations to the account by any
23 licensee nullify or modify the effect of any other
24 disciplinary action taken by the board under the provisions
25 of this chapter.

1 NEW SECTION. Section 16. Repealer. Section 37-51-304,
2 MCA, is repealed.

3 NEW SECTION. Section 17. Initial transfer of funds
4 -- assessment of all licensees -- retransfer. (1) The
5 amount of \$100,000 is transferred from the state special
6 revenue fund to the real estate recovery account for the use
7 of the board.

8 (2) Notwithstanding the provisions of 37-51-311, the
9 board shall charge a fee of \$35 in addition to any other fee
10 due under the provisions of Title 37, chapter 51, to all
11 licensees paying a renewal fee for the 1986 calendar year.

12 (3) Notwithstanding the provisions of [section 3],
13 \$100,000 is transferred from the real estate recovery
14 account on March 1, 1986, or when the total balance of the
15 account exceeds \$200,000, whichever occurs last, to the
16 state special revenue fund for the use of the board.

17 NEW SECTION. Section 18. Codification instruction.
18 Sections 3 through 15 are intended to be codified as an
19 integral part of Title 37, chapter 51, and the provisions
20 of Title 37, chapter 51, apply to sections 3 through 15.

21 NEW SECTION. Section 19. Extension of authority. Any
22 existing authority of the board of realty regulation to make
23 rules on the subject of the provisions of this act is
24 extended to the provisions of this act.

25 NEW SECTION. Section 20. Effective date. This act is

LC 0192/01

1 effective July 1, 1985.

-End-

1 SENATE BILL NO. 250

2 INTRODUCED BY MAZUREK, H. HAMMOND, HARP, HARPER,
3 FULLER, KOEHNKE, MANNING, KEATING, STORY
4 BY REQUEST OF THE BOARD OF REALTY REGULATION
5

6 A BILL FOR AN ACT ENTITLED: "AN ACT CREATING A REAL ESTATE
7 RECOVERY ACCOUNT FOR PAYMENT OF UNSATISFIED JUDGMENTS
8 AGAINST REAL ESTATE SALESMEN AND BROKERS; PROVIDING FOR THE
9 MAKING, ADJUDICATION, AND PAYMENT OF CLAIMS AGAINST THE
10 ACCOUNT; PROVIDING FOR SUBROGATION OF RIGHTS OF THE BOARD OF
11 REALTY REGULATION TO JUDGMENTS PAID FROM THE ACCOUNT;
12 COORDINATING DISCIPLINARY PROVISIONS WITH OTHER POWERS OF
13 THE BOARD; AMENDING SECTIONS 37-51-102 AND 37-51-311, MCA;
14 REPEALING SECTION 37-51-304, MCA; AND PROVIDING AN EFFECTIVE
15 DATE."
16

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

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

19 "37-51-102. Definitions. Unless the context requires
20 otherwise, in this chapter the following definitions apply:

21 (1) "Account" means the real estate recovery account
22 established in [section 3].

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

25 (3) "Broker" includes an individual who for another

1 or for a fee, commission, or other valuable consideration or
2 who with the intent or expectation of receiving the same
3 negotiates or attempts to negotiate the listing, sale,
4 purchase, rental, exchange, or lease of real estate or of
5 the improvements thereon or collects rents or attempts to
6 collect rents or advertises or holds himself out as engaged
7 in any of the foregoing activities. The term "broker" also
8 includes an individual employed by or on behalf of the owner
9 or lessor of real estate to conduct the sale, leasing,
10 subleasing, or other disposition thereof at a salary or for
11 a fee, commission, or any other consideration. The term
12 "broker" also includes an individual who engages in the
13 business of charging an advance fee or contracting for
14 collection of a fee in connection with a contract by which
15 he undertakes primarily to promote the sale, lease, or other
16 disposition of real estate in this state through its listing
17 in a publication issued primarily for this purpose or for
18 referral of information concerning real estate to brokers,
19 or both, and any person who aids, attempts, or offers to
20 aid, for a fee, any person in locating or obtaining any real
21 estate for purchase or lease.

22 (4) "Broker associate" means a broker who
23 associates with a broker owner and does not own an interest
24 in a real estate firm.

25 (5) "Broker owner" means a broker who owns or has a

1 financial interest in a real estate firm.

2 †5†(6) "Department" means the department of commerce
3 provided for in Title 2, chapter 15, part 18.

4 †6†(7) "Franchise agreement" means a contract or
5 agreement by which:

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

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

13 (c) the franchisee is required to pay, directly or
14 indirectly, a fee for the right to operate under the
15 agreement.

16 †7†(8) "Person" includes individuals, partnerships,
17 associations, and corporations, foreign and domestic, except
18 that when referring to a person licensed under this chapter,
19 it means an individual.

20 †8†(9) "Real estate" includes leaseholds as well as
21 any other interest or estate in land, whether corporeal,
22 incorporeal, freehold, or nonfreehold and whether the real
23 estate is situated in this state or elsewhere.

24 †9†(10) "Salesman" includes an individual who for a
25 salary, commission, or compensation of any kind is

1 associated, either directly, indirectly, regularly, or
2 occasionally, with a real estate broker to sell, purchase,
3 or negotiate for the sale, purchase, exchange, or renting of
4 real estate."

5 Section 2. Section 37-51-311, MCA, is amended to read:
6 "37-51-311. Fees -- deposit of fees. (1) The fees
7 prescribed by the board shall be charged by the department
8 and paid into the earmarked revenue fund for the use of the
9 board, subject to 37-1-101(6).

10 (2) The board shall charge an annual fee from a
11 licensee who wishes to be placed in an inactive status. A
12 licensee who is placed in an inactive status by the board
13 and who has paid the required fee need not ~~file a bond with~~
14 ~~the department as provided in 37-51-304~~ pay any fee assessed
15 by the board for the purpose of funding the real estate
16 recovery account during the period the licensee remains in
17 inactive status.

18 (3) The board shall adopt a schedule of fees. However,
19 a fee once set for one of the items for which a fee is
20 charged cannot be increased or decreased until at least 1
21 year has passed since the fee for that particular item was
22 last increased or decreased."

23 NEW SECTION. Section 3. Real estate recovery account
24 established -- minimum balance -- interest. (1) There is
25 established in the state special revenue fund for the use of

1 the board a real estate recovery account. The account is
 2 used to provide payment of claims based on unsatisfied
 3 judgments against persons licensed under the provisions of
 4 this chapter. [THE REAL ESTATE RECOVERY ACCOUNT IS
 5 STATUTORILY APPROPRIATED AS PROVIDED IN [SECTION 2 OF HB
 6 121]].

