

SENATE BILL NO. 303

INTRODUCED BY THAYER, GOOD, WYATT, NISBET,
STRIZICH, MEYER, SIMPKINS, PHILLIPS, O'CONNELL,
AAFEDT, HALLIGAN, NOBLE, WALKER, MANNING, HAMMOND

IN THE SENATE

FEBRUARY 1, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON STATE ADMINISTRATION.
	FIRST READING.
FEBRUARY 17, 1989	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
	STATEMENT OF INTENT ADOPTED.
FEBRUARY 20, 1989	PRINTING REPORT.
	SECOND READING, DO PASS.
FEBRUARY 21, 1989	ENGROSSING REPORT.
	THIRD READING, PASSED. AYES, 41; NOES, 9.
	TRANSMITTED TO HOUSE.

IN THE HOUSE

FEBRUARY 21, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON BUSINESS & ECONOMIC DEVELOPMENT.
	FIRST READING.
MARCH 10, 1989	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
MARCH 11, 1989	SECOND READING, CONCURRED IN AS AMENDED.
MARCH 14, 1989	THIRD READING, CONCURRED IN. AYES, 90; NOES, 4.

RETURNED TO SENATE WITH AMENDMENTS.

IN THE SENATE

APRIL 4, 1989

RECEIVED FROM HOUSE.

SECOND READING, AMENDMENTS
CONCURRED IN.

APRIL 6, 1989

THIRD READING, AMENDMENTS
CONCURRED IN.

SENT TO ENROLLING.

APRIL 12, 1989

REPORTED CORRECTLY ENROLLED.

APRIL 13, 1989

SIGNED BY PRESIDENT.

IN THE HOUSE

APRIL 17, 1989

SIGNED BY SPEAKER.

IN THE SENATE

APRIL 17, 1989

DELIVERED TO GOVERNOR.

APRIL 18, 1989

RETURNED FROM GOVERNOR WITH
RECOMMENDED AMENDMENTS.

APRIL 19, 1989

SECOND READING, GOVERNOR'S AMEND-
MENTS CONCURRED IN.

ON MOTION, RULES SUSPENDED AND BILL
PLACED ON THIRD READING THIS DAY.

THIRD READING, GOVERNOR'S AMENDMENTS
CONCURRED IN.

IN THE HOUSE

APRIL 20, 1989

SECOND READING, GOVERNOR'S AMENDMENTS
CONCURRED IN.

APRIL 21, 1989

THIRD READING, GOVERNOR'S AMENDMENTS
CONCURRED IN.

IN THE SENATE

APRIL 21, 1989

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

BILL NO. 303

INTRODUCED BY

A BILL FOR AN ACT ENTITLED:

"AN ACT REQUIRING LICENSURE OF

ESCROW AGENTS BY THE DEPARTMENT OF COMMERCE; REGULATING
 ESCROW BUSINESSES; PROVIDING FOR FEES AND PENALTIES; AND
 PROVIDING AN EXEMPTION TO THE SUNRISE AUDIT REQUIREMENT."

STATEMENT OF INTENT

A statement of intent is required for this bill because
 it grants rulemaking authority to the director of the
 department of commerce to adopt rules to license and
 regulate escrow agents.

The legislature intends that the rules adopted be
 designed to protect property buyers in this state by
 requiring those who offer escrow services to become licensed
 and subject to state regulation and to prohibit certain
 unsound practices regarding the transaction of escrow
 services.

The legislature further intends that the director:

(1) make reasonable rules that do not extend, modify,
 or conflict with any law of this state or with any
 reasonable implication of those laws; and

(2) make or amend those rules only after hearing for
 which notice has been given.

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

NEW SECTION. **Section 1. Title and purpose.** (1) [This
 act] shall be known and may be cited as the "Regulation of
 Escrow Agents Act".

(2) It is the intent of the legislature that the
 escrow industry be supervised and regulated by the financial
 division of the department of commerce in order to protect
 the citizens of the state and to provide that the business
 practices of the escrow industry are fair and orderly among
 the members of the escrow industry, with due regard to the
 ultimate consumers in this important area of property
 protection.

NEW SECTION. **Section 2. Definitions.** As used in [this
 act], unless the context requires otherwise the following
 definitions apply:

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

(2) "Director" means the director of the department of
 commerce.

(3) "Escrow" means any transaction in which one
 person, for the purpose of effecting the sale, transfer,
 encumbrance, or lease of real or personal property to
 another person or for the purpose of making payments under
 any encumbrance of the property, delivers any written

1 instrument, money, evidence, title to real or personal
 2 property, or other thing of value to a third person to be
 3 held by that third person until the happening of a specified
 4 event or the performance of a prescribed condition, when the
 5 instrument, money, evidence, title, or thing of value is to
 6 be delivered by the third person to a grantee, grantor,
 7 promisee, promisor, obligee, obligor, bailee, or bailor or
 8 to any of his agents or employees pursuant to the written
 9 escrow instructions.

10 (4) "Escrow agent" means a person required to be
 11 licensed under [this act] who is carrying on an escrow
 12 business.

13 (5) "Escrow business" means a commercial activity
 14 characterized by the regular and continuous carrying on of
 15 escrow transactions.

16 (6) "Licensee" means a person holding a valid license
 17 under [this act] as an escrow agent.

18 (7) "Person" means an individual, cooperative,
 19 association, company, firm, partnership, corporation, or
 20 other legal entity.

21 **NEW SECTION. Section 3. Exemptions.** (1) The
 22 provisions of [this act] do not apply to the following:

23 (a) a person licensed by this state pursuant to Title
 24 37, chapter 61, as an attorney at law who is not actively
 25 engaged in the escrow business;

1 (b) a person licensed by this state pursuant to Title
 2 37, chapter 50, as a public accountant who is not actively
 3 engaged in the escrow business;

4 (c) a person whose principal business is that of
 5 preparing abstracts or making searches of title that are
 6 used as a basis for the issuance of any title insurance
 7 policy by a company doing business under the laws of this
 8 state relating to insurance companies if the escrow
 9 transaction does not exceed 90 days;

10 (d) except as provided in subsection (2), any broker
 11 licensed by the Montana board of realty regulation if he is
 12 performing an act:

13 (i) in the course of or incidental to a single real
 14 estate transaction; and

15 (ii) for which a real estate license is required; and

16 (e) any person furnishing escrow services under the
 17 order of a court.

18 (2) An act by a broker that constitutes an escrow
 19 transaction may not exceed a period of 90 days. A trust
 20 account of a broker licensed by the Montana board of realty
 21 regulation is not an escrow account within the meaning of
 22 [this act].

23 **NEW SECTION. Section 4. Exemption or exception --**
 24 **burden of proof.** In any proceeding under [this act], the
 25 burden of proving an exemption or exception from a

1 definition is upon the person claiming it.

2 **NEW SECTION. Section 5. Director . -- powers and**
3 **duties.** (1) The director shall exercise general supervision
4 and control over escrow agents doing escrow business in this
5 state.

6 (2) In addition to the other duties imposed upon him
7 by law, the director shall:

8 (a) adopt reasonable rules necessary to effectuate the
9 purposes of [this act];

10 (b) conduct examinations and investigations that may
11 be necessary to determine whether a person has engaged or is
12 about to engage in any act or practice constituting a
13 violation of any provisions of [this act];

14 (c) conduct examinations, investigations, and hearings
15 necessary and proper for the efficient administration of
16 [this act]; and

17 (d) establish fees commensurate with the costs of
18 issuing the license and examining an escrow agent's escrow
19 business.

20 **NEW SECTION. Section 6. Application for license --**
21 **issuance.** (1) A person must be licensed pursuant to [this
22 act] as an escrow agent before engaging in an escrow
23 business.

24 (2) To obtain a license, an applicant shall file with
25 the director an application for an escrow agent's license.

1 The application must be in writing, verified by oath, and in
2 the form prescribed by the director. The application must
3 set forth:

4 (a) the location of the applicant's principal office
5 and all branch offices in this state and his residence
6 address;

7 (b) the name and form under which the applicant plans
8 to conduct business;

9 (c) the general plan and character of the business;

10 (d) the names, residences, and business addresses of
11 any principals, partners, officers, trustees, and directors,
12 specifying as to each his capacity and title;

13 (e) the experience and qualifications of the persons
14 proposed to act as officers and managers;

15 (f) the length of time the applicant has been engaged
16 in the escrow business; and

17 (g) any other relevant information the director
18 requires.

19 (3) The director shall grant and issue an escrow
20 agent's license if:

21 (a) the director has received and filed the
22 application specified in [this section]; and

23 (b) the applicant has complied with all the
24 requirements of [this act] and any rules promulgated under
25 it.

(4) An escrow agent shall immediately notify the department of any material change in the information contained in the application.

NEW SECTION. Section 7. Transferability. An escrow agent license is not transferable or assignable. The provisions of this section apply to the change of ownership of any escrow business, including the change of control over any corporation licensed as an escrow agent. For purposes of this section, "change of control" means the transfer of 25% or more of the outstanding voting stock of the corporation.

