

SENATE BILL 376

Introduced by Bishop, et al.

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|------|----------------------------------|
| 2/08 | Introduced |
| 2/08 | Referred to State Administration |
| 2/09 | Fiscal Note Requested |
| 2/15 | Fiscal Note Received |
| 2/16 | Fiscal Note Printed |
| | Died in Committee |

1 *Senate* BILL NO. *376*
2 INTRODUCED BY *Bishop*
3 BY REQUEST OF THE DEPARTMENT OF COMMERCE
4 *Hayes*

5 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR LICENSURE
6 AND REGULATION OF PROPERTY MANAGERS AND LEASING AGENTS;
7 ALLOWING PERSONS TO BECOME LICENSED AS PROPERTY MANAGERS OR
8 LEASING AGENTS UNDER QUALIFICATIONS OTHER THAN THOSE
9 REQUIRED OF A REAL ESTATE BROKER; ALLOWING LICENSED REAL
10 ESTATE BROKERS TO ACT AS PROPERTY MANAGERS WITHOUT SECURING
11 AN ADDITIONAL LICENSE; AND AMENDING SECTIONS 37-51-102,
12 37-51-103, 37-51-301 THROUGH 37-51-303, 37-51-305,
13 37-51-306, 37-51-308, 37-51-309, 37-51-312, 37-51-321
14 THROUGH 37-51-323, AND 37-51-401, MCA."

15
16 STATEMENT OF INTENT

17 A statement of intent is required for this bill because
18 it delegates rulemaking authority of the board of realty
19 regulation to provide for the licensure and regulation of
20 real estate property managers and leasing agents.

21 It is the intent of the legislature that the board have
22 general authority to adopt rules to implement and enforce
23 the licensing procedure, including specific authority to
24 adopt rules regarding the procedure for processing license
25 applications and issuing licenses, administering

1 examinations, setting criteria for grading examinations,
2 establishing disciplinary standards for licensees, and
3 establishing procedures for investigating complaints against
4 licensees.

5 It is the intent of the legislature that the board have
6 authority to set and modify fees commensurate with the costs
7 of licensing and regulating the occupations of property
8 manager and leasing agent.

9
10 WHEREAS, the Legislature of the State of Montana finds
11 that a person who manages real estate for rent or lease for
12 others is presently required to be licensed as and meet the
13 qualifications of a real estate broker; and

14 WHEREAS, the Legislature finds that the qualifications
15 for licensure as a real estate broker include and
16 concentrate on experience and knowledge in sales of real
17 estate for others; and

18 WHEREAS, the Legislature finds that persons who manage
19 real estate for rent or lease for others are not involved in
20 the sales of real estate for others.

21 THEREFORE, the Legislature finds it appropriate to
22 allow persons who manage real estate for rent or lease for
23 others to become licensed under qualifications other than
24 those presently required of a real estate broker or salesman
25 and to continue to allow real estate brokers to manage real

1 estate for rent or lease for others without an additional
2 license.

3
4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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

6 **"37-51-102. Definitions.** Unless the context requires
7 otherwise, in this chapter the following definitions apply:

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

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

12 (3) "Broker" includes an individual who for another or
13 for a fee, commission, or other valuable consideration or
14 who with the intent or expectation of receiving the same
15 negotiates or attempts to negotiate the listing, sale,
16 purchase, rental, exchange, or lease of real estate or of
17 the improvements thereon or collects rents or attempts to
18 collect rents or advertises or holds himself out as engaged
19 in any of the foregoing activities. The term "broker" also
20 includes an individual employed by or on behalf of the owner
21 or lessor of real estate to conduct the sale, leasing,
22 subleasing, or other disposition thereof at a salary or for
23 a fee, commission, or any other consideration. The term
24 "broker" also includes an individual who engages in the
25 business of charging an advance fee or contracting for

1 collection of a fee in connection with a contract by which
2 he undertakes primarily to promote the sale, lease, or other
3 disposition of real estate in this state through its listing
4 in a publication issued primarily for this purpose or for
5 referral of information concerning real estate to brokers,
6 or both, and any person who aids, attempts, or offers to
7 aid, for a fee, any person in locating or obtaining any real
8 estate for purchase or lease.