7 (2) The board shall maintain a minimum balance of
 8 \$100,000 in the account. The board may in its discretion
 9 transfer any money in excess of that amount from the account
 10 to the state special revenue fund for the use of the board
 11 in accordance with the purposes provided in 37-51-204.

12 (3) Money earned on the investment of funds in the
 13 account must be credited to the account annually.

14 NEW SECTION. Section 4. Initial licensure and renewal
 15 ADDITIONAL assessment. (1) A person initially licensed under
 16 the provisions of this chapter in 1986 or thereafter shall,
 17 in addition to paying any license fee required under this
 18 chapter, be assessed the sum of \$35 at the time of
 19 licensure, to be credited to the real estate recovery
 20 account.

21 (2) ~~If on--June-30-of-any-year,-beginning-in-1986, AT~~
 22 ANY TIME the balance in the real estate recovery account is
 23 less than \$100,000, every person licensed under this chapter
 24 shall MAY BE ASSESSED A SUM, when renewing his license, pay
 25 a sum not to exceed \$35 in addition to the annual renewal

1 fee, which sum is determined by the board to be sufficient
 2 to maintain the balance of the account at a minimum of
 3 \$100,000.

4 NEW SECTION. Section 5. Claims against fund --
 5 orders for payment. (1) Whenever a person obtains a final
 6 judgment in any court of competent jurisdiction against any
 7 person licensed under this chapter for the conversion of
 8 trust funds or arising directly out of any act or
 9 transaction occurring on or after July 1, 1985, for which a
 10 license is required under this chapter, he may after
 11 executing on such final judgment file an application, in
 12 accordance with this section and [section 6], ~~in-the-court~~
 13 ~~in-which-the-judgment-was-entered~~ WITH THE BOARD for an
 14 order directing payment out of the account for any actual
 15 and direct loss unpaid on the judgment.

16 (2) No application or order for payment from the
 17 account may be made for:

18 (a) a judgment which has been satisfied;

19 (b) any amount in excess of \$25,000 for any one
 20 licensee, regardless of the number of persons injured by
 21 acts of the licensee or number of parcels of real estate
 22 involved in the transaction or transactions;

23 (c) attorney fees and exemplary or punitive damages;

24 or

25 (d) amounts remaining unpaid on any judgment rendered

1 more than 2 years prior to the date of application.

2 (3) The application must be:

3 (a) served by certified mail, return receipt
4 requested, upon the board, the licensee, and any other party
5 to the transaction referred to in the application; and

6 (b) filed with the court along with an affidavit of
7 service.

8 NEW SECTION. Section 6. Form of application. The
9 person making application for payment from the account must
10 show in the application:

11 (1) that he is not the spouse of the judgment debtor
12 or the personal representative of such spouse;

13 (2) that he has obtained a judgment which satisfies
14 the requirements of [section 5], stating the amount of the
15 judgment and the amount unpaid on the date of the
16 application;

17 (3) that he has, on the dates and at the times shown
18 by the applicant, diligently pursued the remedies of
19 execution and proceedings in aid of execution provided in
20 Title 25, chapters 13 and 14, respectively;

21 (4) the amount of any money obtained as a result of
22 the proceedings required to be shown in subsection (3) and
23 the balance of the judgment remaining unpaid for which
24 application is made; and

25 (5) that he has diligently pursued his remedies OF

1 EXECUTION AND PROCEEDINGS IN AID OF EXECUTION against any
2 other persons-liable-to-him-in PERSON AGAINST WHOM HE HAS A
3 JUDGMENT AS A RESULT OF the transaction for which he seeks
4 recovery from the account.

5 NEW SECTION. Section 7. Motion to dismiss
6 application. The board--may--move--the--court LICENSEE MAY
7 REQUEST THE BOARD at any time to dismiss the application if
8 it appears that the application is without merit. The motion
9 may be supported by the affidavit of any person having
10 knowledge of the facts and may be made on the basis that the
11 application and the judgment referred to therein do not form
12 the basis for a payable claim under [sections 5 and 6]. The
13 board shall give the applicant at least 10 days' written
14 notice of any motion to dismiss.

15 NEW SECTION. Section 8. Hearing on application. (1)
16 Within 30 days of the filing of the affidavit of service,
17 the court BOARD shall conduct a hearing upon the
18 application. Upon the motion of either party, the court
19 shall BOARD MAY continue the hearing up to 60 days and upon
20 a showing of good cause may continue the hearing such
21 further period as the court BOARD considers appropriate.

22 (2) At the hearing the court BOARD shall determine by
23 a preponderance of the evidence the truth of any allegations
24 made in the application and supporting documents that are
25 challenged by the board LICENSEE.

1 NEW SECTION. Section 9. Payment from account. (1) If
 2 the court BOARD finds after the hearing that an applicant
 3 has proved a valid claim against the account, the court
 4 BOARD shall enter an order directed-to-the-board requiring
 5 payment from the account of whatever sum it finds to be due
 6 under the provisions of [sections 3 through ~~±5~~ 14].

7 (2) The board may, ~~---subject-to-court-approval,~~
 8 ~~compromise-and~~ pay ALL OR any application PART OF A CLAIM
 9 made under [sections 5 and 6]. The board is not bound by any
 10 prior compromise, admission, or stipulation of the judgment
 11 debtor.

12 NEW SECTION. Section 10. Limitation of payment --
 13 pro rata distribution. (1) The liability of the account may
 14 not exceed \$25,000 for any one licensee ~~until-that-licensee~~
 15 ~~has-repaid-the-account-as-provided-in-[section-ii].~~ If the
 16 \$25,000 liability of the account is insufficient to pay in
 17 full the valid claims of all applications that have been
 18 filed against any one licensee and ordered to be paid, the
 19 \$25,000 must be distributed among those claimants in the
 20 ratio that the amount ordered to be paid to any one claimant
 21 bears to the total amounts ordered to be paid or in such
 22 other manner as the court BOARD considers equitable; and
 23 upon such a distribution, all claims are considered
 24 satisfied by the amount so distributed. Distribution of such
 25 money must, at any time, be among the persons ordered to

1 receive the same, without regard to the order or priority in
 2 which their respective judgments were obtained or their
 3 applications filed.

4 (2) Upon petition of the-board ANY PERSON, the court
 5 BOARD may require all existing applications for payment of
 6 claims against one licensee to be joined in one proceeding
 7 for the purpose of a timely determination of their
 8 respective rights to the money in the account.

9 (3) An application for payment of a claim against a
 10 licensee filed after the distribution of the full amount for
 11 which the account is liable for that licensee and--before
 12 full--repayment--of--the--account--under--[section-ii] must be
 13 denied by the court BOARD.