NEW SECTION. Section 8. Maintenance of records. (1) A licensee shall establish and maintain the books, accounts, and records necessary to enable the director at any time to determine whether the escrow transactions performed by the licensee comply with the provisions of [this act]. The books, accounts, and records must be maintained in accordance with generally accepted accounting principles and good business practice.

(2) A licensee shall establish and maintain the following records concerning general accounts:

(a) a general record reflecting the assets, liabilities, capital, income, and expense of the business, maintained in accordance with generally accepted accounting principles;

(b) a cash receipt and disbursement journal; and

(c) a reconciliation of monthly statements to the general record.

(3) The records referred to in subsections (1) and (2) must be reconciled at least once each month with the bank statements reflecting each escrow account.

(4) A licensee shall preserve for at least 3 years after the close of any escrow:

(a) all bank statements reflecting each escrow account and records of monthly reconciliations of the statements to the general record;

(b) all canceled checks drawn on each escrow account;

(c) any additional records reflecting banking transactions regarding each escrow account, including copies of all receipts for funds transferred from other accounts into each escrow account;

(d) all statements of account;

(e) all escrow instructions and amendments to them; and

(f) all additional records pertinent to each escrow transaction.

(5) (a) A licensee shall file annually with the director, on or before April 30, a statement of its financial condition, transactions, and affairs as of the preceding December 31. The director may grant an extension, not to exceed 10 days, on or before the April 30 filing date

1 if the licensee demonstrates good cause for an extension.
 2 The financial statement must be certified by an independent
 3 public accountant and must be in a form and contain the
 4 information prescribed by the director.

5 (b) If all the escrow transactions of two or more
 6 escrow agents are encompassed in one annual statement of a
 7 person furnishing escrow services, the director may permit
 8 one statement to constitute the annual filing on behalf of
 9 those escrow agents.

10 NEW SECTION. Section 9. Statement of account. A
 11 licensee shall provide a full statement of an escrow account
 12 established under an escrow agreement within 14 days of a
 13 written request made by a party to the escrow agreement. The
 14 statement must state:

- 15 (1) credits to principal;
- 16 (2) interest earned for the period; and
- 17 (3) other information requested.

18 NEW SECTION. Section 10. Deposit of funds required --
 19 disbursement. (1) All money deposited in an escrow to be
 20 delivered upon the close of the escrow or upon any other
 21 contingency must be deposited in a bank or savings and loan
 22 association doing business in this state and must be kept
 23 separate, distinct, and apart from funds belonging to the
 24 escrow agent. The funds, when deposited, must be designated
 25 as "escrow accounts" or given some other appropriate

1 designation indicating that the funds are not the funds of
 2 the escrow agent.

3 (2) A person may not knowingly keep or cause to be
 4 kept any funds or money in any bank or savings and loan
 5 association under the heading of "escrow accounts" or any
 6 other name designating the funds or money as belonging to
 7 the clients of any escrow agent, except actual escrow funds
 8 deposited with the escrow agent.

9 (3) Escrow funds are not subject to execution or
 10 attachment on any claim against the escrow agent.

11 (4) Any interest received on funds deposited with an
 12 escrow agent in connection with any escrow that are
 13 deposited in an authorized depository must be paid over to
 14 the depositing party to the escrow account and may not be
 15 transferred to an account of the escrow agent. This section
 16 does not limit or restrain the right of the depositing party
 17 to contract with respect to the interest received on the
 18 deposits by an independent and subsequent agreement.

19 (5) An escrow agent may not disburse funds from any
 20 escrow account until cash, items, or drafts in an amount
 21 sufficient to fund any disbursements from the account have
 22 been received and deposited in the account and are available
 23 for withdrawal from the account as a matter of right. For
 24 the purposes of this subsection:

- 25 (a) "Available for withdrawal from the account as a

matter of right" means that the bank or savings and loan association in which an item has been deposited considers the item available for withdrawal as a matter of right and that a final settlement will occur in writing with respect to that item.

(b) "Item" means any check, including a cashier's check, negotiable order of withdrawal, share draft, traveler's check, or money order.

NEW SECTION. Section 11. Fees. (1) (a) An applicant for licensure shall pay a license fee set by the director, commensurate with the costs of licensing the applicant.

(b) A licensee may be charged an examination fee based on the actual costs of the examination.

(2) All fees collected by the department for the licensure and examination of escrow agents must be paid to the state treasurer to the credit of the state special revenue fund for use by the department in its licensure and examination functions under [this act].

NEW SECTION. Section 12. Unauthorized business practices -- penalty. (1) Unauthorized business practices of escrow agents include but are not limited to the following:

(a) issuing, circulating, making use of, or publishing, by any means of communication, an advertisement indicating that a person is in the escrow business if that person is not a licensed escrow agent;

(b) soliciting or accepting an escrow instruction or amended or supplemental escrow instruction containing any blank to be filled in after the signing or initialing of the escrow instruction or permitting any person to make any addition to, deletion from, or alteration of an escrow instruction or amended or supplemental escrow instruction unless the addition, deletion, or alteration is signed or initialed by all persons who signed or initialed the escrow instruction or amended or supplemental escrow instruction prior to the addition, deletion, or alteration;

(c) failing to carry out the escrow transactions pursuant to the written escrow instructions unless amended by the written agreement of all parties to the escrow agreement;

(d) accepting any escrow transaction that requires or has required the prepayment, deduction, or withholding of any sum to cover payments on the indebtedness or any prior encumbrance if the payments are not due and payable to the mortgagee or obligee at the time the escrow is established. However, payments may be made on property taxes for the current year or for the next annual premium on hazard insurance.

(e) refusing to allow parties to an escrow transaction or designated agents of those parties access to the records of the escrow transaction; and

(f) failing to promptly distribute funds pursuant to escrow instructions.

(2) Any licensee who engages in an unauthorized business practice is subject to the revocation or suspension of his license.

NEW SECTION. Section 13. Investigations by director -- desist order -- injunctions or other actions. (1) The director may investigate, upon complaint or otherwise, if it appears that:

(a) an escrow agent is conducting its business in an unsafe and injurious manner or in violation of [this act] or any rule promulgated pursuant to [this act]; or

(b) a person is engaging in the escrow business without being licensed under the provisions of [this act].

(2) (a) If it appears to the director, upon sufficient grounds or evidence satisfactory to the director, that an escrow agent has engaged or is about to engage in any act or practice in violation of [this act] or any rule or order issued pursuant to [this act] or that the assets or capital of any escrow business or company are impaired or the escrow agent's affairs are in an unsafe condition, the director may summarily order the escrow agent to cease and desist from the act or practice or the director may apply to the district court of the first judicial district of Lewis and Clark County to enjoin the act or practice and to enforce

compliance with [this act] or for any other appropriate equitable relief.

(b) Upon a proper showing, the court may:

(i) grant a temporary restraining order, followed by a preliminary injunction and a permanent injunction;

(ii) appoint a receiver for the defendant or defendant's assets;

(iii) cancel the licensee's license; and

(iv) order other equitable remedies the court considers necessary and appropriate.

(3) The court may not require the director to post a bond.

NEW SECTION. Section 14. Subpoenas -- oaths -- examinations of witness and evidence. (1) In the conduct of any examination, investigation, or hearing, the director may:

(a) compel the attendance of any person or obtain any documents by subpoena;

(b) administer oaths;

(c) examine any person under oath concerning the business and conduct of affairs of any person subject to the provisions of [this act]; and

(d) require the production of any books, records, or papers relevant to the inquiry.

(2) If a person refuses to obey a subpoena issued to

1 the director, the district court of the first judicial
2 district of Lewis and Clark County or other district court
3 having proper venue, upon application by the director, may
4 order the person to produce documentary evidence or to give
5 evidence touching the matter under investigation or in
6 question. If a person fails to obey the order of the court,
7 the person may be punished by the court as contempt of
8 court.

9 NEW SECTION. **Section 15. Hearings and appeals.** The
10 provisions of the Montana Administrative Procedure Act,
11 Title 2, chapter 4, part 6, apply to a contested case
12 brought under [this act].

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

17 NEW SECTION. **Section 17. Sunrise exemption.** [This
18 act] is exempt from the legislative audit committee report
19 provided for in 2-8-203.

20 NEW SECTION. **Section 18. Codification instruction.**
21 [Sections 1 through 15] are intended to be codified as an
22 integral part of Title 32 and the provisions of Title 32
23 apply to [sections 1 through 15].

24 NEW SECTION. **Section 19. Severability.** If a part of
25 [this act] is invalid, all valid parts that are severable

1 from the invalid part remain in effect. If a part of [this
2 act] is invalid in one or more of its applications, the part
3 remains in effect in all valid applications that are
4 severable from the invalid applications.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB303, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

SB303 would require licensure of escrow agents by the Department of Commerce, regulate escrow business and provide for fees and penalties.