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

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

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

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

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

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

25 (c) the franchisee is required to pay, directly or

1 indirectly, a fee for the right to operate under the
2 agreement.

3 (8) "Lease" includes sublease, rent, hiring, and any
4 like term used to describe a transfer of possession of real
5 estate without the transfer of title to the real estate.

6 (9) "Leasing agent" means an individual who, for a
7 salary, commission, or compensation of any kind, is
8 associated, either directly or indirectly, regularly or
9 occasionally, with a property manager to lease real estate.

10 ~~(8)~~(10) "Person" includes individuals, partnerships,
11 associations, and corporations, foreign and domestic, except
12 that when referring to a person licensed under this chapter,
13 it means an individual.

14 (11) "Property management firm" means a property
15 management business operated by a property manager.

16 (12) "Property manager" includes an individual who:

17 (a) for a fee, commission, or other valuable
18 consideration or with the intent or expectation of receiving
19 the same negotiates or attempts to negotiate for another
20 person the lease of real estate or the improvements on real
21 estate, collects rents or attempts to collect rents, or
22 advertises or holds himself out as engaged in any of the
23 foregoing activities;

24 (b) is employed by or on behalf of the owner or lessor
25 of real estate to conduct the leasing of real estate for a

1 salary;

2 (c) engages in the business of charging an advance fee
3 or contracting for collection of a fee in connection with a
4 contract by which he undertakes to promote leasing in this
5 state through listing in a publication issued:

6 (i) primarily for this purpose;

7 (ii) for the referral of information concerning real
8 estate to property managers; or

9 (iii) for both of the purposes referred to in
10 subsections (12)(c)(i) and (12)(c)(ii).

11 (13) "Property manager associate" means a property
12 manager who associates with a property manager owner and
13 does not own an interest in a property management firm.

14 (14) "Property manager owner" means a property manager
15 who owns or has a financial interest in a property
16 management firm.

17 ~~(9)~~(15) "Real estate" includes leaseholds as well as
18 any other interest or estate in land, whether corporeal,
19 incorporeal, freehold, or nonfreehold and whether the real
20 estate is situated in this state or elsewhere.

21 ~~(10)~~(16) "Salesman" includes an individual who for a
22 salary, commission, or compensation of any kind is
23 associated, either directly, indirectly, regularly, or
24 occasionally, with a real estate broker to sell, purchase,
25 or negotiate for the sale, purchase, exchange, or renting of

1 real estate."

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

3 "37-51-103. Exemptions. (1) A Except as provided in
4 this section, a person who performs a single act performed
5 for a commission or compensation of any kind in the buying,
6 selling, exchanging, leasing, or renting of real estate or
7 in negotiating therefor for others,--except--as--hereinafter
8 specified,--shall--constitute--the--person--performing--any--of
9 such-acts is acting as a real estate broker or real estate
10 salesman.

11 (2) Except as provided in this section, a person who
12 performs a single act for a commission or for compensation
13 of any kind in the leasing of real estate or in negotiating
14 a lease for others is acting as a real estate property
15 manager or leasing agent.

16 (3) However, The the provisions of this chapter,
17 however,--shall--not:

18 {1}(a) do not apply to any person who, as owner or
19 lessor, shall--perform performs any of the aforesaid acts
20 with reference to property owned or leased by himself or to
21 an auctioneer employed by the owner or lessor to aid and
22 assist in conducting a public sale held by such owner or
23 lessor;

24 {2}(b) do not apply to any person acting as
25 attorney-in-fact under the duly executed power of attorney

1 from the owner of any real estate authorizing the final
2 consummation of any contract for the purchase, sale,
3 exchange, renting, or leasing of any real estate;

4 {3}(c) may not be construed to include in any way the
5 services rendered by any attorney at law in the performance
6 of his duty as such attorney at law;