14 NEW-SECTION,--Section-ii,--Repayment---of---fund-----
 15 suspension--of--license--required,--Upon-the-payment-of-any
 16 amount-from-the-account,--the--license--of--the--licensee--on
 17 whose--behalf-the-claim-was-paid-is-automatically-suspended,
 18 effective-upon-the-date--of--the--order--of--the--court--for
 19 payment--from--the--account,--No-licensee-on-whose-behalf-a
 20 claim-is-paid-may-be--granted--reinstatement--until--he--has
 21 repaid--in--full,--plus--interest--at-the-judgment-rate,--the
 22 amount-paid-from-the-account-on-his-behalf,--A--discharge--in
 23 bankruptcy--does--not-relieve-a-licensee-from-the-penalty-of
 24 suspension-required-by-this-section.

25 NEW SECTION. Section 11. Claims satisfied in order of

1 filing. If account funds are insufficient to satisfy any
 2 claim or portion of a claim ordered to be paid on behalf of
 3 a licensee for whom the account liability of \$25,000 has not
 4 been exceeded, the board shall, when sufficient money has
 5 been deposited in the account, satisfy such unpaid claims or
 6 portions of them in the order that the applications for such
 7 claims were originally filed pursuant to [section 5]. The
 8 board shall pay accumulated interest beginning on the date
 9 of the order to pay at the judgment rate on each such
 10 unpaid claim.

11 NEW SECTION. Section 12. Deposits by board. Money
 12 received by the board under [~~sections 11 and 14~~ SECTION 13]
 13 must be deposited in the account and allocated exclusively
 14 for the purposes provided in [sections 3 through 15 14].

15 NEW SECTION. Section 13. Subrogation rights of board.
 16 Upon payment of money from the account, the board is
 17 subrogated to all of the rights of the judgment creditor to
 18 the extent of the amount so paid and the judgment creditor
 19 is considered to have assigned to the board all of his
 20 right, title, and interest in the judgment to the extent of
 21 the amount paid from the account. Any amount and interest
 22 recovered by the board on the judgment must be deposited in
 23 the account.

24 NEW SECTION. Section 14. Other disciplinary powers
 25 unimpaired -- effect of repayment to fund. Nothing

1 contained in [sections 3 through 15 14] limits the authority
 2 of the board to take disciplinary action against any
 3 licensee under other provisions of this chapter, nor does
 4 the repayment in full of all obligations to the account by
 5 any licensee nullify or modify the effect of any other
 6 disciplinary action taken by the board under the provisions
 7 of this chapter.

8 NEW SECTION. Section 15. Repealer. Section 37-51-304,
 9 MCA, is repealed.

10 NEW SECTION. Section 16. Initial transfer of funds
 11 -- assessment of all licensees -- retransfer. (1) The
 12 amount of \$100,000 is transferred from the state special
 13 revenue fund to the real estate recovery account for the use
 14 of the board.

15 (2) Notwithstanding the provisions of 37-51-311, the
 16 board shall charge a fee of \$35 in addition to any other fee
 17 due under the provisions of Title 37, chapter 51, to all
 18 licensees paying a renewal fee for the 1986 calendar year.

19 (3) Notwithstanding the provisions of [section 3],
 20 \$100,000 is transferred from the real estate recovery
 21 account on March 1, 1986, or when the total balance of the
 22 account exceeds \$200,000, whichever occurs last, to the
 23 state special revenue fund for the use of the board.

24 NEW SECTION. Section 17. Codification instruction.
 25 Sections 3 through 15 14 are intended to be codified as an

1 integral part of Title 37, chapter 51, and the provisions
2 of Title 37, chapter 51, apply to sections 3 through ~~15~~ 14.

3 NEW SECTION. Section 18. Extension of authority. Any
4 existing authority of the board of realty regulation to make
5 rules on the subject of the provisions of this act is
6 extended to the provisions of this act.

7 NEW SECTION. SECTION 19. COORDINATION INSTRUCTION.
8 IF THIS ACT AND HB 12 ARE BOTH PASSED AND APPROVED, A
9 CITATION TO SECTION 3 OF THIS ACT IS ADDED TO THE LIST OF
10 STATUTORY CITATIONS IN SECTION 2 OF HB 12. IF HB 12 IS NOT
11 PASSED AND APPROVED, THE BRACKETED LANGUAGE IN SECTION 3 OF
12 THIS ACT IS VOID.

13 NEW SECTION. Section 20. Effective date. This act is
14 effective July 1, 1985.

-End-

STANDING COMMITTEE REPORT

HOUSE

March 29

19 85

MR. SPEAKER

We, your committee on BUSINESS AND LABOR

having had under consideration SENATE

Bill No. 250

third reading copy (blue color)

REAL ESTATE RECOVERY ACCOUNT FOR UNSATISFIED JUDGMENTS

Respectfully report as follows: That SENATE

Bill No. 250

BE AMENDED AS FOLLOWS:

1. Page 4, line 18

Following: "fees."

Strike: the remainder of line 18 and lines 19, 20, 21, and 22 in their entirety

OKKASS

BE CONCURRED IN AS AMENDED

Rep. Bob Pavlovich
Rep. Bob Pavlovich, Chairman.

MK
54
3/29

COMMITTEE OF THE WHOLE AMENDMENT

HOUSE

3-30-85

DATE

10:30

TIME

MR. CHAIRMAN: I MOVE TO AMEND _____ SENATE BILL _____ No. 250

third reading copy (blue) as follows:
Color

AMENDING HOUSE STANDING COMMITTEE REPORT OF 3-29-85:

Strike the amendments in their entirety.

AS

ADOPT

REJECT

Ray Brandewie
Rep. Brandewie

1 SENATE BILL NO. 250
 2 INTRODUCED BY MAZUREK, H. HAMMOND, HARP, HARPER,
 3 FULLER, KOEHNKE, MANNING, KEATING, STORY
 4 BY REQUEST OF THE BOARD OF REALTY REGULATION

5
 6 A BILL FOR AN ACT ENTITLED: "AN ACT CREATING A REAL ESTATE
 7 RECOVERY ACCOUNT FOR PAYMENT OF UNSATISFIED JUDGMENTS
 8 AGAINST REAL ESTATE SALESMEN AND BROKERS; PROVIDING FOR THE
 9 MAKING, ADJUDICATION, AND PAYMENT OF CLAIMS AGAINST THE
 10 ACCOUNT; PROVIDING FOR SUBROGATION OF RIGHTS OF THE BOARD OF
 11 REALTY REGULATION TO JUDGMENTS PAID FROM THE ACCOUNT;
 12 COORDINATING DISCIPLINARY PROVISIONS WITH OTHER POWERS OF
 13 THE BOARD; AMENDING SECTIONS 37-51-102 AND 37-51-311, MCA;
 14 REPEALING SECTION 37-51-304, MCA; AND PROVIDING AN EFFECTIVE
 15 DATE."