ASSUMPTIONS:

1. Most escrow activity will be conducted through commercial banks.
2. Eighty percent of all Montana commercial banks and thrift institutions offer escrow service.
3. The Dept. of Commerce Financial Division will have authority to regulate escrow activity in federally-chartered banks and thrifts.
4. There will be approximately 148 entities requiring regulation comprised of the following: 135 commercial banks, 8 thrift institutions and 5 escrow companies.
5. Regulation and supervision will require a 0.50 FTE (grade 14 examiner) and \$3,000 operating expenses per year with most of the inspection incorporated into bank examination procedures and conducted during the regular examination process.
6. The current law budget is as recommended by the executive.
7. There is no fiscal impact on the Supreme Court or District Court programs from this proposed law.

FISCAL IMPACT:

	Current	FY90		Current	FY91	
<u>Expenditures:</u>		Proposed			Proposed	
	Law	Law	Difference	Law	Law	Difference
Dept. of Commerce						
Personal Services	\$549,970	\$562,940	\$12,970	\$551,516	\$564,486	\$12,970
Operating Expenses	223,142	226,142	3,000	219,123	222,123	3,000
Total	\$773,112	\$789,082	\$15,970	\$770,639	\$786,609	\$15,970

Funding:

State Special Fees	\$773,112	\$789,082	\$15,970	\$770,639	\$786,609	\$15,970
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TECHNICAL OR MECHANICAL DEFECTS OR CONFLICTS WITH EXISTING LEGISLATION:

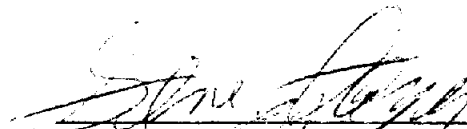
The proposed law does not exclude federally-chartered banks or thrifts and a concern may be as to whether a state agency can regulate activities of a federal chartered entity.



RAY SHACKLEFORD, BUDGET DIRECTOR
OFFICE OF BUDGET AND PROGRAM PLANNING

2/7/89

DATE



GENE THAYER, PRIMARY SPONSOR

2/8/89

DATE

Fiscal Note for SB303, as introduced

SB 303

APPROVED BY COMMITTEE
ON STATE ADMINISTRATION

SENATE BILL NO. 303

INTRODUCED BY THAYER, GOOD, WYATT, NISBET,
STRIZICH, MEYER, SIMPKINS, PHILLIPS, O'CONNELL,
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A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING LICENSURE OF
ESCROW AGENTS BY THE DEPARTMENT OF COMMERCE; REGULATING
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PROVIDING AN EXEMPTION TO THE SUNRISE AUDIT REQUIREMENT."

STATEMENT OF INTENT

A statement of intent is required for this bill because
it grants rulemaking authority to the director of the
department of commerce to adopt rules to license and
regulate escrow agents.

The legislature intends that the rules adopted be
designed to protect property buyers in this state by
requiring those who offer escrow services to become licensed
and subject to state regulation and to prohibit certain
unsound practices regarding the transaction of escrow
services.

The legislature further intends that the director:

(1) make reasonable rules that do not extend, modify,
or conflict with any law of this state or with any
reasonable implication of those laws; and

(2) make or amend those rules ~~only-after-hearing-for~~
~~which-notice-has-been-given.~~

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

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act] shall be known and may be cited as the "Regulation of
Escrow Agents Act".

(2) It is the intent of the legislature that the
escrow industry be supervised and regulated by the financial
division of the department of commerce in order to protect
the citizens of the state and to provide that the business
practices of the escrow industry are fair and orderly among
the members of the escrow industry, with due regard to the
ultimate consumers in this important area of property
protection.

NEW SECTION. **Section 2.** Definitions. As used in [this
act], unless the context requires otherwise the following
definitions apply:

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

(2) "Director" means the director of the department of
commerce.

(3) "Escrow" means any transaction in which one
person, for the purpose of effecting the sale, transfer,
encumbrance, or lease of real or personal property to

another person or for the purpose of making payments under any encumbrance of the property, delivers any written instrument, money, evidence, title to real or personal property, or other thing of value to a third person to be held by that third person until the happening of a specified event or the performance of a prescribed condition, when the instrument, money, evidence, title, or thing of value is to be delivered by the third person to a grantee, grantor, promisee, promisor, obligee, obligor, bailee, or bailor or to any of his agents or employees pursuant to the written escrow instructions.

(4) "Escrow agent" means a person required to be licensed under [this act] who is carrying on an escrow business.

(5) "Escrow business" means a commercial activity characterized by the regular and continuous carrying on of escrow transactions.

(6) "Licensee" means a person holding a valid license under [this act] as an escrow agent.

(7) "Person" means an individual, cooperative, association, company, firm, partnership, corporation, or other legal entity.

NEW SECTION. Section 3. Exemptions. (1) The provisions of [this act] do not apply to the following:

(a) a person licensed by this state pursuant to Title

37, chapter 61, as an attorney at law who is not actively engaged in the escrow business;

(b) a person licensed by this state pursuant to Title 37, chapter 50, as a public accountant who is not actively engaged in the escrow business;

(c) a person whose principal business is that of preparing abstracts or making searches of title that are used as a basis for the issuance of any title insurance policy by a company doing business under the laws of this state relating to insurance companies if the escrow transaction does not exceed 90 120 days AND THE PERSON IS REGULATED BY THE COMMISSIONER OF INSURANCE;

(D) A FINANCIAL INSTITUTION, AS DEFINED IN 32-6-103, THAT HAS ITS ESCROW ACCOUNTS REGULARLY AUDITED OR EXAMINED. THE FINANCIAL INSTITUTION MUST SUPPLY A COPY OF THE MOST RECENTLY PREPARED AUDIT OR EXAMINATION TO THE DIRECTOR UPON HIS REQUEST.

~~(d)~~(E) except as provided in subsection (2), any broker licensed by the Montana board of realty regulation if he is performing an act:

(i) in the course of or incidental to a single real estate transaction; and

(ii) for which a real estate license is required; and

~~(e)~~(F) any person furnishing escrow services under the order of a court.

(2) An act by a broker that constitutes an escrow transaction may not exceed a period of 90 120 days. A trust account of a broker licensed by the Montana board of realty regulation is not an escrow account within the meaning of [this act].

NEW SECTION. **Section 4. Exemption or exception -- burden of proof.** In any proceeding under [this act], the burden of proving an exemption or exception from a definition is upon the person claiming it.

NEW SECTION. **Section 5. Director -- powers and duties.** (1) The director shall exercise general supervision and control over escrow agents doing escrow business in this state.

(2) In addition to the other duties imposed upon him by law, the director shall:

(a) adopt reasonable rules necessary to effectuate the purposes of [this act];

(b) conduct examinations and investigations that may be necessary to determine whether a person has engaged or is about to engage in any act or practice constituting a violation of any provisions of [this act];

(c) conduct examinations, investigations, and hearings necessary and proper for the efficient administration of [this act]; and

(d) establish fees commensurate with the costs of

issuing the license and examining an escrow agent's escrow business.

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(2) To obtain a license, an applicant shall file with the director an application for an escrow agent's license. The application must be in writing, verified by oath, and in the form prescribed by the director. The application must set forth:

(a) the location of the applicant's principal office and all branch offices in this state and his residence address;

(b) the name and form under which the applicant plans to conduct business;

(c) the general plan and character of the business;

(d) the names, residences, and business addresses of any principals, partners, officers, trustees, and directors, specifying as to each his capacity and title;

(e) the experience and qualifications of the persons proposed to act as officers and managers;

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1 requires.

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22 determine whether the escrow transactions performed by the
23 licensee comply with the provisions of [this act]. The
24 books, accounts, and records must be maintained in
25 accordance with generally accepted accounting principles and

1 good business practice.

2 (2) A licensee shall establish and maintain the
3 following records concerning general accounts:

4 (a) a general record reflecting the assets,
5 liabilities, capital, income, and expense of the business,
6 maintained in accordance with generally accepted accounting
7 principles;

8 (b) a cash receipt and disbursement journal; and

9 (c) a reconciliation of monthly statements to the
10 general record.

11 (3) The records referred to in subsections (1) and (2)
12 must be reconciled at least once each month with the bank
13 statements reflecting each escrow account.

14 (4) A licensee shall preserve for at least 3 years
15 after the close of any escrow:

16 (a) all bank statements reflecting each escrow account
17 and records of monthly reconciliations of the statements to
18 the general record;

19 (b) all canceled checks drawn on each escrow account;

20 (c) any additional records reflecting banking
21 transactions regarding each escrow account, including copies
22 of all receipts for funds transferred from other accounts
23 into each escrow account;

24 (d) all statements of account;

25 (e) all escrow instructions and amendments to them;

1 and

2 (f) all additional records pertinent to each escrow
3 transaction.

4 (5) (a) A licensee shall file annually with the
5 director, on or before April 30, a statement of its
6 financial condition, transactions, and affairs as of the
7 preceding December 31. The director may grant an extension,
8 not to exceed 10 days, on or before the April 30 filing date
9 if the licensee demonstrates good cause for an extension.
10 The financial statement must be certified by an independent
11 public accountant and must be in a form and contain the
12 information prescribed by the director.

13 (b) If all the escrow transactions of two or more
14 escrow agents are encompassed in one annual statement of a
15 person furnishing escrow services, the director may permit
16 one statement to constitute the annual filing on behalf of
17 those escrow agents.