7 {4}(d) do not apply to any person duly appointed by a
8 court for purpose of evaluation or appraising an estate in a
9 probate matter;

10 {5}(e) may not be held to include, while acting as
11 such, a receiver, a trustee in bankruptcy, an administrator
12 or executor, any person selling real estate under order of
13 any court, a trustee under a trust agreement, deed of trust,
14 or will, or an auctioneer employed by a receiver, trustee in
15 bankruptcy, administrator, executor, or trustee to aid and
16 assist in conducting a public sale held by any such officer;
17 {6}(f) do not apply to public officials in the conduct
18 of their official duties;

19 {7}(g) do not apply to any person, partnership,
20 association, or corporation, foreign or domestic, performing
21 any act with respect to prospecting, leasing, drilling, or
22 operating land for hydrocarbons and hard minerals or
23 disposing of any hydrocarbons, hard minerals, or mining
24 rights therein, whether upon a royalty basis or otherwise;
25 or and

1 ~~†8†(h)~~ do not apply to persons acting as managers of
2 housing complexes for low-income persons, which are
3 subsidized, directly or indirectly, by this state or an
4 agency or subdivision thereof or by the government of the
5 United States or an agency thereof."

6 **Section 3.** Section 37-51-301, MCA, is amended to read:

7 "37-51-301. License required -- limited to persons.

8 (1) (a) It is unlawful for a person to engage in or conduct,
9 directly or indirectly, or to advertise or hold himself out
10 as engaging in or conducting the business or acting in the
11 capacity of a real estate broker, ~~or a real estate salesman,~~
12 property manager, or leasing agent within this state without
13 a license ~~as a broker or salesman~~ or otherwise complying
14 with this chapter.

15 (b) A real estate broker may act as a property manager
16 for all purposes of this chapter without being licensed as a
17 property manager and without meeting any qualifications in
18 addition to those required for licensure as a real estate
19 broker.

20 (2) (a) Corporations, partnerships, and associations
21 may not be licensed under this chapter.

22 (b) A corporation or a partnership may act as a real
23 estate broker if every corporate officer and every partner
24 performing the functions of a "broker", as defined in
25 37-51-102, is licensed as a broker.

1 (c) A corporation or a partnership may act as a
2 property manager if every corporate officer and every
3 partner performing the functions of a property manager is
4 licensed as a property manager.

5 (d) All officers of a corporation or all members of a
6 partnership acting as a broker or property manager are in
7 violation of this chapter unless there is full compliance
8 with this subsection section."

9 **Section 4.** Section 37-51-302, MCA, is amended to read:

10 "37-51-302. Broker~~---or---salesman---license~~ License --
11 qualifications of applicant. (1) (a) Licenses may be granted
12 only to individuals considered by the board to be of good
13 repute and competent to transact the business of a broker,
14 or salesman, property manager, or leasing agent in a manner
15 as to safeguard the interests of the public.

16 (b) The board shall require information from an
17 applicant that it considers necessary to determine his
18 honesty, trustworthiness, and competency.

19 (2) An applicant for a broker's license shall:

20 (a) must be at least 18 years of age;

21 (b) must have graduated from an accredited high school
22 or completed an equivalent education as determined by the
23 board;

24 (c) must have been actively engaged as a licensed real
25 estate salesman for a period of 2 years or have had

1 experience or special education equivalent to that which a
2 licensed real estate salesman ordinarily would receive
3 during this 2-year period as determined by the board, except
4 that if the board finds that an applicant could not obtain
5 employment as a licensed real estate salesman because of
6 conditions existing in the area where he resides, the board
7 may waive this experience requirement;

8 (d) shall file an application for license with the
9 department; and

10 (e) shall furnish written evidence that he has
11 completed 60 classroom or equivalent hours (in addition to
12 those required to secure a salesman's license) in a course
13 of study approved by the board and taught by instructors
14 approved by the board and has satisfactorily passed an
15 examination dealing with the material taught in each course.
16 The course of study must include the subjects of real estate
17 principles, real estate law, real estate finance, and
18 related topics.