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

18 Section 1. Section 37-51-102, MCA, is amended to read:
 19 "37-51-102. Definitions. Unless the context requires
 20 otherwise, in this chapter the following definitions apply:

21 (1) "Account" means the real estate recovery account
 22 established in section 3.

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

25 (3) "Broker" includes an individual who for another

1 or for a fee, commission, or other valuable consideration or
 2 who with the intent or expectation of receiving the same
 3 negotiates or attempts to negotiate the listing, sale,
 4 purchase, rental, exchange, or lease of real estate or of
 5 the improvements thereon or collects rents or attempts to
 6 collect rents or advertises or holds himself out as engaged
 7 in any of the foregoing activities. The term "broker" also
 8 includes an individual employed by or on behalf of the owner
 9 or lessor of real estate to conduct the sale, leasing,
 10 subleasing, or other disposition thereof at a salary or for
 11 a fee, commission, or any other consideration. The term
 12 "broker" also includes an individual who engages in the
 13 business of charging an advance fee or contracting for
 14 collection of a fee in connection with a contract by which
 15 he undertakes primarily to promote the sale, lease, or other
 16 disposition of real estate in this state through its listing
 17 in a publication issued primarily for this purpose or for
 18 referral of information concerning real estate to brokers,
 19 or both, and any person who aids, attempts, or offers to
 20 aid, for a fee, any person in locating or obtaining any real
 21 estate for purchase or lease.

22 (4) "Broker associate" means a broker who
 23 associates with a broker owner and does not own an interest
 24 in a real estate firm.

25 (5) "Broker owner" means a broker who owns or has a



1 financial interest in a real estate firm.

2 ~~(5)~~(6) "Department" means the department of commerce
3 provided for in Title 2, chapter 15, part 18.

4 ~~(6)~~(7) "Franchise agreement" means a contract or
5 agreement by which:

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

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

13 (c) the franchisee is required to pay, directly or
14 indirectly, a fee for the right to operate under the
15 agreement.

16 ~~(7)~~(8) "Person" includes individuals, partnerships,
17 associations, and corporations, foreign and domestic, except
18 that when referring to a person licensed under this chapter,
19 it means an individual.

20 ~~(8)~~(9) "Real estate" includes leaseholds as well as
21 any other interest or estate in land, whether corporeal,
22 incorporeal, freehold, or nonfreehold and whether the real
23 estate is situated in this state or elsewhere.

24 ~~(9)~~(10) "Salesman" includes an individual who for a
25 salary, commission, or compensation of any kind is

1 associated, either directly, indirectly, regularly, or
2 occasionally, with a real estate broker to sell, purchase,
3 or negotiate for the sale, purchase, exchange, or renting of
4 real estate."

5 Section 2. Section 37-51-311, MCA, is amended to read:

6 "37-51-311. Fees -- deposit of fees. (1) The fees
7 prescribed by the board shall be charged by the department
8 and paid into the earmarked revenue fund for the use of the
9 board, subject to 37-1-101(6).

10 (2) The board shall charge an annual fee from a
11 licensee who wishes to be placed in an inactive status. A
12 licensee who is placed in an inactive status by the board
13 and who has paid the required fee need not ~~file a bond with~~
14 ~~the department as provided in 37-51-304~~ pay any fee assessed
15 by the board for the purpose of funding the real estate
16 recovery account during the period the licensee remains in
17 inactive status.

18 (3) The board shall adopt a schedule of fees.
19 ~~However, a fee once set for one of the items for which a fee~~
20 ~~is charged cannot be increased or decreased until at least 1~~
21 ~~year has passed since the fee for that particular item was~~
22 ~~last increased or decreased. HOWEVER, A FEE ONCE SET FOR ONE~~
23 ~~OF THE ITEMS FOR WHICH A FEE IS CHARGED CANNOT BE INCREASED~~
24 ~~OR DECREASED UNTIL AT LEAST 1 YEAR HAS PASSED SINCE THE FEE~~
25 ~~FOR THAT PARTICULAR ITEM WAS LAST INCREASED OR DECREASED."~~

1 NEW SECTION. Section 3. Real estate recovery account
 2 established -- minimum balance -- interest. (1) There is
 3 established in the state special revenue fund for the use of
 4 the board a real estate recovery account. The account is
 5 used to provide payment of claims based on unsatisfied
 6 judgments against persons licensed under the provisions of
 7 this chapter. [THE REAL ESTATE RECOVERY ACCOUNT IS
 8 STATUTORILY APPROPRIATED AS PROVIDED IN [SECTION 2 OF HB
 9 12].]

10 (2) The board shall maintain a minimum balance of
 11 \$100,000 in the account. The board may in its discretion
 12 transfer any money in excess of that amount from the account
 13 to the state special revenue fund for the use of the board
 14 in accordance with the purposes provided in 37-51-204.

15 (3) Money earned on the investment of funds in the
 16 account must be credited to the account annually.

17 NEW SECTION. Section 4. Initial licensure and ~~renewal~~
 18 ADDITIONAL assessment. (1) A person initially licensed under
 19 the provisions of this chapter in 1986 or thereafter shall,
 20 in addition to paying any license fee required under this
 21 chapter, be assessed the sum of \$35 at the time of
 22 licensure, to be credited to the real estate recovery
 23 account.

24 (2) If ~~on--June-30-of-any-year,-beginning-in-1986,~~ AT
 25 ANY TIME the balance in the real estate recovery account is

1 less than \$100,000, every person licensed under this chapter
 2 shall MAY BE ASSESSED A SUM, ~~when-renewing-his-license,-pay~~
 3 ~~a-sum-not-to-exceed-\$35-in-addition-to--the--annual--renewal~~
 4 ~~fee,~~ which sum is determined by the board to be sufficient
 5 to maintain the balance of the account at a minimum of
 6 \$100,000.

7 NEW SECTION. Section 5. Claims against fund --
 8 orders for payment. (1) Whenever a person obtains a final
 9 judgment in any court of competent jurisdiction against any
 10 person licensed under this chapter for the conversion of
 11 trust funds or arising directly out of any act or
 12 transaction occurring on or after July 1, 1985, for which a
 13 license is required under this chapter, he may after
 14 executing on such final judgment file an application, in
 15 accordance with this section and [section 6], ~~in-the-court~~
 16 ~~in-which-the-judgment-was-entered~~ WITH THE BOARD for an
 17 order directing payment out of the account for any actual
 18 and direct loss unpaid on the judgment.