18 NEW SECTION. Section 9. Statement of account. A
19 licensee shall provide a full statement of an escrow account
20 established under an escrow agreement within 14 days of a
21 written request made by a party to the escrow agreement. The
22 statement must state:

- 23 (1) credits to principal;
24 (2) interest earned for the period; and
25 (3) other information requested.

1 NEW SECTION. Section 10. Deposit of funds required --
2 disbursement. (1) All money deposited in an escrow to be
3 delivered upon the close of the escrow or upon any other
4 contingency must be deposited ~~in a bank or savings and loan~~
5 association WITH A FINANCIAL INSTITUTION, AS DEFINED IN
6 32-6-103, doing business in this state and must be kept
7 separate, distinct, and apart from funds belonging to the
8 escrow agent. The funds, when deposited, must be designated
9 as "escrow accounts" or given some other appropriate
10 designation indicating that the funds are not the funds of
11 the escrow agent.

12 (2) A person may not knowingly keep or cause to be
13 kept any funds or money ~~in any bank or savings and loan~~
14 association WITH A FINANCIAL INSTITUTION, AS DEFINED IN
15 32-6-103, under the heading of "escrow accounts" or any
16 other name designating the funds or money as belonging to
17 the clients of any escrow agent, except actual escrow funds
18 deposited with the escrow agent.

19 (3) Escrow funds are not subject to execution or
20 attachment on any claim against the escrow agent.

21 (4) Any interest received on funds deposited with an
22 escrow agent in connection with any escrow that are
23 deposited in an authorized depository must be paid over to
24 the depositing party to the escrow account and may not be
25 transferred to an account of the escrow agent. This section

1 does not limit or restrain the right of the depositing party
2 to contract with respect to the interest received on the
3 deposits by an independent ~~and-subsequent~~ agreement.

4 (5) An escrow agent may not disburse funds from any
5 escrow account until cash, items, or drafts in an amount
6 sufficient to fund any disbursements from the account have
7 been received and deposited in the account and are available
8 for withdrawal from the account as a matter of right. For
9 the purposes of this subsection:

10 (a) "Available for withdrawal from the account as a
11 matter of right" means that the bank or savings and loan
12 association in which an item has been deposited considers
13 the item available for withdrawal as a matter of right and
14 that a final settlement will occur in writing with respect
15 to that item.

16 (b) "Item" means any check, including a cashier's
17 check, negotiable order of withdrawal, share draft,
18 traveler's check, or money order.

19 NEW SECTION. Section 11. Fees. (1) (a) An applicant
20 for licensure shall pay a license fee set by the director,
21 commensurate with the costs of licensing the applicant.

22 (b) A licensee may be charged an examination fee based
23 on the actual costs of the examination.

24 (2) All fees collected by the department for the
25 licensure and examination of escrow agents must be paid to

1 the state treasurer to the credit of the state special
2 revenue fund for use by the department in its licensure and
3 examination functions under [this act].

4 NEW SECTION. Section 12. Unauthorized business
5 practices -- penalty. (1) Unauthorized business practices of
6 escrow agents include but are not limited to the following:

7 (a) issuing, circulating, making use of, or
8 publishing, by any means of communication, an advertisement
9 indicating that a person is in the escrow business if that
10 person is not a licensed escrow agent;

11 (b) soliciting or accepting an escrow instruction or
12 amended or supplemental escrow instruction containing any
13 blank to be filled in after the signing or initialing of the
14 escrow instruction or permitting any person to make any
15 addition to, deletion from, or alteration of an escrow
16 instruction or amended or supplemental escrow instruction
17 unless the addition, deletion, or alteration is signed or
18 initialed by ~~all--persons~~ THE AFFECTED PARTY who signed or
19 initialed the escrow instruction or amended or supplemental
20 escrow instruction prior to the addition, deletion, or
21 alteration;

22 (c) failing to carry out the escrow transactions
23 pursuant to the written escrow instructions unless amended
24 by the written agreement of ~~--all--parties~~ to the escrow
25 agreement;

1 (d) accepting any escrow transaction that requires or
 2 has required the prepayment, deduction, or withholding of
 3 any sum to cover payments on the indebtedness or any prior
 4 encumbrance if the payments are not due and payable to the
 5 mortgagee or obligee at the time the escrow is established.
 6 However, payments may be made on property taxes for the
 7 current year or for the next annual premium on hazard
 8 insurance.

9 (e) refusing to allow parties to an escrow transaction
 10 or designated agents of those parties access to the records
 11 of the escrow transaction; and

12 (f) failing to promptly distribute funds pursuant to
 13 escrow instructions.

14 (2) Any licensee who engages in an unauthorized
 15 business practice is subject to the revocation or suspension
 16 of his license.

17 NEW SECTION. Section 13. Investigations by director
 18 -- desist order -- injunctions or other actions. (1) The
 19 director may investigate, upon complaint or otherwise, if it
 20 appears that:

21 (a) an escrow agent is conducting its business in an
 22 unsafe and injurious manner or in violation of [this act] or
 23 any rule promulgated pursuant to [this act]; or

24 (b) a person is engaging in the escrow business
 25 without being licensed under the provisions of [this act].

1 (2) (a) If it appears to the director, upon sufficient
 2 grounds or evidence satisfactory to the director, that an
 3 escrow agent has engaged or is about to engage in any act or
 4 practice in violation of [this act] or any rule or order
 5 issued pursuant to [this act] or that the assets or capital
 6 of any escrow business or company are impaired or the escrow
 7 agent's affairs are in an unsafe condition, the director may
 8 summarily order the escrow agent to cease and desist from
 9 the act or practice or the director may apply to the
 10 district court of the first judicial district of Lewis and
 11 Clark County to enjoin the act or practice and to enforce
 12 compliance with [this act] or for any other appropriate
 13 equitable relief.

14 (b) Upon a proper showing, the court may:

15 (i) grant a temporary restraining order, followed by a
 16 preliminary injunction and a permanent injunction;

17 (ii) appoint a receiver for the defendant or
 18 defendant's assets;

19 (iii) cancel the licensee's license; and

20 (iv) order other equitable remedies the court considers
 21 necessary and appropriate.

22 (3) The court may not require the director to post a
 23 bond.

24 NEW SECTION. Section 14. Subpoenas -- oaths --
 25 examinations of witness and evidence. (1) In the conduct of

1 any examination, investigation, or hearing, the director
2 may:

3 (a) compel the attendance of any person or obtain any
4 documents by subpoena;

5 (b) administer oaths;

6 (c) examine any person under oath concerning the
7 business and conduct of affairs of any person subject to the
8 provisions of [this act]; and

9 (d) require the production of any books, records, or
10 papers relevant to the inquiry.

11 (2) If a person refuses to obey a subpoena issued to
12 the director, the district court of the first judicial
13 district of Lewis and Clark County or other district court
14 having proper venue, upon application by the director, may
15 order the person to produce documentary evidence or to give
16 evidence touching RELATING TO the matter under investigation
17 or in question. If a person fails to obey the order of the
18 court, the person may be punished by the court as contempt
19 of court.

20 NEW SECTION. Section 15. Hearings and appeals. The
21 provisions of the Montana Administrative Procedure Act,
22 Title 2, chapter 4, part 6, apply to a contested case
23 brought under [this act].

24 NEW SECTION. Section 16. Extension of authority. Any
25 existing authority to make rules on the subject of the

1 provisions of [this act] is extended to the provisions of
2 [this act].

3 NEW SECTION. Section 17. Sunrise exemption. [This
4 act] is exempt from the legislative audit committee report
5 provided for in 2-8-203.

6 NEW SECTION. Section 18. Codification instruction.
7 [Sections 1 through 15] are intended to be codified as an
8 integral part of Title 32 and the provisions of Title 32
9 apply to [sections 1 through 15].

10 NEW SECTION. Section 19. Severability. If a part of
11 [this act] is invalid, all valid parts that are severable
12 from the invalid part remain in effect. If a part of [this
13 act] is invalid in one or more of its applications, the part
14 remains in effect in all valid applications that are
15 severable from the invalid applications.

-End-

1 SENATE BILL NO. 303

2 INTRODUCED BY THAYER, GOOD, WYATT, NISBET,
3 STRIZICH, MEYER, SIMPKINS, PHILLIPS, O'CONNELL,
4 AAFEDT, HALLIGAN, NOBLE, WALKER, MANNING, HAMMOND
5

6 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING LICENSURE OF
7 ESCROW AGENTS BY THE DEPARTMENT OF COMMERCE; REGULATING
8 ESCROW BUSINESSES; PROVIDING FOR FEES AND PENALTIES; AND
9 PROVIDING AN EXEMPTION TO THE SUNRISE AUDIT REQUIREMENT."
10

11 STATEMENT OF INTENT

12 A statement of intent is required for this bill because
13 it grants rulemaking authority to the director of the
14 department of commerce to adopt rules to license and
15 regulate escrow agents.