19 ~~{3}--The--board--shall--require--information--it--considers~~
20 ~~necessary--from--an--applicant--to--determine--his--honesty,~~
21 ~~trustworthiness,--and--competency.~~

22 ~~{4}{3}~~ (a) An applicant for a salesman's license
23 ~~shall:~~

24 (i) must be at least 18 years of age;

25 (ii) must have received credit for completion of 2

1 years of full curriculum study at an accredited high school
2 or completed an equivalent education as determined by the
3 board;

4 (iii) shall file an application for license with the
5 department; and

6 (iv) shall furnish written evidence that he has
7 completed 60 classroom or equivalent hours in a course of
8 study approved by the board and taught by instructors
9 approved by the board and has satisfactorily passed an
10 examination dealing with the material taught in each course.
11 The course of study must include the subjects of real estate
12 principles, real estate law and ethics, real estate finance,
13 and related topics.

14 (b) His application ~~shall~~ must be accompanied by the
15 recommendation of the licensed broker by whom the applicant
16 will be employed or placed under contract, certifying that
17 the applicant is of good repute and that the broker will
18 actively supervise and train the applicant during the period
19 the requested license remains in effect.

20 (4) An applicant for a property manager's license:

21 (a) must be at least 18 years of age;

22 (b) must have graduated from an accredited high school
23 or completed an equivalent education as determined by the
24 board;

25 (c) must have been actively engaged as a leasing agent

1 for a period of 2 years or have had experience or continuing
 2 education equivalent to that which a leasing agent
 3 ordinarily would receive during a 2-year period as
 4 determined by the board. If the board finds that an
 5 applicant could not obtain employment as a leasing agent
 6 because of conditions existing in the area where he resides,
 7 the board may waive this experience requirement.

8 (d) shall file an application for license with the
 9 department; and

10 (e) shall furnish written evidence that he has
 11 completed 20 classroom or equivalent hours (in addition to
 12 those required to secure a leasing agent's license) in a
 13 course of study approved by the board and taught by
 14 instructors approved by the board and has satisfactorily
 15 passed an examination dealing with the material taught in
 16 each course. The course of study must include the subjects
 17 of real estate leasing principles, real estate leasing law,
 18 and related topics.

19 (5) (a) An applicant for a leasing agent's license:

20 (i) must be at least 18 years of age;

21 (ii) must have received credit for completion of 2
 22 years of full curriculum study at an accredited high school
 23 or completed an equivalent education as determined by the
 24 board;

25 (iii) shall file an application for license with the

1 department; and

2 (iv) shall furnish written evidence that he has
 3 completed 20 classroom or equivalent hours in a course of
 4 study approved by the board and taught by instructors
 5 approved by the board and has satisfactorily passed an
 6 examination dealing with the material taught in each course.
 7 The course of study must include the subjects of real estate
 8 leasing principles, real estate leasing law, and related
 9 topics.

10 (b) The application must be accompanied by the
 11 recommendation of the property manager who will be employing
 12 or contracting with the applicant, certifying that the
 13 applicant is of good repute and that the property manager
 14 will actively supervise and train the applicant during the
 15 period the license remains in effect.

16 (5)(6) The department shall issue to each licensed
 17 broker-and-to-each-licensed-salesman licensee a license and
 18 a pocket card in a form and size as the board prescribes.

19 (6)(7) A broker's license must indicate whether the
 20 broker is a broker owner or a broker associate. A property
 21 manager's license must indicate whether the licensee is a
 22 property manager owner or property manager associate."

23 **Section 5.** Section 37-51-303, MCA, is amended to read:

24 **"37-51-303. Broker-----or-----salesman-----examination-**
 25 **Examinations. (1) In addition to proof of honesty,**

trustworthiness, and good reputation, an applicant whose application is then pending shall satisfactorily pass a written examination prepared by or under the supervision of the board. The examination shall be given at least once each 6 months and at places within the state the board prescribes.