19 (2) No application or order for payment from the
 20 account may be made for:

- 21 (a) a judgment which has been satisfied;
 22 (b) any amount in excess of \$25,000 for any one
 23 licensee, regardless of the number of persons injured by
 24 acts of the licensee or number of parcels of real estate
 25 involved in the transaction or transactions;

1 (c) attorney fees and exemplary or punitive damages;
2 or

3 (d) amounts remaining unpaid on any judgment rendered
4 more than 2 years prior to the date of application.

5 (3) The application must be:

6 (a) served by certified mail, return receipt
7 requested, upon the board, the licensee, and any other party
8 to the transaction referred to in the application; and

9 (b) filed with the court along with an affidavit of
10 service.

11 NEW SECTION. Section 6. Form of application. The
12 person making application for payment from the account must
13 show in the application:

14 (1) that he is not the spouse of the judgment debtor
15 or the personal representative of such spouse;

16 (2) that he has obtained a judgment which satisfies
17 the requirements of [section 5], stating the amount of the
18 judgment and the amount unpaid on the date of the
19 application;

20 (3) that he has, on the dates and at the times shown
21 by the applicant, diligently pursued the remedies of
22 execution and proceedings in aid of execution provided in
23 Title 25, chapters 13 and 14, respectively;

24 (4) the amount of any money obtained as a result of
25 the proceedings required to be shown in subsection (3) and

1 the balance of the judgment remaining unpaid for which
2 application is made; and

3 (5) that he has diligently pursued his remedies OF
4 EXECUTION AND PROCEEDINGS IN AID OF EXECUTION against any
5 other ~~persons liable to him in~~ PERSON AGAINST WHOM HE HAS A
6 JUDGMENT AS A RESULT OF the transaction for which he seeks
7 recovery from the account.

8 NEW SECTION. Section 7. Motion to dismiss
9 application. The ~~board may move the court~~ LICENSEE MAY
10 REQUEST THE BOARD at any time to dismiss the application if
11 it appears that the application is without merit. The motion
12 may be supported by the affidavit of any person having
13 knowledge of the facts and may be made on the basis that the
14 application and the judgment referred to therein do not form
15 the basis for a payable claim under [sections 5 and 6]. The
16 board shall give the applicant at least 10 days' written
17 notice of any motion to dismiss.

18 NEW SECTION. Section 8. Hearing on application. (1)
19 Within 30 days of the filing of the affidavit of service,
20 the court BOARD shall conduct a hearing upon the
21 application. Upon the motion of either party, the court
22 shall BOARD MAY continue the hearing up to 60 days and upon
23 a showing of good cause may continue the hearing such
24 further period as the court BOARD considers appropriate.

25 (2) At the hearing the court BOARD shall determine by

1 a preponderance of the evidence the truth of any allegations
 2 made in the application and supporting documents that are
 3 challenged by the board LICENSEE.

4 NEW SECTION. Section 9. Payment from account. (1) If
 5 the court BOARD finds after the hearing that an applicant
 6 has proved a valid claim against the account, the court
 7 BOARD shall enter an order ~~directed to the board~~ requiring
 8 payment from the account of whatever sum it finds to be due
 9 under the provisions of [sections 3 through 15 14].

10 (2) The board may, ~~subject to court approval,~~
 11 compromise and pay ALL OR any application PART OF A CLAIM
 12 made under [sections 5 and 6]. The board is not bound by any
 13 prior compromise, admission, or stipulation of the judgment
 14 debtor.

15 NEW SECTION. Section 10. Limitation of payment --
 16 pro rata distribution. (1) The liability of the account may
 17 not exceed \$25,000 for any one licensee ~~until that licensee~~
 18 ~~has repaid the account as provided in {section 11}~~. If the
 19 \$25,000 liability of the account is insufficient to pay in
 20 full the valid claims of all applications that have been
 21 filed against any one licensee and ordered to be paid, the
 22 \$25,000 must be distributed among those claimants in the
 23 ratio that the amount ordered to be paid to any one claimant
 24 bears to the total amounts ordered to be paid or in such
 25 other manner as the court BOARD considers equitable; and

1 upon such a distribution, all claims are considered
 2 satisfied by the amount so distributed. Distribution of such
 3 money must, at any time, be among the persons ordered to
 4 receive the same, without regard to the order or priority in
 5 which their respective judgments were obtained or their
 6 applications filed.

7 (2) Upon petition of ~~the board~~ ANY PERSON, the court
 8 BOARD may require all existing applications for payment of
 9 claims against one licensee to be joined in one proceeding
 10 for the purpose of a timely determination of their
 11 respective rights to the money in the account.

12 (3) An application for payment of a claim against a
 13 licensee filed after the distribution of the full amount for
 14 which the account is liable for that licensee ~~and before~~
 15 ~~full repayment of the account under {section 11}~~ must be
 16 denied by the court BOARD.

17 ~~NEW SECTION: Section 11. Repayment of fund -----~~
 18 ~~suspension of license required. Upon the payment of any~~
 19 ~~amount from the account, the license of the licensee on~~
 20 ~~whose behalf the claim was paid is automatically suspended,~~
 21 ~~effective upon the date of the order of the court for~~
 22 ~~payment from the account. No licensee on whose behalf a~~
 23 ~~claim is paid may be granted reinstatement until he has~~
 24 ~~repaid in full, plus interest at the judgment rate, the~~
 25 ~~amount paid from the account on his behalf. A discharge in~~

1 ~~bankruptcy--does--not--relieve--a--licensee--from--the--penalty--of~~
2 ~~suspension--required--by--this--section--~~

3 NEW SECTION. Section 11. Claims satisfied in order of
4 filing. If account funds are insufficient to satisfy any
5 claim or portion of a claim ordered to be paid on behalf of
6 a licensee for whom the account liability of \$25,000 has not
7 been exceeded, the board shall, when sufficient money has
8 been deposited in the account, satisfy such unpaid claims or
9 portions of them in the order that the applications for such
10 claims were originally filed pursuant to [section 5]. The
11 board shall pay accumulated interest beginning on the date
12 of the order to pay at the judgment rate on each such
13 unpaid claim.

14 NEW SECTION. Section 12. Deposits by board. Money
15 received by the board under [~~sections 11 and 14~~ SECTION 13]
16 must be deposited in the account and allocated exclusively
17 for the purposes provided in [sections 3 through 15 14].

18 NEW SECTION. Section 13. Subrogation rights of board.
19 Upon payment of money from the account, the board is
20 subrogated to all of the rights of the judgment creditor to
21 the extent of the amount so paid and the judgment creditor
22 is considered to have assigned to the board all of his
23 right, title, and interest in the judgment to the extent of
24 the amount paid from the account. Any amount and interest
25 recovered by the board on the judgment must be deposited in

1 the account.