16 The legislature intends that the rules adopted be
17 designed to protect property buyers in this state by
18 requiring those who offer escrow services to become licensed
19 and subject to state regulation and to prohibit certain
20 unsound practices regarding the transaction of escrow
21 services.

22 The legislature further intends that the director:

23 (1) make reasonable rules that do not extend, modify,
24 or conflict with any law of this state or with any
25 reasonable implication of those laws; and

There is no change on SB 303 and will not
be reprinted. Please refer to second reading
(yellow) for complete text.




STANDING COMMITTEE REPORT

March 9, 1989

Page 1 of 4

Mr. Speaker: We, the committee on Business and Economic Development report that Senate Bill 303 (third reading copy - blue), with statement of intent attached, be concurred in as amended.

Signed 
Robert Pavlovich, Chairman

[REP. GOOD WILL CARRY THIS BILL ON THE HOUSE FLOOR]

And, that such amendments read:

1. Title, line 7.

Strike: "AGENTS"

Insert: "BUSINESSES"

2. Title, lines 8 and 9.

Following: "PENALTIES"

Strike: remainder of line 8 through "REQUIREMENT" on line 9

3. Page 1, line 15.

Strike: "agents"

Insert: "businesses"

4. Page 1, line 18.

Following: "those"

Strike: "who"

Insert: "businesses that"

5. Page 2, line 7.

Strike: "Agents"

Insert: "Businesses"

6. Page 3, lines 12 through 14.

Strike: subsection (4) in its entirety

Re-number: subsequent subsections

7. Page 3, line 19.

Strike: "agent"

Insert: "business"

8. Page 4, lines 10 and 11.

Following: "companies"

Strike: remainder of line 10 through "days" on line 11

9. Page 5, lines 1 and 2.

Following: "(2)" on line 1

Strike: remainder of line 1 through "days." on line 2

10. Page 5, line 12.

Strike: "escrow agents"

Insert: "persons"

11. Page 6, line 1.

Strike: "escrow agent's"

12. Page 6, line 5.

Strike: "as an escrow agent"

13. Page 6, line 8.

Strike: "agent's"

Insert: "business"

14. Page 6, lines 13 and 14.

Strike: "and his residence address"

15. Page 7, line 3.

Strike: "agent's"

Insert: "business"

16. Page 7, line 9.

Strike: "agent"

Insert: "business"

17. Page 7, line 16.

Strike: "agent"

Insert: "business"

18. Page 9, line 4.

Strike: "(a)"

Following: "shall"

Insert: "perform one of the following:

(a)"

19. Page 9, lines 13 through 17.

Strike: lines 13 through 17

Insert: "(b) request that the director examine the financial condition, transactions, and affairs of the licensee pursuant to

March 9, 1989

Page 2 of 4

HOUSE

SB 303

March 9, 1989
Page 3 of 4

procedures prescribed by the director."

20. Page 10, line 8.

Strike: "agent"

Insert: "business"

21. Page 10, line 11.

Strike: "agent"

Insert: "business"

22. Page 10, line 17.

Strike: "agent"

Insert: "business"

23. Page 10, line 18.

Strike: "agent"

Insert: "business"

24. Page 10, line 20.

Strike: "agent"

Insert: "business"

25. Page 10, line 22.

Strike: "agent"

Insert: "business"

26. Page 10, line 22.

Strike: "are"

Insert: "is"

27. Page 10, line 25.

Strike: "agent"

Insert: "business"

28. Page 11, line 4.

Strike: "agent"

Insert: "business"

29. Page 11, line 25.

Strike: "agents"

Insert: "businesses"

30. Page 12, line 6.

Strike: "agents"

Insert: "businesses"

31. Page 12, line 10.

Following: "person"

Insert: "is not a licensed"

March 9, 1989
Page 4 of 4

Strike: "agent"

Insert: "business license"

32. Page 13, line 16.

Strike: "his"

Insert: "the licensee's"

33. Page 13, line 21.

Strike: "agent"

Insert: "business"

34. Page 14, line 3.

Strike: "agent"

Insert: "business"

35. Page 14, lines 6 and 7.

Following: "the"

Strike: "escrow agent's"

Insert: "licensee's"

36. Page 14, line 8.

Strike: "agent"

Insert: "business"

37. Page 16, lines 3 through 5.

Strike: section 17 in its entirety

Renumber: subsequent sections

COMMITTEE OF THE WHOLE AMENDMENT
Senate Bill 303
Representative Good

March 11, 1989 10:57 am
Page 1 of 1

Mr. Chairman: I move to amend Senate Bill 303 (third reading copy -- blue).

Signed: 
Representative Good

And, that such amendments to House committee on Business and Economic Development amendments to Senate Bill 303 read as follows:

1. Amendment 31.
Strike: first insert "is not a licensed"
in second insert Following: "business"
Strike: "license"

ADOPT

REJECT

HOUSE ,

SB 303

1 SENATE BILL NO. 303

2 INTRODUCED BY THAYER, GOOD, WYATT, NISBET,
3 STRIZICH, MEYER, SIMPKINS, PHILLIPS, O'CONNELL,
4 AAFEDT, HALLIGAN, NOBLE, WALKER, MANNING, HAMMOND

5
6 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING LICENSURE OF
7 ESCROW AGENTS BUSINESSES BY THE DEPARTMENT OF COMMERCE;
8 REGULATING ESCROW BUSINESSES; PROVIDING FOR FEES AND
9 PENALTIES;--AND--PROVIDING-AN-EXEMPTION-TO-THE-SUNRISE-AUDIT
10 REQUIREMENT."

11
12 STATEMENT OF INTENT

13 A statement of intent is required for this bill because
14 it grants rulemaking authority to the director of the
15 department of commerce to adopt rules to license and
16 regulate escrow agents BUSINESSES.

17 The legislature intends that the rules adopted be
18 designed to protect property buyers in this state by
19 requiring those who BUSINESSES THAT offer escrow services to
20 become licensed and subject to state regulation and to
21 prohibit certain unsound practices regarding the transaction
22 of escrow services.

23 The legislature further intends that the director:

24 (1) make reasonable rules that do not extend, modify,
25 or conflict with any law of this state or with any

1 reasonable implication of those laws; and

2 (2) make or amend those rules ~~only-after-hearing-for~~
3 ~~which-notice-has-been-given.~~

4
5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

6 NEW SECTION. **Section 1.** Title and purpose. (1) [This
7 act] shall be known and may be cited as the "Regulation of
8 Escrow Agents BUSINESSES Act".

9 (2) It is the intent of the legislature that the
10 escrow industry be supervised and regulated by the financial
11 division of the department of commerce in order to protect
12 the citizens of the state and to provide that the business
13 practices of the escrow industry are fair and orderly among
14 the members of the escrow industry, with due regard to the
15 ultimate consumers in this important area of property
16 protection.

17 NEW SECTION. **Section 2.** Definitions. As used in [this
18 act], unless the context requires otherwise the following
19 definitions apply:

20 (1) "Department" means the department of commerce as
21 provided for in Title 2, chapter 15, part 18.

22 (2) "Director" means the director of the department of
23 commerce.

24 (3) "Escrow" means any transaction in which one
25 person, for the purpose of effecting the sale, transfer,

1 encumbrance, or lease of real or personal property to
 2 another person or for the purpose of making payments under
 3 any encumbrance of the property, delivers any written
 4 instrument, money, evidence, title to real or personal
 5 property, or other thing of value to a third person to be
 6 held by that third person until the happening of a specified
 7 event or the performance of a prescribed condition, when the
 8 instrument, money, evidence, title, or thing of value is to
 9 be delivered by the third person to a grantee, grantor,
 10 promisee, promisor, obligee, obligor, bailee, or bailor or
 11 to any of his agents or employees pursuant to the written
 12 escrow instructions.

13 {4}--"Escrow-agent"--means--a--person--required--to--be
 14 licensed-under-[this-act]--who--is--carrying-on--an--escrow
 15 business:

16 {5}{4} "Escrow business" means a commercial activity
 17 characterized by the regular and continuous carrying on of
 18 escrow transactions.

19 {6}{5} "Licensee" means a person holding a valid
 20 license under [this act] as an escrow agent BUSINESS.

21 {7}{6} "Person" means an individual, cooperative,
 22 association, company, firm, partnership, corporation, or
 23 other legal entity.

24 NEW SECTION. Section 3. Exemptions. (1) The
 25 provisions of [this act] do not apply to the following:

1 (a) a person licensed by this state pursuant to Title
 2 37, chapter 61, as an attorney at law who is not actively
 3 engaged in the escrow business;

4 (b) a person licensed by this state pursuant to Title
 5 37, chapter 50, as a public accountant who is not actively
 6 engaged in the escrow business;

7 (c) a person whose principal business is that of
 8 preparing abstracts or making searches of title that are
 9 used as a basis for the issuance of any title insurance
 10 policy by a company doing business under the laws of this
 11 state relating to insurance companies if--the--escrow
 12 transaction-does-not-exceed-90-120-days AND THE PERSON IS
 13 REGULATED BY THE COMMISSIONER OF INSURANCE;

14 (D) A FINANCIAL INSTITUTION, AS DEFINED IN 32-6-103,
 15 THAT HAS ITS ESCROW ACCOUNTS REGULARLY AUDITED OR EXAMINED.
 16 THE FINANCIAL INSTITUTION MUST SUPPLY A COPY OF THE MOST
 17 RECENTLY PREPARED AUDIT OR EXAMINATION TO THE DIRECTOR UPON
 18 HIS REQUEST.