(2) (a) The examination for a salesman's license ~~shall~~ must include:

(i) business ethics, writing, composition, arithmetic, elementary principles of land economics and appraisal;

(ii) a general knowledge of the statutes of this state relating to deeds, mortgages, contracts of sale, agency, brokerage, and of this chapter.

(b) If the applicant passes one subject portion of the examination, (2)(a)(i) or (2)(a)(ii), he ~~shall~~ may not be required to repeat that portion of the examination if he passes the remaining portion within 12 months.

(3) The examination for a broker's license ~~shall~~ may be of a more exacting nature and scope and more stringent than the examination for a salesman's license.

(4) (a) The examination for a leasing agent's license must include:

(i) business ethics, writing, composition, and arithmetic;

(ii) a general knowledge of the statutes of this state

relating to leases, contracts for lease, agency, and this chapter; and

(iii) the provisions of the Montana Residential Landlord and Tenant Act of 1977, Title 70, chapter 24.

(b) If the applicant passes one portion of the examination, (4)(a)(i), (4)(a)(ii), or (4)(a)(iii), he may not be required to repeat that portion of the examination if he passes the remaining portion or portions within 12 months.

(5) The examination for a property manager's license must be of a more exacting nature and scope and more stringent than the examination for a leasing agent's license."

Section 6. Section 37-51-305, MCA, is amended to read:

"37-51-305. License -- form -- delivery -- display -- pocket card. (1) The board shall prescribe the form of license. A license shall bear the seal of the board.

(2) (a) The license of a real estate salesman ~~shall~~ must be delivered or mailed to the real estate broker with whom the real estate salesman is associated and ~~shall~~ must be kept in the custody and control of the broker.

(b) The license of a leasing agent must be delivered or mailed to the real estate broker or property manager with whom the leasing agent is associated and must be kept in the custody and control of the broker or property manager.

(3) A broker or property manager shall display his own license conspicuously in his place of business.

(4) The department shall annually prepare and deliver a pocket card:

(a) certifying that the person whose name appears is a registered real estate broker, or a registered real estate salesman, property manager, or leasing agent;

(b) stating the period for which fees have been paid; and,

(c) stating:

(i) on a real estate salesman's cards-only card, the name and address of the broker with whom he is associated; or

(ii) on a leasing agent's card, the name and address of the broker or property manager with whom he is associated."

Section 7. Section 37-51-306, MCA, is amended to read:

"37-51-306. Transactions with nonresidents and with nonlicensed brokers--~~or--salesmen persons~~ -- reciprocity -- consent to legal process. (1) (a) Except as provided in subsection (1)(b), it is unlawful:

(i) for a licensed broker to employ or compensate, directly or indirectly, a person for performing the acts regulated by this chapter who is not a licensed broker or licensed salesman; or

(ii) for a licensed property manager to employ or compensate, directly or indirectly, a person for performing the acts regulated by this chapter who is not a licensed property manager or leasing agent.

(b) ~~However, a~~ A licensed broker or licensed property manager may pay a commission to a licensed broker or licensed property manager of another state if the nonresident broker has not conducted and does not conduct in this state a service for which a fee, compensation, or commission is paid. This subsection does not limit ~~the next~~ the provisions of subsection (2).

(2) A nonresident of this state actively engaged in the real estate business who maintains a place of business in another state and who has been licensed in the other state to conduct this business in that state may obtain a license as a broker or property manager in this state by complying with this chapter. However, this section applies only to brokers and property managers of those other states which offer the same privileges to the ~~licensed-brokers~~ licensees of this state. The nonresident licensee need not maintain a place of business in this state. The board may authorize the department to license a nonresident broker without examination if he files with the department an authorized or certified copy of the license issued to the nonresident for conducting this business in another state

and pays to the department the same license fee as is required for obtaining a broker's license in this state. The board may in its discretion refuse to authorize the department to issue a broker's license to an applicant who is not a resident of this state.