2 NEW SECTION. Section 14. Other disciplinary powers
3 unimpaired -- effect of repayment to fund. Nothing
4 contained in [sections 3 through 15 14] limits the authority
5 of the board to take disciplinary action against any
6 licensee under other provisions of this chapter, nor does
7 the repayment in full of all obligations to the account by
8 any licensee nullify or modify the effect of any other
9 disciplinary action taken by the board under the provisions
10 of this chapter.

11 NEW SECTION. Section 15. Repealer. Section 37-51-304,
12 MCA, is repealed.

13 NEW SECTION. Section 16. Initial transfer of funds
14 -- assessment of all licensees -- retransfer. (1) The
15 amount of \$100,000 is transferred from the state special
16 revenue fund to the real estate recovery account for the use
17 of the board.

18 (2) Notwithstanding the provisions of 37-51-311, the
19 board shall charge a fee of \$35 in addition to any other fee
20 due under the provisions of Title 37, chapter 51, to all
21 licensees paying a renewal fee for the 1986 calendar year.

22 (3) Notwithstanding the provisions of [section 3],
23 \$100,000 is transferred from the real estate recovery
24 account on March 1, 1986, or when the total balance of the
25 account exceeds \$200,000, whichever occurs last, to the

1 state special revenue fund for the use of the board.

2 NEW SECTION. Section 17. Codification instruction.
3 Sections 3 through ~~15~~ 14 are intended to be codified as an
4 integral part of Title 37, chapter 51, and the provisions
5 of Title 37, chapter 51, apply to sections 3 through ~~15~~ 14.

6 NEW SECTION. Section 18. Extension of authority. Any
7 existing authority of the board of realty regulation to make
8 rules on the subject of the provisions of this act is
9 extended to the provisions of this act.

10 NEW SECTION. SECTION 19. COORDINATION INSTRUCTION.
11 IF THIS ACT AND HB 12 ARE BOTH PASSED AND APPROVED, A
12 CITATION TO SECTION 3 OF THIS ACT IS ADDED TO THE LIST OF
13 STATUTORY CITATIONS IN SECTION 2 OF HB 12. IF HB 12 IS NOT
14 PASSED AND APPROVED, THE BRACKETED LANGUAGE IN SECTION 3 OF
15 THIS ACT IS VOID.

16 NEW SECTION. Section 20. Effective date. This act is
17 effective July 1, 1985.

-End-

GOVERNOR'S PROPOSED AMENDMENTS
TO SENATE BILL NO. 250,
REFERENCE COPY
April 24, 1985

1. Page 4, lines 18-25.
Following: line 17
Strike: subsection 3 in its entirety

2. Page 7, line 3.
Following: "any"
Insert: "final"
Following: "judgment"
Strike: "rendered"
Insert: "entered"

3. Page 7, line 9.
Following: "the"
Strike: "court"
Insert: "board"

4. Page 9, line 4.
Following: "account."
Strike: "(1)"

5. Page 9, lines 10-14.
Following: line 9
Strike: subsection (2) in its entirety

6. Page 9, line 17.
Following: "licensee"
Insert: "until that licensee has repaid the account"

-END-

1 SENATE BILL NO. 250
 2 INTRODUCED BY MAZUREK, H. HAMMOND, HARP, HARPER,
 3 FULLER, KOEHNKE, MANNING, KEATING, STORY
 4 BY REQUEST OF THE BOARD OF REALTY REGULATION
 5

6 A BILL FOR AN ACT ENTITLED: "AN ACT CREATING A REAL ESTATE
 7 RECOVERY ACCOUNT FOR PAYMENT OF UNSATISFIED JUDGMENTS
 8 AGAINST REAL ESTATE SALESMEN AND BROKERS; PROVIDING FOR THE
 9 MAKING, ADJUDICATION, AND PAYMENT OF CLAIMS AGAINST THE
 10 ACCOUNT; PROVIDING FOR SUBROGATION OF RIGHTS OF THE BOARD OF
 11 REALTY REGULATION TO JUDGMENTS PAID FROM THE ACCOUNT;
 12 COORDINATING DISCIPLINARY PROVISIONS WITH OTHER POWERS OF
 13 THE BOARD; AMENDING SECTIONS 37-51-102 AND 37-51-311, MCA;
 14 REPEALING SECTION 37-51-304, MCA; AND PROVIDING AN EFFECTIVE
 15 DATE."
 16

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

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

19 "37-51-102. Definitions. Unless the context requires
 20 otherwise, in this chapter the following definitions apply:

21 (1) "Account" means the real estate recovery account
 22 established in [section 3].

23 (1)(2) "Board" means the board of realty regulation
 24 provided for in 2-15-1867.

25 (2)(3) "Broker" includes an individual who for another

1 or for a fee, commission, or other valuable consideration or
 2 who with the intent or expectation of receiving the same
 3 negotiates or attempts to negotiate the listing, sale,
 4 purchase, rental, exchange, or lease of real estate or of
 5 the improvements thereon or collects rents or attempts to
 6 collect rents or advertises or holds himself out as engaged
 7 in any of the foregoing activities. The term "broker" also
 8 includes an individual employed by or on behalf of the owner
 9 or lessor of real estate to conduct the sale, leasing,
 10 subleasing, or other disposition thereof at a salary or for
 11 a fee, commission, or any other consideration. The term
 12 "broker" also includes an individual who engages in the
 13 business of charging an advance fee or contracting for
 14 collection of a fee in connection with a contract by which
 15 he undertakes primarily to promote the sale, lease, or other
 16 disposition of real estate in this state through its listing
 17 in a publication issued primarily for this purpose or for
 18 referral of information concerning real estate to brokers,
 19 or both, and any person who aids, attempts, or offers to
 20 aid, for a fee, any person in locating or obtaining any real
 21 estate for purchase or lease.

22 (3)(4) "Broker associate" means a broker who
 23 associates with a broker owner and does not own an interest
 24 in a real estate firm.

25 (4)(5) "Broker owner" means a broker who owns or has a



1 financial interest in a real estate firm.

2 {5}(6) "Department" means the department of commerce
3 provided for in Title 2, chapter 15, part 18.

4 {6}(7) "Franchise agreement" means a contract or
5 agreement by which:

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

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

13 (c) the franchisee is required to pay, directly or
14 indirectly, a fee for the right to operate under the
15 agreement.

16 {7}(8) "Person" includes individuals, partnerships,
17 associations, and corporations, foreign and domestic, except
18 that when referring to a person licensed under this chapter,
19 it means an individual.

20 {8}(9) "Real estate" includes leaseholds as well as
21 any other interest or estate in land, whether corporeal,
22 incorporeal, freehold, or nonfreehold and whether the real
23 estate is situated in this state or elsewhere.