19 {d}{E} except as provided in subsection (2), any
 20 broker licensed by the Montana board of realty regulation if
 21 he is performing an act:

22 (i) in the course of or incidental to a single real
 23 estate transaction; and

24 (ii) for which a real estate license is required; and
 25 {e}{F} any person furnishing escrow services under the

1 order of a court.

2 (2) ~~An act by a broker that constitutes an escrow~~
3 ~~transaction may not exceed a period of 90-120 days.~~ A trust
4 account of a broker licensed by the Montana board of realty
5 regulation is not an escrow account within the meaning of
6 [this act].

7 NEW SECTION. Section 4. Exemption or exception --
8 burden of proof. In any proceeding under [this act], the
9 burden of proving an exemption or exception from a
10 definition is upon the person claiming it.

11 NEW SECTION. Section 5. Director -- powers and
12 duties. (1) The director shall exercise general supervision
13 and control over escrow-agents PERSONS doing escrow business
14 in this state.

15 (2) In addition to the other duties imposed upon him
16 by law, the director shall:

17 (a) adopt reasonable rules necessary to effectuate the
18 purposes of [this act];

19 (b) conduct examinations and investigations that may
20 be necessary to determine whether a person has engaged or is
21 about to engage in any act or practice constituting a
22 violation of any provisions of [this act];

23 (c) conduct examinations, investigations, and hearings
24 necessary and proper for the efficient administration of
25 [this act]; and

1 (d) establish fees commensurate with the costs of
2 issuing the license and examining an escrow-agent's escrow
3 business.

4 NEW SECTION. Section 6. Application for license --
5 issuance. (1) A person must be licensed pursuant to [this
6 act] ~~as an escrow-agent~~ before engaging in an escrow
7 business.

8 (2) To obtain a license, an applicant shall file with
9 the director an application for an escrow agent's BUSINESS
10 license. The application must be in writing, verified by
11 oath, and in the form prescribed by the director. The
12 application must set forth:

13 (a) the location of the applicant's principal office
14 and all branch offices in this state ~~and his residence~~
15 address;

16 (b) the name and form under which the applicant plans
17 to conduct business;

18 (c) the general plan and character of the business;

19 (d) the names, residences, and business addresses of
20 any principals, partners, officers, trustees, and directors,
21 specifying as to each his capacity and title;

22 (e) the experience and qualifications of the persons
23 proposed to act as officers and managers;

24 (f) the length of time the applicant has been engaged
25 in the escrow business; and

1 (g) any other relevant information the director
2 requires.

3 (3) The director shall grant and issue an escrow
4 agent's BUSINESS license if:

5 (a) the director has received and filed the
6 application specified in [this section]; and

7 (b) the applicant has complied with all the
8 requirements of [this act] and any rules promulgated under
9 it.

10 (4) An escrow agent BUSINESS shall immediately notify
11 the department of any material change in the information
12 contained in the application.

13 NEW SECTION. Section 7. Transferability. An escrow
14 agent license is not transferable or assignable. The
15 provisions of this section apply to the change of ownership
16 of any escrow business, including the change of control over
17 any corporation licensed as an escrow agent BUSINESS. For
18 purposes of this section, "change of control" means the
19 transfer of 25% or more of the outstanding voting stock of
20 the corporation.

21 NEW SECTION. Section 8. Maintenance of records. (1) A
22 licensee shall establish and maintain the books, accounts,
23 and records necessary to enable the director at any time to
24 determine whether the escrow transactions performed by the
25 licensee comply with the provisions of [this act]. The

1 books, accounts, and records must be maintained in
2 accordance with generally accepted accounting principles and
3 good business practice.

4 (2) A licensee shall establish and maintain the
5 following records concerning general accounts:

6 (a) a general record reflecting the assets,
7 liabilities, capital, income, and expense of the business,
8 maintained in accordance with generally accepted accounting
9 principles;

10 (b) a cash receipt and disbursement journal; and

11 (c) a reconciliation of monthly statements to the
12 general record.

13 (3) The records referred to in subsections (1) and (2)
14 must be reconciled at least once each month with the bank
15 statements reflecting each escrow account.

16 (4) A licensee shall preserve for at least 3 years
17 after the close of any escrow:

18 (a) all bank statements reflecting each escrow account
19 and records of monthly reconciliations of the statements to
20 the general record;

21 (b) all canceled checks drawn on each escrow account;

22 (c) any additional records reflecting banking
23 transactions regarding each escrow account, including copies
24 of all receipts for funds transferred from other accounts
25 into each escrow account;

(d) all statements of account;

(e) all escrow instructions and amendments to them;

and

(f) all additional records pertinent to each escrow transaction.

(5) ~~(a)~~ A licensee shall PERFORM ONE OF THE FOLLOWING:

(A) file annually with the director, on or before April 30, a statement of its financial condition, transactions, and affairs as of the preceding December 31. The director may grant an extension, not to exceed 10 days, on or before the April 30 filing date if the licensee demonstrates good cause for an extension. The financial statement must be certified by an independent public accountant and must be in a form and contain the information prescribed by the director.

~~(b)--If all the escrow transactions of two or more escrow agents are encompassed in one annual statement of a person furnishing escrow services, the director may permit one statement to constitute the annual filing on behalf of those escrow agents. (B) REQUEST THAT THE DIRECTOR EXAMINE THE FINANCIAL CONDITION, TRANSACTIONS, AND AFFAIRS OF THE LICENSEE PURSUANT TO PROCEDURES PRESCRIBED BY THE DIRECTOR.~~

NEW SECTION. Section 9. Statement of account. A licensee shall provide a full statement of an escrow account established under an escrow agreement within 14 days of a

written request made by a party to the escrow agreement. The statement must state:

(1) credits to principal;

(2) interest earned for the period; and

(3) other information requested.

NEW SECTION. Section 10. Deposit of funds required -- disbursement. (1) All money deposited in an escrow to be delivered upon the close of the escrow or upon any other contingency must be deposited ~~in a bank or savings and loan association~~ WITH A FINANCIAL INSTITUTION, AS DEFINED IN 32-6-103, doing business in this state and must be kept separate, distinct, and apart from funds belonging to the escrow agent BUSINESS. The funds, when deposited, must be designated as "escrow accounts" or given some other appropriate designation indicating that the funds are not the funds of the escrow agent BUSINESS.

(2) A person may not knowingly keep or cause to be kept any funds or money ~~in any bank or savings and loan association~~ WITH A FINANCIAL INSTITUTION, AS DEFINED IN 32-6-103, under the heading of "escrow accounts" or any other name designating the funds or money as belonging to the clients of any escrow agent BUSINESS, except actual escrow funds deposited with the escrow agent BUSINESS.

(3) Escrow funds are not subject to execution or attachment on any claim against the escrow agent BUSINESS.

(4) Any interest received on funds deposited with an escrow agent BUSINESS in connection with any escrow that are IS deposited in an authorized depository must be paid over to the depositing party to the escrow account and may not be transferred to an account of the escrow agent BUSINESS. This section does not limit or restrain the right of the depositing party to contract with respect to the interest received on the deposits by an independent and-subsequent agreement.

(5) An escrow agent BUSINESS may not disburse funds from any escrow account until cash, items, or drafts in an amount sufficient to fund any disbursements from the account have been received and deposited in the account and are available for withdrawal from the account as a matter of right. For the purposes of this subsection:

(a) "Available for withdrawal from the account as a matter of right" means that the bank or savings and loan association in which an item has been deposited considers the item available for withdrawal as a matter of right and that a final settlement will occur in writing with respect to that item.

(b) "Item" means any check, including a cashier's check, negotiable order of withdrawal, share draft, traveler's check, or money order.

NEW SECTION. Section 11. Fees. (1) (a) An applicant

for licensure shall pay a license fee set by the director, commensurate with the costs of licensing the applicant.

(b) A licensee may be charged an examination fee based on the actual costs of the examination.

(2) All fees collected by the department for the licensure and examination of escrow agents BUSINESSES must be paid to the state treasurer to the credit of the state special revenue fund for use by the department in its licensure and examination functions under [this act].

NEW SECTION. Section 12. Unauthorized business practices -- penalty. (1) Unauthorized business practices of escrow agents BUSINESSES include but are not limited to the following:

(a) issuing, circulating, making use of, or publishing, by any means of communication, an advertisement indicating that a person is in the escrow business if that person is not a licensed escrow agent BUSINESS;

(b) soliciting or accepting an escrow instruction or amended or supplemental escrow instruction containing any blank to be filled in after the signing or initialing of the escrow instruction or permitting any person to make any addition to, deletion from, or alteration of an escrow instruction or amended or supplemental escrow instruction unless the addition, deletion, or alteration is signed or initialed by ~~all~~ persons THE AFFECTED PARTY who signed or

1 initialed the escrow instruction or amended or supplemental
2 escrow instruction prior to the addition, deletion, or
3 alteration;

4 (c) failing to carry out the escrow transactions
5 pursuant to the written escrow instructions unless amended
6 by the written agreement of--all--parties to the escrow
7 agreement;

8 (d) accepting any escrow transaction that requires or
9 has required the prepayment, deduction, or withholding of
10 any sum to cover payments on the indebtedness or any prior
11 encumbrance if the payments are not due and payable to the
12 mortgagee or obligee at the time the escrow is established.
13 However, payments may be made on property taxes for the
14 current year or for the next annual premium on hazard
15 insurance.