(3) A nonresident broker or property manager shall file an irrevocable written consent that legal actions arising out of a commenced or completed transaction may be commenced against the nonresident broker in a county of this state which may be appropriate and designated by Title 25, chapter 2, part 1. The consent shall provide that service of summons in this action may be served on the department for and on behalf of the nonresident, ~~broker, and this~~ This service is sufficient to give the court jurisdiction over the nonresident broker and his salesman or agent or over the nonresident property manager and his leasing agent conducting a transaction in a county. The consent ~~shall~~ must be acknowledged and, if made by a corporation, ~~shall~~ must be authenticated by its seal."

Section 8. Section 37-51-308, MCA, is amended to read:

"37-51-308. Broker's office -- notice to department of change of address. (1) A resident licensed--broker licensee shall maintain a fixed office in this state. The original license of the broker or property manager and the original license of each salesman licensee associated or under

contract with the broker ~~shall~~ or property manager must be prominently displayed in the office. The address of the office and any branch office ~~shall~~ must be designated on the broker's or property manager's license.

(2) In case of removal from the designated address, the licensee shall notify the department before removal or within 10 days thereafter, designating the new location of ~~this~~ the office and paying the required fee, whereupon a license for the new location must be issued for the unexpired period."

Section 9. Section 37-51-309, MCA, is amended to read:

"37-51-309. Broker--owner Owner -- broker associate -- salesman -- leasing agent -- notice to department of change of association. (1) (a) A salesman may not be associated with or under contract to more than one licensed broker owner, nor may he perform services for a broker other than the one designated on the license issued to the salesman.

(b) A leasing agent may not be associated with or under contract to more than one licensed broker owner or property manager owner, nor may he perform services for a broker or property manager other than the one designated on the license issued to the leasing agent.

(2) (a) When If a licensed salesman desires to change his association or contractual relationship from one licensed broker to another, or if a licensed leasing agent

1 desires to change his association or contractual
 2 relationship from one licensed broker or property manager to
 3 another, he shall:

4 (i) notify the department promptly in writing of these
 5 facts; and

6 (ii) pay the required fee, ~~and return his license and~~
 7 ~~pocket card, and a new license and pocket card shall be~~
 8 ~~issued. No salesman shall directly or indirectly work~~

9 (b) A salesman may not work directly or indirectly
 10 for or with a broker owner and a leasing agent may not work
 11 directly or indirectly for a broker owner or property
 12 manager until he has been issued a license to work for or
 13 with that broker owner or manager.

14 (c) On termination of a salesman's or leasing agent's
 15 association or contractual relationship, he shall surrender
 16 his license and pocket card to his broker the owner, who
 17 shall return them to the department for cancellation.

18 (d) If a licensee alters his contractual relationship,
 19 the department shall issue a new license and a new pocket
 20 card.

21 (3) Only one license ~~shall~~ may be issued to a salesman
 22 or leasing agent to be in effect at one time.

23 (4) A broker or property manager associate may not be
 24 associated with more than one broker owner."

25 **Section 10.** Section 37-51-312, MCA, is amended to

1 read:

2 "37-51-312. No taxation by municipality. No license
 3 fee or tax may be imposed on a ~~real-estate-broker--or~~
 4 ~~salesman licensee under this chapter~~ by a municipality or
 5 any other political subdivision of the state."

6 **Section 11.** Section 37-51-321, MCA, is amended to
 7 read:

8 "37-51-321. Revocation or suspension of license --
 9 initiation of proceedings -- grounds. The board may on its
 10 own motion and shall on the sworn complaint in writing of a
 11 person investigate the actions of a ~~real-estate-broker--or--a~~
 12 ~~real-estate--salesman licensee~~, subject to 37-1-101 and
 13 37-1-121, and may revoke or suspend a license issued under
 14 this chapter when the ~~broker--or--salesman licensee~~ has been
 15 found guilty by a majority of the board of any of the
 16 following practices:

17 (1) intentionally misleading, untruthful, or
 18 inaccurate advertising, whether printed or by radio,
 19 display, or other nature, which advertising in any material
 20 particular or in any material way misrepresents any
 21 property, terms, values, policies, or services of the
 22 business conducted. A broker or property manager who
 23 operates under a franchise agreement engages in misleading,
 24 untruthful, or inaccurate advertising if in using the
 25 franchise name he does not incorporate his own name in the

1 franchise name or logotype or does not conspicuously
2 display, on his letterhead and other printed materials
3 available to the public, a statement that his office is
4 independently owned and operated. The board may not adopt
5 advertising standards more stringent than those set forth in
6 this subsection.

