

HOUSE BILL NO. 521

INTRODUCED BY GOOD, HANNAH, CODY

IN THE HOUSE

FEBRUARY 1, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON BUSINESS & ECONOMIC DEVELOPMENT. FIRST READING.
FEBRUARY 14, 1989	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
FEBRUARY 15, 1989	PRINTING REPORT.
FEBRUARY 18, 1989	SECOND READING, DO PASS.
FEBRUARY 20, 1989	ENGROSSING REPORT.
FEBRUARY 21, 1989	THIRD READING, PASSED. AYES, 96; NOES, 0. TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 28, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON BUSINESS & INDUSTRY. FIRST READING.
MARCH 9, 1989	COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED.
MARCH 10, 1989	SECOND READING, CONCURRED IN.
MARCH 11, 1989	SECOND READING, CONCURRED IN.
MARCH 14, 1989	THIRD READING, CONCURRED IN. AYES, 46; NOES, 3. RETURNED TO HOUSE.

IN THE HOUSE

MARCH 15, 1989

RECEIVED FROM SENATE.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 HOUSE BILL NO. 521
 2 INTRODUCED BY Rep. Herb S. Cody
 3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO CLARIFY THE
 5 DEFINITION OF REAL ESTATE BROKER; AND AMENDING SECTIONS
 6 37-51-102 AND 37-51-103, MCA."

7
 8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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

10 "37-51-102. Definitions. Unless the context requires
 11 otherwise, in this chapter the following definitions apply:

12 (1) "Account" means the real estate recovery account
 13 established in 37-51-501.

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

16 (3) "Broker" includes an individual who:

17 (a) for another or for a--fee,--commission,--or--other
 18 valuable consideration or who with the intent or expectation
 19 of receiving the same consideration negotiates or attempts
 20 to negotiate the advertising, listing, sale, purchase,
 21 rental, exchange, or lease of real estate or of the
 22 improvements thereon on real estate or collects rents or
 23 attempts to collect rents;

24 (b) obtains and organizes information from a potential
 25 seller of real estate or refers the name of a potential

1 buyer of real estate; or

2 (c) advertises or holds himself out as engaged in any
 3 of the foregoing activities;--The term "broker" also includes
 4 an individual referred to in subsection (3)(a) or (3)(b);

5 (d) is employed by or on behalf of the owner or lessor
 6 of real estate to conduct the advertising, sale, leasing,
 7 subleasing, or other disposition thereof at a salary or of
 8 real estate for a--fee,--commission,--or--any--other
 9 consideration; The--term--"broker"--also--includes--an
 10 individual

11 (e) who engages in the business of charging an
 12 advance fee or contracting for collection of a fee in
 13 connection with a contract by which he undertakes primarily
 14 to promote the advertising, sale, lease, or other
 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

19 (f) makes the advertising, sale, lease, or other real
 20 estate information available by public display to potential
 21 buyers or both; and any person who aids, attempts, or offers
 22 to aid, for a fee, any person in locating or obtaining any
 23 real estate for purchase or lease.

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

1 estate firm.

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

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

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

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

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

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

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

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

1 (10) "Salesman" includes an individual who for a
2 salary, commission, or compensation of any kind is
3 associated, either directly, indirectly, regularly, or
4 occasionally, with a real estate broker to sell, purchase,
5 or negotiate for the sale, purchase, exchange, or renting of
6 real estate."

7 **Section 2.** Section 37-51-103, MCA, is amended to read:

8 "37-51-103. **Exemptions.** ~~A single~~ An act performed for
9 ~~a--commission--or~~ compensation of any kind in the buying,
10 selling, exchanging, leasing, or renting of real estate or
11 in negotiating therefor for others, except as hereinafter
12 specified in this section, shall constitute the person
13 performing any of ~~such the~~ acts a real estate broker or real
14 estate salesman. The provisions of this chapter, ~~however,~~
15 shall may not:

16 (1) apply to any person who, as owner or lessor, shall
17 perform any ~~of-the-aforesaid~~ acts listed in subsection (1)
18 with reference to property owned or leased by himself or to
19 an auctioneer employed by the owner or lessor to aid and
20 assist in conducting a public sale held by ~~such the~~ owner or
21 lessor;

22 (2) apply to any person acting as attorney-in-fact
23 under the duly executed power of attorney from the owner of
24 any real estate authorizing the final consummation of any
25 contract for the purchase, sale, exchange, renting, or

1 leasing of any real estate;

2 (3) be construed to include in any way the services
3 rendered by any attorney at law in the performance of his
4 duty as such an attorney at law;

5 (4) apply to any person duly appointed by a court for
6 purpose of evaluation or appraising an estate in a probate
7 matter;