16 (e) refusing to allow parties to an escrow transaction
17 or designated agents of those parties access to the records
18 of the escrow transaction; and

19 (f) failing to promptly distribute funds pursuant to
20 escrow instructions.

21 (2) Any licensee who engages in an unauthorized
22 business practice is subject to the revocation or suspension
23 of his THE LICENSEE'S license.

24 NEW SECTION. Section 13. Investigations by director
25 -- desist order -- injunctions or other actions. (1) The

1 director may investigate, upon complaint or otherwise, if it
2 appears that:

3 (a) an escrow agent BUSINESS is conducting its
4 business in an unsafe and injurious manner or in violation
5 of [this act] or any rule promulgated pursuant to [this
6 act]; or

7 (b) a person is engaging in the escrow business
8 without being licensed under the provisions of [this act].

9 (2) (a) If it appears to the director, upon sufficient
10 grounds or evidence satisfactory to the director, that an
11 escrow agent BUSINESS has engaged or is about to engage in
12 any act or practice in violation of [this act] or any rule
13 or order issued pursuant to [this act] or that the assets or
14 capital of any escrow business or company are impaired or
15 the escrow--agent's LICENSEE'S affairs are in an unsafe
16 condition, the director may summarily order the escrow agent
17 BUSINESS to cease and desist from the act or practice or the
18 director may apply to the district court of the first
19 judicial district of Lewis and Clark County to enjoin the
20 act or practice and to enforce compliance with [this act] or
21 for any other appropriate equitable relief.

22 (b) Upon a proper showing, the court may:

23 (i) grant a temporary restraining order, followed by a
24 preliminary injunction and a permanent injunction;

25 (ii) appoint a receiver for the defendant or

1 defendant's assets;

2 (iii) cancel the licensee's license; and

3 (iv) order other equitable remedies the court considers
4 necessary and appropriate.

5 (3) The court may not require the director to post a
6 bond.

7 NEW SECTION. Section 14. Subpoenas -- oaths --
8 examinations of witness and evidence. (1) In the conduct of
9 any examination, investigation, or hearing, the director
10 may:

11 (a) compel the attendance of any person or obtain any
12 documents by subpoena;

13 (b) administer oaths;

14 (c) examine any person under oath concerning the
15 business and conduct of affairs of any person subject to the
16 provisions of [this act]; and

17 (d) require the production of any books, records, or
18 papers relevant to the inquiry.

19 (2) If a person refuses to obey a subpoena issued to
20 the director, the district court of the first judicial
21 district of Lewis and Clark County or other district court
22 having proper venue, upon application by the director, may
23 order the person to produce documentary evidence or to give
24 evidence touching RELATING TO the matter under investigation
25 or in question. If a person fails to obey the order of the

1 court, the person may be punished by the court as contempt
2 of court.

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4 provisions of the Montana Administrative Procedure Act,
5 Title 2, chapter 4, part 6, apply to a contested case
6 brought under [this act].

7 NEW SECTION. Section 16. Extension of authority. Any
8 existing authority to make rules on the subject of the
9 provisions of [this act] is extended to the provisions of
10 [this act].

11 ~~NEW SECTION. Section 17. Sunrise exemption. [This~~
12 ~~act] is exempt from the legislative audit committee report~~
13 ~~provided for in 2-8-2003.~~

14 NEW SECTION. Section 17. Codification instruction.
15 [Sections 1 through 15] are intended to be codified as an
16 integral part of Title 32 and the provisions of Title 32
17 apply to [sections 1 through 15].

18 NEW SECTION. Section 18. Severability. If a part of
19 [this act] is invalid, all valid parts that are severable
20 from the invalid part remain in effect. If a part of [this
21 act] is invalid in one or more of its applications, the part
22 remains in effect in all valid applications that are
23 severable from the invalid applications.

-End-

GOVERNOR'S AMENDMENTS
TO SENATE BILL 303
(REFERENCE COPY AS AMENDED)
April 18, 1989

1. Page 7, line 14.
Strike: "agent"
Insert: "business"
2. Page 13, line 6.
Following: "agreement"
Insert: "of all parties"
3. Page 13, line 7.
Following: "agreement"
Insert: "or their assigns"

-END-

SENATE BILL NO. 303

INTRODUCED BY THAYER, GOOD, WYATT, NISBET,
STRIZICH, MEYER, SIMPKINS, PHILLIPS, O'CONNELL,
AAFEDT, HALLIGAN, NOBLE, WALKER, MANNING, HAMMOND

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING LICENSURE OF
ESCROW AGENTS BUSINESSES BY THE DEPARTMENT OF COMMERCE;
REGULATING ESCROW BUSINESSES; PROVIDING FOR FEES AND
PENALTIES;--AND--PROVIDING-AN-EXEMPTION-TO-THE-SUNRISE-AUDIT
REQUIREMENT."

STATEMENT OF INTENT

A statement of intent is required for this bill because
it grants rulemaking authority to the director of the
department of commerce to adopt rules to license and
regulate escrow agents BUSINESSES.

The legislature intends that the rules adopted be
designed to protect property buyers in this state by
requiring those who BUSINESSES THAT offer escrow services to
become licensed and subject to state regulation and to
prohibit certain unsound practices regarding the transaction
of escrow services.

The legislature further intends that the director:

(1) make reasonable rules that do not extend, modify,
or conflict with any law of this state or with any

reasonable implication of those laws; and

(2) make or amend those rules ~~only-after-hearing-for~~
~~which-notice-has-been-given.~~

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

NEW SECTION. **Section 1.** Title and purpose. (1) [This
act] shall be known and may be cited as the "Regulation of
Escrow Agents BUSINESSES Act".

(2) It is the intent of the legislature that the
escrow industry be supervised and regulated by the financial
division of the department of commerce in order to protect
the citizens of the state and to provide that the business
practices of the escrow industry are fair and orderly among
the members of the escrow industry, with due regard to the
ultimate consumers in this important area of property
protection.

NEW SECTION. **Section 2.** Definitions. As used in [this
act], unless the context requires otherwise the following
definitions apply:

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

(2) "Director" means the director of the department of
commerce.

(3) "Escrow" means any transaction in which one
person, for the purpose of effecting the sale, transfer,

1 encumbrance, or lease of real or personal property to
 2 another person or for the purpose of making payments under
 3 any encumbrance of the property, delivers any written
 4 instrument, money, evidence, title to real or personal
 5 property, or other thing of value to a third person to be
 6 held by that third person until the happening of a specified
 7 event or the performance of a prescribed condition, when the
 8 instrument, money, evidence, title, or thing of value is to
 9 be delivered by the third person to a grantee, grantor,
 10 promisee, promisor, obligee, obligor, bailee, or bailor or
 11 to any of his agents or employees pursuant to the written
 12 escrow instructions.

13 {4}--"Escrow--agent"--means--a--person--required--to--be
 14 licensed-under-[this-act]-who--is--carrying-on--an--escrow
 15 business;

16 {5}{4} "Escrow business" means a commercial activity
 17 characterized by the regular and continuous carrying on of
 18 escrow transactions.

19 {6}{5} "Licensee" means a person holding a valid
 20 license under [this act] as an escrow agent BUSINESS.

21 {7}{6} "Person" means an individual, cooperative,
 22 association, company, firm, partnership, corporation, or
 23 other legal entity.

24 NEW SECTION. Section 3. Exemptions. (1) The
 25 provisions of [this act] do not apply to the following:

1 (a) a person licensed by this state pursuant to Title
 2 37, chapter 61, as an attorney at law who is not actively
 3 engaged in the escrow business;

4 (b) a person licensed by this state pursuant to Title
 5 37, chapter 50, as a public accountant who is not actively
 6 engaged in the escrow business;

7 (c) a person whose principal business is that of
 8 preparing abstracts or making searches of title that are
 9 used as a basis for the issuance of any title insurance
 10 policy by a company doing business under the laws of this
 11 state relating to insurance companies ~~if--the--escrow~~
 12 ~~transaction--does--not--exceed--90--120--days~~ AND THE PERSON IS
 13 REGULATED BY THE COMMISSIONER OF INSURANCE;

14 (D) A FINANCIAL INSTITUTION, AS DEFINED IN 32-6-103,
 15 THAT HAS ITS ESCROW ACCOUNTS REGULARLY AUDITED OR EXAMINED.
 16 THE FINANCIAL INSTITUTION MUST SUPPLY A COPY OF THE MOST
 17 RECENTLY PREPARED AUDIT OR EXAMINATION TO THE DIRECTOR UPON
 18 HIS REQUEST.