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

9 (3) pursuing a continued and flagrant course of
10 misrepresentation or making false promises through agents,
11 or salesmen, or leasing agents, or any medium of advertising
12 or otherwise;

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

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

19 (6) accepting, giving, or charging an undisclosed
20 commission, rebate, or profit on expenditures made for a
21 principal;

22 (7) acting in a dual capacity of broker or property
23 manager and undisclosed principal in a transaction;

24 (8) guaranteeing, authorizing, or permitting a person
25 to guarantee future profits which may result from the

1 resale, lease, sublease, or like disposition of real
2 property;

3 (9) offering real property for sale or lease without
4 the knowledge and consent of the owner or his authorized
5 agent or on terms other than those authorized by the owner
6 or his authorized agent;

7 (10) inducing a party to a contract of sale or lease to
8 break the contract for the purpose of substituting a new
9 contract with another principal;

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

14 (12) negotiating a sale, exchange, or lease of real
15 property directly with an owner or lessee if he knows that
16 the owner has a written, outstanding contract in connection
17 with the property granting an exclusive agency to another
18 broker;

19 (13) soliciting, selling, or offering for sale or lease
20 real property by conducting lotteries for the purpose of
21 influencing a purchaser or prospective purchaser or lessee
22 of real property;

23 (14) representing or attempting to represent a real
24 estate broker or property manager other than the employer
25 without the express knowledge or consent of the employer;

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

(16) paying a commission in connection with a real estate sale, lease, or transaction to a person who is not licensed ~~as-a-real-estate-broker--or--real--estate--salesman~~ under this chapter;

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

(18) failing, if a salesman or leasing agent, to place, as soon after receipt as is practicably possible, in the custody of his registered broker or property manager, deposit money or other money entrusted to him ~~as-salesman~~ by a person;

(19) demonstrating his unworthiness or incompetency to act as a ~~broker-or-salesman~~ licensee; or

(20) ~~conviction~~ being convicted of a felony."

Section 12. Section 37-51-322, MCA, is amended to read:

"37-51-322. Right to notice and hearing. When If the board has investigated an application for a ~~real--estate broker's--or--salesman's~~ license or, subject to 37-1-101 and 37-1-121, investigated the actions of ~~a-real--estate--broker or--salesman~~ an applicant or licensee on the sworn complaint

in writing of a person or on its own motion and the investigation has revealed reasonable grounds for denying the application or reasonable indication of a violation of this chapter as cause for revoking or suspending a license issued to a ~~real-estate-broker--or--salesman~~ licensee, the board shall, before denying the application or revoking or suspending the license, give notice and set the matter for hearing."

Section 13. Section 37-51-323, MCA, is amended to read:

"37-51-323. Penalties -- criminal -- civil. (1) Any ~~individual person~~ acting ~~as-a-broker-or-salesman~~ without a license or while his license is suspended or revoked or any person who violates any provision of this chapter ~~shall-be~~ is guilty of a misdemeanor, ~~and-upon~~ Upon conviction thereof by a district court of this state, ~~shall-be~~ the person is punishable by a fine of not less than \$100 or more than \$500 or by imprisonment for a term not to exceed 90 days, or both. Upon conviction of a second or subsequent violation, the person ~~shall-be~~ is punishable by a fine of not less than \$500 or more than \$2,000 or by imprisonment for a term not to exceed 6 months, or both.