8 (5) be held to include, while acting as such, a
9 receiver, a trustee in bankruptcy, an administrator or
10 executor, any person selling real estate under order of any
11 court, a trustee under a trust agreement, deed of trust, or
12 will, or an auctioneer employed by a receiver, trustee in
13 bankruptcy, administrator, executor, or trustee to aid and
14 assist in conducting a public sale held by ~~any-such~~ the
15 officer;

16 (6) apply to public officials in the conduct of their
17 official duties;

18 (7) apply to any person, partnership, association, or
19 corporation, foreign or domestic, performing any act with
20 respect to prospecting, leasing, drilling, or operating land
21 for hydrocarbons and hard minerals or disposing of any
22 hydrocarbons, hard minerals, or mining rights therein,
23 whether upon a royalty basis or otherwise; or

24 (8) apply to persons acting as managers of housing
25 complexes for low-income persons, which are subsidized,

1 directly or indirectly, by this state or an agency or
2 subdivision thereof or by the government of the United
3 States or an agency thereof."

4 NEW SECTION. **Section 3.** Extension of authority. Any
5 existing authority to make rules on the subject of the
6 provisions of [this act] is extended to the provisions of
7 [this act].

-End-

APPROVED BY COMM. ON BUSINESS
AND ECONOMIC DEVELOPMENT

HOUSE BILL NO. 521

INTRODUCED BY GOOD, HANNAH, CODY

A BILL FOR AN ACT ENTITLED: "AN ACT TO CLARIFY THE
DEFINITION OF REAL ESTATE BROKER; AND AMENDING SECTIONS
37-51-102 AND 37-51-103, 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) "Account" means the real estate recovery account
established in 37-51-501.

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

(3) "Broker" includes an individual who:

(a) for another or for a fee, commission, or other
valuable consideration or who with the intent or expectation
of receiving the same VALUABLE consideration negotiates or
attempts to negotiate the advertising, listing, sale,
purchase, rental, exchange, or lease of real estate or of
the improvements thereon on real estate or collects rents or
attempts to collect rents;

(b) obtains and organizes information from a potential
seller of real estate or refers the name of a potential

buyer of real estate; or

(c) advertises or holds himself out as engaged in any
of the foregoing activities. The term "broker" also includes
an individual referred to in subsection (3)(a) or (3)(b);

(d)(B) is employed by or on behalf of the owner or
lessor of real estate to conduct the advertising, sale,
leasing, subleasing, or other disposition thereof at a
salary or of real estate for a fee, commission, or any other
consideration; The term "broker" also includes an
individual

(e)(C) 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 advertising, 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

(f)(D) makes the advertising, sale, lease, or other
real estate information available by public display to
potential buyers 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;

(E) AID, ATTEMPT, OR OFFERS TO AID FOR A FEE ANY
PERSON IN LOCATING OR OBTAINING ANY REAL ESTATE FOR PURCHASE

1 OR LEASE; OR

2 (F) ADVERTISES OR HOLDS HIMSELF OUT AS ENGAGED IN ANY
3 OF THE ACTIVITIES REFERRED TO IN SUBSECTIONS (3)(A) THROUGH
4 (3)(F).

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

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

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

12 (7) "Franchise agreement" means a contract or
13 agreement by which:

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

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

21 (c) the franchisee is required to pay, directly or
22 indirectly, a fee for the right to operate under the
23 agreement.

24 (8) "Person" includes individuals, partnerships,
25 associations, and corporations, foreign and domestic, except

1 that when referring to a person licensed under this chapter,
2 it means an individual.

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

7 (10) "Salesman" includes an individual who for a
8 salary, commission, or compensation of any kind is
9 associated, either directly, indirectly, regularly, or
10 occasionally, with a real estate broker to sell, purchase,
11 or negotiate for the sale, purchase, exchange, or renting of
12 real estate."

13 **Section 2.** Section 37-51-103, MCA, is amended to read:

14 **"37-51-103. Exemptions. A-single (1)** An act performed
15 for ~~a-commission-or~~ compensation of any kind in the buying,
16 selling, exchanging, leasing, or renting of real estate or
17 in negotiating therefor for others, except as ~~hereinafter~~
18 specified in this section, shall constitute the person
19 performing any of ~~such the~~ acts a real estate broker or real
20 estate salesman. The provisions of this chapter, ~~however,~~
21 ~~shall~~ may not:

22 ~~(1)(A)~~ apply to any person who, as owner or lessor,
23 shall perform any ~~of-the-aforesaid~~ acts listed in subsection
24 (1) with reference to property owned or leased by himself or
25 to an auctioneer employed by the owner or lessor to aid and

1 assist in conducting a public sale held by ~~such~~ the owner or
2 lessor;

3 †2†(B) apply to any person acting as attorney-in-fact
4 under the duly executed power of attorney from the owner of
5 any real estate authorizing the final consummation of any
6 contract for the purchase, sale, exchange, renting, or
7 leasing of any real estate;