19 {d}{E} except as provided in subsection (2), any
 20 broker licensed by the Montana board of realty regulation if
 21 he is performing an act:

22 (i) in the course of or incidental to a single real
 23 estate transaction; and

24 (ii) for which a real estate license is required; and

25 {e}{F} any person furnishing escrow services under the

1 order of a court.

2 (2) ~~An act by a broker that constitutes an escrow~~
3 ~~transaction may not exceed a period of 90-120 days.~~ A trust
4 account of a broker licensed by the Montana board of realty
5 regulation is not an escrow account within the meaning of
6 [this act].

7 NEW SECTION. Section 4. Exemption or exception --
8 burden of proof. In any proceeding under [this act], the
9 burden of proving an exemption or exception from a
10 definition is upon the person claiming it.

11 NEW SECTION. Section 5. Director -- powers and
12 duties. (1) The director shall exercise general supervision
13 and control over ~~escrow agents~~ PERSONS doing escrow business
14 in this state.

15 (2) In addition to the other duties imposed upon him
16 by law, the director shall:

17 (a) adopt reasonable rules necessary to effectuate the
18 purposes of [this act];

19 (b) conduct examinations and investigations that may
20 be necessary to determine whether a person has engaged or is
21 about to engage in any act or practice constituting a
22 violation of any provisions of [this act];

23 (c) conduct examinations, investigations, and hearings
24 necessary and proper for the efficient administration of
25 [this act]; and

1 (d) establish fees commensurate with the costs of
2 issuing the license and examining an ~~escrow agent's~~ escrow
3 business.

4 NEW SECTION. Section 6. Application for license --
5 issuance. (1) A person must be licensed pursuant to [this
6 act] ~~as an escrow agent~~ before engaging in an escrow
7 business.

8 (2) To obtain a license, an applicant shall file with
9 the director an application for an escrow agent's BUSINESS
10 license. The application must be in writing, verified by
11 oath, and in the form prescribed by the director. The
12 application must set forth:

13 (a) the location of the applicant's principal office
14 and all branch offices in this state ~~and his residence~~
15 address;

16 (b) the name and form under which the applicant plans
17 to conduct business;

18 (c) the general plan and character of the business;

19 (d) the names, residences, and business addresses of
20 any principals, partners, officers, trustees, and directors,
21 specifying as to each his capacity and title;

22 (e) the experience and qualifications of the persons
23 proposed to act as officers and managers;

24 (f) the length of time the applicant has been engaged
25 in the escrow business; and

1 (g) any other relevant information the director
2 requires.

3 (3) The director shall grant and issue an escrow
4 ~~agent's~~ BUSINESS license if:

5 (a) the director has received and filed the
6 application specified in [this section]; and

7 (b) the applicant has complied with all the
8 requirements of [this act] and any rules promulgated under
9 it.

10 (4) An escrow ~~agent~~ BUSINESS shall immediately notify
11 the department of any material change in the information
12 contained in the application.

13 NEW SECTION. Section 7. Transferability. An escrow
14 ~~agent~~ BUSINESS license is not transferable or assignable.
15 The provisions of this section apply to the change of
16 ownership of any escrow business, including the change of
17 control over any corporation licensed as an escrow ~~agent~~
18 BUSINESS. For purposes of this section, "change of control"
19 means the transfer of 25% or more of the outstanding voting
20 stock of the corporation.

21 NEW SECTION. Section 8. Maintenance of records. (1) A
22 licensee shall establish and maintain the books, accounts,
23 and records necessary to enable the director at any time to
24 determine whether the escrow transactions performed by the
25 licensee comply with the provisions of [this act]. The

1 books, accounts, and records must be maintained in
2 accordance with generally accepted accounting principles and
3 good business practice.

4 (2) A licensee shall establish and maintain the
5 following records concerning general accounts:

6 (a) a general record reflecting the assets,
7 liabilities, capital, income, and expense of the business,
8 maintained in accordance with generally accepted accounting
9 principles;

10 (b) a cash receipt and disbursement journal; and

11 (c) a reconciliation of monthly statements to the
12 general record.

13 (3) The records referred to in subsections (1) and (2)
14 must be reconciled at least once each month with the bank
15 statements reflecting each escrow account.

16 (4) A licensee shall preserve for at least 3 years
17 after the close of any escrow:

18 (a) all bank statements reflecting each escrow account
19 and records of monthly reconciliations of the statements to
20 the general record;

21 (b) all canceled checks drawn on each escrow account;

22 (c) any additional records reflecting banking
23 transactions regarding each escrow account, including copies
24 of all receipts for funds transferred from other accounts
25 into each escrow account;

1 (d) all statements of account;
 2 (e) all escrow instructions and amendments to them;
 3 and
 4 (f) all additional records pertinent to each escrow
 5 transaction.

6 (5) ~~(a)~~ A licensee shall PERFORM ONE OF THE FOLLOWING:

7 (A) file annually with the director, on or before
 8 April 30, a statement of its financial condition,
 9 transactions, and affairs as of the preceding December 31.
 10 The director may grant an extension, not to exceed 10 days,
 11 on or before the April 30 filing date if the licensee
 12 demonstrates good cause for an extension. The financial
 13 statement must be certified by an independent public
 14 accountant and must be in a form and contain the information
 15 prescribed by the director.

16 ~~(b) -- If -- all -- the -- escrow -- transactions -- of -- two -- or -- more~~
 17 ~~escrow agents are encompassed in one annual statement -- of -- a~~
 18 ~~person -- furnishing -- escrow services, the director may permit~~
 19 ~~one statement to constitute the annual filing on -- behalf -- of~~
 20 ~~those -- escrow agents: (B) REQUEST THAT THE DIRECTOR EXAMINE~~
 21 THE FINANCIAL CONDITION, TRANSACTIONS, AND AFFAIRS OF THE
 22 LICENSEE PURSUANT TO PROCEDURES PRESCRIBED BY THE DIRECTOR.

23 NEW SECTION. Section 9. Statement of account. A
 24 licensee shall provide a full statement of an escrow account
 25 established under an escrow agreement within 14 days of a

1 written request made by a party to the escrow agreement. The
 2 statement must state:

- 3 (1) credits to principal;
 4 (2) interest earned for the period; and
 5 (3) other information requested.

6 NEW SECTION. Section 10. Deposit of funds required --
 7 disbursement. (1) All money deposited in an escrow to be
 8 delivered upon the close of the escrow or upon any other
 9 contingency must be deposited in a bank or savings and loan
 10 association WITH A FINANCIAL INSTITUTION, AS DEFINED IN
 11 32-6-103, doing business in this state and must be kept
 12 separate, distinct, and apart from funds belonging to the
 13 escrow agent BUSINESS. The funds, when deposited, must be
 14 designated as "escrow accounts" or given some other
 15 appropriate designation indicating that the funds are not
 16 the funds of the escrow agent BUSINESS.

17 (2) A person may not knowingly keep or cause to be
 18 kept any funds or money in any bank or savings and loan
 19 association WITH A FINANCIAL INSTITUTION, AS DEFINED IN
 20 32-6-103, under the heading of "escrow accounts" or any
 21 other name designating the funds or money as belonging to
 22 the clients of any escrow agent BUSINESS, except actual
 23 escrow funds deposited with the escrow agent BUSINESS.

24 (3) Escrow funds are not subject to execution or
 25 attachment on any claim against the escrow agent BUSINESS.

1 (4) Any interest received on funds deposited with an
 2 escrow agent BUSINESS in connection with any escrow that are
 3 IS deposited in an authorized depository must be paid over
 4 to the depositing party to the escrow account and may not be
 5 transferred to an account of the escrow agent BUSINESS.
 6 This section does not limit or restrain the right of the
 7 depositing party to contract with respect to the interest
 8 received on the deposits by an independent and--subsequent
 9 agreement.

10 (5) An escrow agent BUSINESS may not disburse funds
 11 from any escrow account until cash, items, or drafts in an
 12 amount sufficient to fund any disbursements from the account
 13 have been received and deposited in the account and are
 14 available for withdrawal from the account as a matter of
 15 right. For the purposes of this subsection:

16 (a) "Available for withdrawal from the account as a
 17 matter of right" means that the bank or savings and loan
 18 association in which an item has been deposited considers
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 20 that a final settlement will occur in writing with respect
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 25 initialed by ~~all--persons~~ THE AFFECTED PARTY who signed or

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9 has required the prepayment, deduction, or withholding of
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10 grounds or evidence satisfactory to the director, that an
11 escrow agent BUSINESS has engaged or is about to engage in
12 any act or practice in violation of [this act] or any rule
13 or order issued pursuant to [this act] or that the assets or
14 capital of any escrow business or company are impaired or
15 the escrow-agent's LICENSEE'S affairs are in an unsafe
16 condition, the director may summarily order the escrow agent
17 BUSINESS to cease and desist from the act or practice or the
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22 (b) Upon a proper showing, the court may:

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25 (ii) appoint a receiver for the defendant or

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-End-