

SENATE BILL NO. 411
INTRODUCED BY BIANCHI

IN THE SENATE

FEBRUARY 16, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON BUSINESS & INDUSTRY.
	FIRST READING.
FEBRUARY 18, 1993	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
FEBRUARY 19, 1993	PRINTING REPORT.
FEBRUARY 20, 1993	SECOND READING, DO PASS.
FEBRUARY 22, 1993	ENGROSSING REPORT.
	THIRD READING, PASSED. AYES, 48; NOES, 0.
	TRANSMITTED TO HOUSE.

IN THE HOUSE

FEBRUARY 23, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON BUSINESS & ECONOMIC DEVELOPMENT.
	FIRST READING.
MARCH 9, 1993	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
MARCH 11, 1993	SECOND READING, CONCURRED IN.
MARCH 15, 1993	THIRD READING, CONCURRED IN. AYES, 88; NOES, 11.
MARCH 16, 1993	RETURNED TO SENATE WITH AMENDMENTS.

IN THE SENATE

MARCH 18, 1993	RECEIVED FROM HOUSE.
	SECOND READING, AMENDMENTS CONCURRED IN.

MARCH 19, 1993

THIRD READING, AMENDMENTS
CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 Senate BILL NO. 411
2 INTRODUCED BY Brundage
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING A REAL ESTATE
5 BROKER OPERATING UNDER A FRANCHISE AGREEMENT TO DISCLOSE THE
6 TRADE NAME, IF ANY, BY WHICH THE OFFICE IS KNOWN; REQUIRING
7 A BROKER WHO IS ALSO THE PRINCIPAL TO DISCLOSE THAT FACT IN
8 ADVERTISING CONCERNING THE PROPERTY; AND AMENDING SECTION
9 37-51-321, MCA."

10

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

12 **Section 1.** Section 37-51-321, MCA, is amended to read:

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

22 {1}(a) intentionally misleading, untruthful, or
23 inaccurate advertising, whether printed or by radio,
24 display, or other nature, which advertising in any material
25 particular or in any material way misrepresents any

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

13 {2}(b) making any false promises of a character likely
14 to influence, persuade, or induce;

15 {3}(c) pursuing a continued and flagrant course of
16 misrepresentation or making false promises through agents or
17 salesmen salespersons or any medium of advertising or
18 otherwise;

19 {4}(d) use of the term "realtor" by a person not
20 authorized to do so or using another trade name or insignia
21 of membership in a real estate organization of which the
22 licensee is not a member;

23 {5}(e) failing to account for or to remit money coming
24 into his the broker's or salesperson's possession belonging
25 to others;

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

4 †7†(g) acting in a dual capacity of broker and
5 undisclosed principal in a transaction, including failing to
6 disclose in advertisements for real property the person's
7 dual capacity as broker and principal;

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

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

15 †10†(j) inducing a party to a contract of sale or lease
16 to break the contract for the purpose of substituting a new
17 contract with another principal;

18 †11†(k) accepting employment or compensation for
19 appraising real property contingent on the reporting of a
20 predetermined value or issuing an appraisal report on real
21 property in which he the broker or salesperson has an
22 undisclosed interest;

23 †12†(l) negotiating a sale, exchange, or lease of real
24 property directly with an owner or lessee if he the broker
25 or salesperson knows that the owner has a written,

1 outstanding contract in connection with the property
2 granting an exclusive agency to another broker;

3 †13†(m) soliciting, selling, or offering for sale real
4 property by conducting lotteries for the purpose of
5 influencing a purchaser or prospective purchaser of real
6 property;

7 †14†(n) representing or attempting to represent a real
8 estate broker other than the employer without the express
9 knowledge or consent of the employer;

10 †15†(o) failing voluntarily to furnish a copy of a
11 written instrument to a party executing it at the time of
12 its execution;

13 †16†(p) paying a commission in connection with a real
14 estate sale or transaction to a person who is not licensed
15 as a real estate broker or real estate salesman salesperson
16 under this chapter;

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

20 †18†(r) failing, if a salesman salesperson, to place,
21 as soon after receipt as is practicably possible, in the
22 custody of his the salesperson's registered broker, deposit
23 money or other money entrusted to him the salesperson as
24 salesman in that capacity by a person;

25 †19†(s) demonstrating his unworthiness or incompetency

1 to act as a broker or ~~salesman~~ salesperson; or
2 ~~(20)~~(t) conviction of a felony.
3 (2) It is unlawful for a broker or salesperson to
4 openly advertise property, whether by means of printed
5 material, radio, television, or display or by other means,
6 unless the broker or salesperson has a signed listing
7 agreement from the owner of the property. The listing
8 agreement must be valid as of the date of advertisement. The
9 license of a broker or salesperson who violates this
10 subsection may be suspended or revoked as provided in
11 subsection (1)."