(2) In case any person in a civil action is found guilty of having received any money or the equivalent thereof as a fee, commission, compensation, or profit by or

1 in consequence of a violation of any provision of this
2 chapter, he ~~shall-in-addition-be~~ is also liable to a penalty
3 of not less than the amount of the sum of money so received
4 and not more than three times the sum so received, as may be
5 determined by the court, ~~7-which~~ This civil penalty may be
6 recovered in any court of competent jurisdiction by any
7 person aggrieved."

8 **Section 14.** Section 37-51-401, MCA, is amended to
9 read:

10 "37-51-401. Action for compensation limited to
11 ~~licensed--broker-or-salesman~~ licensee. Any person engaged in
12 the business of or acting in the capacity of a ~~real--estate~~
13 ~~broker--or--real--estate-salesman~~ licensee within this state
14 ~~shall-not-be-permitted-to~~ may not bring or maintain any
15 action in the courts for the collection of compensation for
16 the sale or lease or otherwise disposing of real estate
17 without first alleging and proving that such person was a
18 duly licensed ~~real-estate-broker-or-real-estate-salesman~~ or
19 authorized to act ~~as-a-broker~~ under the provisions of this
20 chapter at the time the alleged cause of action or claim
21 arose."

22 **NEW SECTION. Section 15.** Extension of authority. Any
23 existing authority to make rules on the subject of the
24 provisions of [this act] is extended to the provisions of
25 [this act].

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB376, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

SB376 would provide for licensure and regulation of property managers and leasing agents, allowing persons to become licensed as property managers or leasing agents under qualifications other than those required of a real estate broker and allowing brokers to act as property managers without securing an additional license.

ASSUMPTIONS:

1. There will be 500 new licensees in FY90 and 50 new licensees in FY91 at an initial cost of \$15.55 each and a renewal cost of \$10 per year thereafter.
2. There will need to be a rule hearing taking eight hours at \$25 per hour, plus five pages of rules and associated costs.
3. There will be one additional two-day board meeting attended by all five members in FY90 and in FY91 to develop and implement the program. Board members travel an average of 350 miles each to board meetings.
4. The board will contract the new examinations and will charge of fee of \$30 for each examination.
5. The Professional and Occupational Licensing Bureau support staff and overhead will continue to equal 41% of the board's direct costs.
5. The executive budget is used under current law below.

FISCAL IMPACT:

| <u>Expenditures:</u> | <u>FY90</u> | | | <u>FY91</u> | | |
|-------------------------|----------------|-----------------|------------|----------------|-----------------|------------|
| | Current Law | Proposed Law | Difference | Current Law | Proposed Law | Difference |
| Dept. of Commerce, POL | | | | | | |
| Personal Services | \$ 66,933 | \$ 67,433 | \$ 500 | \$ 66,974 | \$ 67,474 | \$ 500 |
| Operating Expenses | 174,586 | 196,865 | 22,279 | 175,228 | 180,551 | 5,323 |
| Total | \$241,519 | \$264,298 | \$22,779 | \$242,202 | \$248,025 | \$5,823 |
| <u>Funding:</u> | | | | | | |
| State Special Revenue | \$241,519 | \$264,298 | \$22,779 | \$242,202 | \$248,025 | \$5,823 |
| <u>Revenue:</u> | | | | | | |
| POL License & Exam Fees | \$253,700 | \$276,479 | \$22,779 | \$253,700 | \$260,750 | \$7,050 |
| Administrative Fees | 21,000 | 21,000 | -0- | 21,000 | 21,000 | -0- |
| Photocopy Fees | 3,500 | 3,500 | -0- | 3,500 | 3,500 | -0- |
| Total | \$278,200 | \$300,979 | \$22,779 | \$278,200 | \$285,250 | \$7,050 |

TECHNICAL NOTES:

Due to the number of bills which may increase the duties of the POL Bureau, the entire group of added board responsibilities may require additional staff towards the end of the session when all can be considered together.



DATE 2/15/89

RAY SHACKLEFORD, BUDGET DIRECTOR
OFFICE OF BUDGET AND PROGRAM PLANNING



DATE 2/15/89

AL BISHOP, PRIMARY SPONSOR

Fiscal Note for SB376, as introduced

SB 376