24 {9}(10) "Salesman" includes an individual who for a
25 salary, commission, or compensation of any kind is

1 associated, either directly, indirectly, regularly, or
2 occasionally, with a real estate broker to sell, purchase,
3 or negotiate for the sale, purchase, exchange, or renting of
4 real estate."

5 Section 2. Section 37-51-311, MCA, is amended to read:
6 "37-51-311. Fees -- deposit of fees. (1) The fees
7 prescribed by the board shall be charged by the department
8 and paid into the earmarked revenue fund for the use of the
9 board, subject to 37-1-101(6).

10 (2) The board shall charge an annual fee from a
11 licensee who wishes to be placed in an inactive status. A
12 licensee who is placed in an inactive status by the board
13 and who has paid the required fee need not file a bond with
14 the department as provided in 37-51-304 pay any fee assessed
15 by the board for the purpose of funding the real estate
16 recovery account during the period the licensee remains in
17 inactive status.

18 ~~{3}--The board shall adopt a schedule of fees. However,~~
19 ~~a fee once set for one of the items for which a fee is~~
20 ~~charged cannot be increased or decreased until at least 1~~
21 ~~year has passed since the fee for that particular item was~~
22 ~~last increased or decreased. HOWEVER, A FEE ONCE SET FOR ONE~~
23 ~~OF THE ITEMS FOR WHICH A FEE IS CHARGED CANNOT BE INCREASED~~
24 ~~OR DECREASED UNTIL AT LEAST 1 YEAR HAS PASSED SINCE THE FEE~~
25 ~~FOR THAT PARTICULAR ITEM WAS LAST INCREASED OR DECREASED."~~

1 NEW SECTION. Section 3. Real estate recovery account
 2 established -- minimum balance -- interest. (1) There is
 3 established in the state special revenue fund for the use of
 4 the board a real estate recovery account. The account is
 5 used to provide payment of claims based on unsatisfied
 6 judgments against persons licensed under the provisions of
 7 this chapter. [THE REAL ESTATE RECOVERY ACCOUNT IS
 8 STATUTORILY APPROPRIATED AS PROVIDED IN [SECTION 2 OF HB
 9 12].]

10 (2) The board shall maintain a minimum balance of
 11 \$100,000 in the account. The board may in its discretion
 12 transfer any money in excess of that amount from the account
 13 to the state special revenue fund for the use of the board
 14 in accordance with the purposes provided in 37-51-204.

15 (3) Money earned on the investment of funds in the
 16 account must be credited to the account annually.

17 NEW SECTION. Section 4. Initial licensure and ~~renewal~~
 18 ADDITIONAL assessment. (1) A person initially licensed under
 19 the provisions of this chapter in 1986 or thereafter shall,
 20 in addition to paying any license fee required under this
 21 chapter, be assessed the sum of \$35 at the time of
 22 licensure, to be credited to the real estate recovery
 23 account.

24 (2) If ~~on June 30 of any year, beginning in 1986,~~ AT
 25 ANY TIME the balance in the real estate recovery account is

1 less than \$100,000, every person licensed under this chapter
 2 shall MAY BE ASSESSED A SUM, when-renewing-his-license,--pay
 3 a--sum--not--to-exceed--\$35-in-addition-to-the-annual-renewal
 4 fee, which sum is determined by the board to be sufficient
 5 to maintain the balance of the account at a minimum of
 6 \$100,000.

7 NEW SECTION. Section 5. Claims against fund --
 8 orders for payment. (1) Whenever a person obtains a final
 9 judgment in any court of competent jurisdiction against any
 10 person licensed under this chapter for the conversion of
 11 trust funds or arising directly out of any act or
 12 transaction occurring on or after July 1, 1985, for which a
 13 license is required under this chapter, he may after
 14 executing on such final judgment file an application, in
 15 accordance with this section and [section 6], ~~in--the--court~~
 16 ~~in--which--the--judgment--was--entered~~ WITH THE BOARD for an
 17 order directing payment out of the account for any actual
 18 and direct loss unpaid on the judgment.

19 (2) No application or order for payment from the
 20 account may be made for:

- 21 (a) a judgment which has been satisfied;
 22 (b) any amount in excess of \$25,000 for any one
 23 licensee, regardless of the number of persons injured by
 24 acts of the licensee or number of parcels of real estate
 25 involved in the transaction or transactions;

1 (c) attorney fees and exemplary or punitive damages;
2 or

3 (d) amounts remaining unpaid on any FINAL judgment
4 rendered ENTERED more than 2 years prior to the date of
5 application.

6 (3) The application must be:

7 (a) served by certified mail, return receipt
8 requested, upon the board, the licensee, and any other party
9 to the transaction referred to in the application; and

10 (b) filed with the court BOARD along with an affidavit
11 of service.

12 NEW SECTION. Section 6. Form of application. The
13 person making application for payment from the account must
14 show in the application:

15 (1) that he is not the spouse of the judgment debtor
16 or the personal representative of such spouse;

17 (2) that he has obtained a judgment which satisfies
18 the requirements of [section 5], stating the amount of the
19 judgment and the amount unpaid on the date of the
20 application;

21 (3) that he has, on the dates and at the times shown
22 by the applicant, diligently pursued the remedies of
23 execution and proceedings in aid of execution provided in
24 Title 25, chapters 13 and 14, respectively;

25 (4) the amount of any money obtained as a result of

1 the proceedings required to be shown in subsection (3) and
2 the balance of the judgment remaining unpaid for which
3 application is made; and

4 (5) that he has diligently pursued his remedies OF
5 EXECUTION AND PROCEEDINGS IN AID OF EXECUTION against any
6 other ~~persons liable to him in~~ PERSON AGAINST WHOM HE HAS A
7 JUDGMENT AS A RESULT OF the transaction for which he seeks
8 recovery from the account.

9 NEW SECTION. Section 7. Motion to dismiss
10 application. The board--may--move--the--court LICENSEE MAY
11 REQUEST THE BOARD at any time to dismiss the application if
12 it appears that the application is without merit. The motion
13 may be supported by the affidavit of any person having
14 knowledge of the facts and may be made on the basis that the
15 application and the judgment referred to therein do not form
16 the basis for a payable claim under [sections 5 and 6]. The
17 board shall give the applicant at least 10 days' written
18 notice of any motion to dismiss.

19 NEW SECTION. Section 8. Hearing on application. (1)
20 Within 30 days of the filing of the affidavit of service,
21 the court BOARD shall conduct a hearing upon the
22 application. Upon the motion of either party, the court
23 shall BOARD MAY continue the hearing up to 60 days and upon
24 a showing of good cause may continue the hearing such
25 further period as the court BOARD considers appropriate.