-End-

APPROVED BY COMM. ON
BUSINESS & INDUSTRY

SENATE BILL NO. 411

INTRODUCED BY BIANCHI

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING A REAL ESTATE
BROKER OPERATING UNDER A FRANCHISE AGREEMENT TO DISCLOSE THE
TRADE NAME, IF ANY, BY WHICH THE OFFICE IS KNOWN; REQUIRING
A BROKER WHO IS ALSO THE PRINCIPAL TO DISCLOSE THAT FACT IN
ADVERTISING CONCERNING THE PROPERTY; AND AMENDING SECTION
37-51-321, MCA."

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

Section 1. Section 37-51-321, MCA, is amended to read:

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

(a) intentionally misleading, untruthful, or
inaccurate advertising, whether printed or by radio,
display, or other nature, which advertising in any material
particular or in any material way misrepresents any

property, terms, values, policies, or services of the
business conducted. A broker who operates under a franchise
agreement engages in misleading, untruthful, or inaccurate
advertising if in using the franchise name he the broker
does not incorporate his the broker's own name in the
franchise name or logotype or does not conspicuously
display, on his the broker's letterhead and other printed
materials available to the public, a statement that his the
broker's office is independently owned and operated and the
trade name, if any, by which the office is known. The board
may not adopt advertising standards more stringent than
those set forth in this subsection.

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

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

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

(5)(e) failing to account for or to remit money coming
into his the broker's or salesperson's possession belonging
to others;

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

4 †7†(g) acting in a dual capacity of broker and
5 undisclosed principal in a transaction, including failing to
6 disclose in advertisements for real property the person's
7 dual capacity as broker and principal;

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

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

15 †10†(j) inducing a party to a contract of sale or lease
16 to break the contract for the purpose of substituting a new
17 contract with another principal;

18 †11†(k) accepting employment or compensation for
19 appraising real property contingent on the reporting of a
20 predetermined value or issuing an appraisal report on real
21 property in which he the broker or salesperson has an
22 undisclosed interest;

23 †12†(l) negotiating a sale, exchange, or lease of real
24 property directly with an owner or lessee if he the broker
25 or salesperson knows that the owner has a written,

1 outstanding contract in connection with the property
2 granting an exclusive agency to another broker;

3 †13†(m) soliciting, selling, or offering for sale real
4 property by conducting lotteries for the purpose of
5 influencing a purchaser or prospective purchaser of real
6 property;

7 †14†(n) representing or attempting to represent a real
8 estate broker other than the employer without the express
9 knowledge or consent of the employer;

10 †15†(o) failing voluntarily to furnish a copy of a
11 written instrument to a party executing it at the time of
12 its execution;

13 †16†(p) paying a commission in connection with a real
14 estate sale or transaction to a person who is not licensed
15 as a real estate broker or real estate salesman salesperson
16 under this chapter;

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

20 †18†(r) failing, if a salesman salesperson, to place,
21 as soon after receipt as is practicably possible, in the
22 custody of his the salesperson's registered broker, deposit
23 money or other money entrusted to him the salesperson as
24 salesman in that capacity by a person;

25 †19†(s) demonstrating his unworthiness or incompetency

1 to act as a broker or ~~salesman~~ salesperson; or
2 ~~†20†(t)~~ conviction of a felony.
3 (2) It is unlawful for a broker or salesperson to
4 openly advertise property BELONGING TO OTHERS, whether by
5 means of printed material, radio, television, or display or
6 by other means, unless the broker or salesperson has a
7 signed listing agreement from the owner of the property. The
8 listing agreement must be valid as of the date of
9 advertisement. The license of a broker or salesperson who
10 violates this subsection may be suspended or revoked as
11 provided in subsection (1)."

-End-

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3 (2) (A) It is unlawful for a broker or salesperson to
4 openly advertise property BELONGING TO OTHERS, whether by
5 means of printed material, radio, television, or display or
6 by other means, unless the broker or salesperson has a
7 signed listing agreement from the owner of the property. The
8 listing agreement must be valid as of the date of
9 advertisement.

10 (B) THE PROVISIONS OF SUBSECTION (2)(A) DO NOT PREVENT
11 A BROKER OR SALESPERSON FROM INCLUDING INFORMATION ON
12 PROPERTIES LISTED BY OTHER BROKERS OR SALESPERSONS WHO WILL
13 COOPERATE WITH THE SELLING BROKER OR SALESPERSON IN
14 MATERIALS DISPENSED TO PROSPECTIVE CUSTOMERS.

15 (C) The license of a broker or salesperson who violates
16 this subsection (2) may be suspended or revoked as provided
17 in subsection (1)."

-End-