8 †3†(C) be construed to include in any way the services
9 rendered by any attorney at law in the performance of his
10 duty as ~~such~~ an attorney at law;

11 †4†(D) apply to any person duly appointed by a court
12 for purpose of evaluation or appraising an estate in a
13 probate matter;

14 †5†(E) be held to include, while acting as such, a
15 receiver, a trustee in bankruptcy, an administrator or
16 executor, any person selling real estate under order of any
17 court, a trustee under a trust agreement, deed of trust, or
18 will, or an auctioneer employed by a receiver, trustee in
19 bankruptcy, administrator, executor, or trustee to aid and
20 assist in conducting a public sale held by ~~any-such~~ the
21 officer;

22 †6†(F) apply to public officials in the conduct of
23 their official duties;

24 †7†(G) apply to any person, partnership, association,
25 or corporation, foreign or domestic, performing any act with

1 respect to prospecting, leasing, drilling, or operating land
2 for hydrocarbons and hard minerals or disposing of any
3 hydrocarbons, hard minerals, or mining rights therein,
4 whether upon a royalty basis or otherwise; or

5 †8†(H) apply to persons acting as managers of housing
6 complexes for low-income persons, which are subsidized,
7 directly or indirectly, by this state or an agency or
8 subdivision thereof or by the government of the United
9 States or an agency thereof.

10 (2) THE PROVISIONS OF THIS CHAPTER DO NOT APPLY TO A
11 NEWSPAPER OR OTHER PUBLICATION OF GENERAL CIRCULATION OR TO
12 A RADIO OR TELEVISION STATION ENGAGED IN THE NORMAL COURSE
13 OF BUSINESS."

14 NEW SECTION. **Section 3.** Extension of authority. Any
15 existing authority to make rules on the subject of the
16 provisions of [this act] is extended to the provisions of
17 [this act].

-End-

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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 37-51-501.

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

(3) "Broker" includes an individual who:

(a) for another or for a fee, commission, or other valuable consideration or who with the intent or expectation of receiving the same VALUABLE consideration negotiates or attempts to negotiate the advertising, listing, sale, purchase, rental, exchange, or lease of real estate or of the improvements thereon on real estate or collects rents or attempts to collect rents;

(b) obtains and organizes information from a potential seller of real estate or refers the name of a potential

buyer of real estate; or

(c) advertises or holds himself out as engaged in any of the foregoing activities. The term "broker" also includes an individual referred to in subsection (3)(a) or (3)(b);

(d) (B) is employed by or on behalf of the owner or lessor of real estate to conduct the advertising, sale, leasing, subleasing, or other disposition thereof at a salary or of real estate for a fee, commission, or any other consideration; The term "broker" also includes an individual

(e) (C) 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 advertising, 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

(f) (D) makes the advertising, sale, lease, or other real estate information available by public display to potential buyers 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;

(E) AIDS, ATTEMPTS, OR OFFERS TO AID FOR A FEE ANY PERSON IN LOCATING OR OBTAINING ANY REAL ESTATE FOR PURCHASE

1 OR LEASE; OR

2 (F) ADVERTISES OR HOLDS HIMSELF OUT AS ENGAGED IN ANY
3 OF THE ACTIVITIES REFERRED TO IN SUBSECTIONS (3)(A) THROUGH
4 (3)(F).

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

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9 financial interest in a real estate firm.

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

12 (7) "Franchise agreement" means a contract or
13 agreement by which:

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15 business under a marketing plan prescribed in substantial
16 part by the franchisor;

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18 substantially associated with the franchisor's trademark,
19 trade name, logotype, or other commercial symbol or
20 advertising designating the franchisor; and

21 (c) the franchisee is required to pay, directly or
22 indirectly, a fee for the right to operate under the
23 agreement.

24 (8) "Person" includes individuals, partnerships,
25 associations, and corporations, foreign and domestic, except

1 that when referring to a person licensed under this chapter,
2 it means an individual.

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

7 (10) "Salesman" includes an individual who for a
8 salary, commission, or compensation of any kind is
9 associated, either directly, indirectly, regularly, or
10 occasionally, with a real estate broker to sell, purchase,
11 or negotiate for the sale, purchase, exchange, or renting of
12 real estate."