1 (2) At the hearing the court BOARD shall determine by
2 a preponderance of the evidence the truth of any allegations
3 made in the application and supporting documents that are
4 challenged by the board LICENSEE.

5 NEW SECTION. Section 9. Payment from account. ~~{}~~ If
6 the court BOARD finds after the hearing that an applicant
7 has proved a valid claim against the account, the court
8 BOARD shall enter an order ~~directed-to-the-board~~ requiring
9 payment from the account of whatever sum it finds to be due
10 under the provisions of [sections 3 through ~~15~~ 14].

11 ~~{2}--The-board-may-subject---to---court---approval,~~
12 ~~compromise--and pay ALL-OR any application PART-OF-A-CLAIM~~
13 ~~made-under-{sections-5-and-6},--The-board-is-not-bound-by-any~~
14 ~~prior-compromise,-admission,-or-stipulation-of-the--judgment~~
15 ~~debtor-~~

16 NEW SECTION. Section 10. Limitation of payment --
17 pro rata distribution. (1) The liability of the account may
18 not exceed \$25,000 for any one licensee UNTIL THAT LICENSEE
19 HAS REPAID THE ACCOUNT ~~until-that-licensee--has--repaid--the~~
20 ~~account---as--provided--in--{section--11}~~. If the \$25,000
21 liability of the account is insufficient to pay in full the
22 valid claims of all applications that have been filed
23 against any one licensee and ordered to be paid, the \$25,000
24 must be distributed among those claimants in the ratio that
25 the amount ordered to be paid to any one claimant bears to

1 the total amounts ordered to be paid or in such other manner
2 as the court BOARD considers equitable; and upon such a
3 distribution, all claims are considered satisfied by the
4 amount so distributed. Distribution of such money must, at
5 any time, be among the persons ordered to receive the same,
6 without regard to the order or priority in which their
7 respective judgments were obtained or their applications
8 filed.

9 (2) Upon petition of the board ANY PERSON, the court
10 BOARD may require all existing applications for payment of
11 claims against one licensee to be joined in one proceeding
12 for the purpose of a timely determination of their
13 respective rights to the money in the account.

14 (3) An application for payment of a claim against a
15 licensee filed after the distribution of the full amount for
16 which the account is liable for that licensee ~~and-before~~
17 ~~full-repayment-of-the-account-under--{section--11}~~ must be
18 denied by the court BOARD.

19 NEW-SECTION--Section-11--Repayment---of---fund-----
20 suspension-of-license-required--Upon--the--payment--of--any
21 amount--from--the--account,-the--license-of-the-licensee-on
22 whose-behalf-the-claim-was-paid-is-automatically--suspended,
23 effective--upon--the--date--of--the--order--of--the--court--for
24 payment-from-the-account--No-licensee--on--whose--behalf--a
25 claim--is--paid--may--be--granted-reinstatement-until-he-has

1 ~~repaid-in-full, plus interest at the judgment rate, the~~
 2 ~~amount paid from the account on his behalf. A discharge in~~
 3 ~~bankruptcy does not relieve a licensee from the penalty of~~
 4 ~~suspension required by this section.~~

5 NEW SECTION. Section 11. Claims satisfied in order of
 6 filing. If account funds are insufficient to satisfy any
 7 claim or portion of a claim ordered to be paid on behalf of
 8 a licensee for whom the account liability of \$25,000 has not
 9 been exceeded, the board shall, when sufficient money has
 10 been deposited in the account, satisfy such unpaid claims or
 11 portions of them in the order that the applications for such
 12 claims were originally filed pursuant to [section 5]. The
 13 board shall pay accumulated interest beginning on the date
 14 of the order to pay at the judgment rate on each such
 15 unpaid claim.

16 NEW SECTION. Section 12. Deposits by board. Money
 17 received by the board under [sections 11 and 14 SECTION 13]
 18 must be deposited in the account and allocated exclusively
 19 for the purposes provided in [sections 3 through 15 14].

20 NEW SECTION. Section 13. Subrogation rights of board.
 21 Upon payment of money from the account, the board is
 22 subrogated to all of the rights of the judgment creditor to
 23 the extent of the amount so paid and the judgment creditor
 24 is considered to have assigned to the board all of his
 25 right, title, and interest in the judgment to the extent of

1 the amount paid from the account. Any amount and interest
 2 recovered by the board on the judgment must be deposited in
 3 the account.

4 NEW SECTION. Section 14. Other disciplinary powers
 5 unimpaired -- effect of repayment to fund. Nothing
 6 contained in [sections 3 through 15 14] limits the authority
 7 of the board to take disciplinary action against any
 8 licensee under other provisions of this chapter, nor does
 9 the repayment in full of all obligations to the account by
 10 any licensee nullify or modify the effect of any other
 11 disciplinary action taken by the board under the provisions
 12 of this chapter.

13 NEW SECTION. Section 15. Repealer. Section 37-51-304,
 14 MCA, is repealed.

15 NEW SECTION. Section 16. Initial transfer of funds
 16 -- assessment of all licensees -- retransfer. (1) The
 17 amount of \$100,000 is transferred from the state special
 18 revenue fund to the real estate recovery account for the use
 19 of the board.

20 (2) Notwithstanding the provisions of 37-51-311, the
 21 board shall charge a fee of \$35 in addition to any other fee
 22 due under the provisions of Title 37, chapter 51, to all
 23 licensees paying a renewal fee for the 1986 calendar year.

24 (3) Notwithstanding the provisions of [section 3],
 25 \$100,000 is transferred from the real estate recovery

1 account on March 1, 1986, or when the total balance of the
2 account exceeds \$200,000, whichever occurs last, to the
3 state special revenue fund for the use of the board.

4 NEW SECTION. Section 17. Codification instruction.
5 Sections 3 through ~~15~~ 14 are intended to be codified as an
6 integral part of Title 37, chapter 51, and the provisions
7 of Title 37, chapter 51, apply to sections 3 through ~~15~~ 14.

8 NEW SECTION. Section 18. Extension of authority. Any
9 existing authority of the board of realty regulation to make
10 rules on the subject of the provisions of this act is
11 extended to the provisions of this act.

12 NEW SECTION. SECTION 19. COORDINATION INSTRUCTION.
13 IF THIS ACT AND HB 12 ARE BOTH PASSED AND APPROVED, A
14 CITATION TO SECTION 3 OF THIS ACT IS ADDED TO THE LIST OF
15 STATUTORY CITATIONS IN SECTION 2 OF HB 12. IF HB 12 IS NOT
16 PASSED AND APPROVED, THE BRACKETED LANGUAGE IN SECTION 3 OF
17 THIS ACT IS VOID.

18 NEW SECTION. Section 20. Effective date. This act is
19 effective July 1, 1985.

-End-