13 **Section 2.** Section 37-51-103, MCA, is amended to read:

14 "37-51-103. **Exemptions.** A single (1) An act performed
15 for ~~a commission or~~ compensation of any kind in the buying,
16 selling, exchanging, leasing, or renting of real estate or
17 in negotiating therefor for others, except as ~~hereinafter~~
18 specified in this section, shall constitute the person
19 performing any of ~~such the~~ acts a real estate broker or real
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21 ~~shall~~ may not:

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24 (1) with reference to property owned or leased by himself or
25 to an auctioneer employed by the owner or lessor to aid and

1 assist in conducting a public sale held by ~~such~~ the owner or
2 lessor;

3 {2}(B) apply to any person acting as attorney-in-fact
4 under the duly executed power of attorney from the owner of
5 any real estate authorizing the final consummation of any
6 contract for the purchase, sale, exchange, renting, or
7 leasing of any real estate;

8 {3}(C) be construed to include in any way the services
9 rendered by any attorney at law in the performance of his
10 duty as ~~such an~~ attorney at law;

11 {4}(D) apply to any person duly appointed by a court
12 for purpose of evaluation or appraising an estate in a
13 probate matter;

14 {5}(E) be held to include, while acting as such, a
15 receiver, a trustee in bankruptcy, an administrator or
16 executor, any person selling real estate under order of any
17 court, a trustee under a trust agreement, deed of trust, or
18 will, or an auctioneer employed by a receiver, trustee in
19 bankruptcy, administrator, executor, or trustee to aid and
20 assist in conducting a public sale held by ~~any-such~~ the
21 officer;

22 {6}(F) apply to public officials in the conduct of
23 their official duties;

24 {7}(G) apply to any person, partnership, association,
25 or corporation, foreign or domestic, performing any act with

1 respect to prospecting, leasing, drilling, or operating land
2 for hydrocarbons and hard minerals or disposing of any
3 hydrocarbons, hard minerals, or mining rights therein,
4 whether upon a royalty basis or otherwise; or

5 {8}(H) apply to persons acting as managers of housing
6 complexes for low-income persons, which are subsidized,
7 directly or indirectly, by this state or an agency or
8 subdivision thereof or by the government of the United
9 States or an agency thereof.

10 (2) THE PROVISIONS OF THIS CHAPTER DO NOT APPLY TO A
11 NEWSPAPER OR OTHER PUBLICATION OF GENERAL CIRCULATION OR TO
12 A RADIO OR TELEVISION STATION ENGAGED IN THE NORMAL COURSE
13 OF BUSINESS."

14 NEW SECTION. Section 3. Extension of authority. Any
15 existing authority to make rules on the subject of the
16 provisions of [this act] is extended to the provisions of
17 [this act].

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to promote the advertising, 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;
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(f)(D) makes the advertising, sale, lease, or other
real estate information available by public display to
potential buyers 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;

(E) AID, ATTEMPTS, OR OFFERS TO AID FOR A FEE ANY
PERSON IN LOCATING OR OBTAINING ANY REAL ESTATE FOR PURCHASE

1 OR LEASE; OR

2 (F) ADVERTISES OR HOLDS HIMSELF OUT AS ENGAGED IN ANY
3 OF THE ACTIVITIES REFERRED TO IN SUBSECTIONS (3)(A) THROUGH
4 (3)(F).

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

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9 financial interest in a real estate firm.

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11 provided for in Title 2, chapter 15, part 18.

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12 real estate."

13 **Section 2.** Section 37-51-103, MCA, is amended to read:

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20 estate salesman. The provisions of this chapter ~~however,~~
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24 (1) with reference to property owned or leased by himself or
25 to an auctioneer employed by the owner or lessor to aid and

1 assist in conducting a public sale held by such the owner or
2 lessor;

3 {2}(B) apply to any person acting as attorney-in-fact
4 under the duly executed power of attorney from the owner of
5 any real estate authorizing the final consummation of any
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7 leasing of any real estate;

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12 for purpose of evaluation or appraising an estate in a
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15 receiver, a trustee in bankruptcy, an administrator or
16 executor, any person selling real estate under order of any
17 court, a trustee under a trust agreement, deed of trust, or
18 will, or an auctioneer employed by a receiver, trustee in
19 bankruptcy, administrator, executor, or trustee to aid and
20 assist in conducting a public sale held by any-such the
21 officer;

22 {6}(F) apply to public officials in the conduct of
23 their official duties;

24 {7}(G) apply to any person, partnership, association,
25 or corporation, foreign or domestic, performing any act with

1 respect to prospecting, leasing, drilling, or operating land
2 for hydrocarbons and hard minerals or disposing of any
3 hydrocarbons, hard minerals, or mining rights therein,
4 whether upon a royalty basis or otherwise; or

5 {8}(H) apply to persons acting as managers of housing
6 complexes for low-income persons, which are subsidized,
7 directly or indirectly, by this state or an agency or
8 subdivision thereof or by the government of the United
9 States or an agency thereof.

10 (2) THE PROVISIONS OF THIS CHAPTER DO NOT APPLY TO A
11 NEWSPAPER OR OTHER PUBLICATION OF GENERAL CIRCULATION OR TO
12 A RADIO OR TELEVISION STATION ENGAGED IN THE NORMAL COURSE
13 OF BUSINESS."

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