

1 SENATE BILL NO. 12

2 INTRODUCED BY HARP

3 BY REQUEST OF THE DEPARTMENT OF COMMERCE

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT GRANTING THE BOARD OF REALTY REGULATION THE
6 AUTHORITY TO IMPOSE ADMINISTRATIVE FINES ON LICENSEES; REQUIRING A HEARING BEFORE THE
7 FINES MAY BE IMPOSED; AND AMENDING SECTIONS 37-51-102, 37-51-321, AND 37-51-322, MCA."

8
9 STATEMENT OF INTENT

10 This bill requires a statement of intent because it grants the board of realty regulation the authority
11 to impose administrative fines for violations of certain provisions of 37-51-321 and 37-51-322.

12
13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

14
15 **Section 1.** Section 37-51-102, MCA, is amended to read:

16 **"37-51-102. Definitions.** Unless the context requires otherwise, in this chapter, the following
17 definitions apply:

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

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

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

21 (a) for another or for valuable consideration or who with the intent or expectation of receiving
22 valuable consideration negotiates or attempts to negotiate the listing, sale, purchase, rental, exchange, or
23 lease of real estate or of the improvements on real estate or collects rents or attempts to collect rents;

24 (b) is employed by or on behalf of the owner or lessor of real estate to conduct the sale, leasing,
25 subleasing, or other disposition of real estate for consideration;

26 (c) engages in the business of charging an advance fee or contracting for collection of a fee in
27 connection with a contract by which the individual undertakes primarily to promote the sale, lease, or other
28 disposition of real estate in this state through its listing in a publication issued primarily for this purpose or
29 for referral of information concerning real estate to brokers;

30 (d) makes the advertising, sale, lease, or other real estate information available by public display

1 to potential buyers and who aids, attempts, or offers to aid, for a fee, any person in locating or obtaining
2 any real estate for purchase or lease;

3 (e) aids or attempts or offers to aid, for a fee, any person in locating or obtaining any real estate
4 for purchase or lease;

5 (f) receives a fee, commission, or other compensation for referring to a licensed broker or ~~salesman~~
6 salesperson the name of a prospective buyer or seller of real property; or

7 (g) advertises or represents to the public that the individual is engaged in any of the activities
8 referred to in subsections (3)(a) through (3)(f).

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

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

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

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

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

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

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

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

22 (9) "Property manager" includes a person who for a salary, commission, or compensation of any
23 kind engages in the business of leasing, renting, subleasing, or other transfer of possession of real estate
24 belonging to others without transfer of the title to the property, pursuant to 37-51-601 and 37-51-602.

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

28 (11) ~~"Salesman"~~ "Salesperson" includes an individual who for a salary, commission, or
29 compensation of any kind is associated, either directly, indirectly, regularly, or occasionally, with a real
30 estate broker to sell, purchase, or negotiate for the sale, purchase, exchange, or renting of real estate."

1 **Section 2.** Section 37-51-321, MCA, is amended to read:

2 **"37-51-321. Revocation or suspension of license -- initiation of proceedings -- grounds.** (1) The
3 board may on its own motion and shall on the sworn complaint in writing of a person investigate the
4 actions of a real estate broker or a real estate salesperson, subject to 37-1-101 and 37-1-121,~~and.~~ The
5 board may revoke or suspend a license issued under this chapter and may impose an administrative fine
6 not to exceed \$5,000 per incident against a licensee when ~~the~~ a broker or salesperson has been found
7 guilty by a majority of the board of any of the following practices:

8 (a) intentionally misleading, untruthful, or inaccurate advertising, whether printed or by radio,
9 display, or other nature, which advertising in any material particular or in any material way misrepresents
10 any property, terms, values, policies, or services of the business conducted. A broker who operates under
11 a franchise agreement engages in misleading, untruthful, or inaccurate advertising if, in using the franchise
12 name, the broker does not incorporate the broker's own name in the franchise name or logotype or does
13 not conspicuously display, on the broker's letterhead and other printed materials available to the public, a
14 statement that the broker's office is independently owned and operated and the trade name, if any, by
15 which the office is known. The board may not adopt advertising standards more stringent than those set
16 forth in this subsection.

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

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

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

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

24 (f) accepting, giving, or charging an undisclosed commission, rebate, or profit on expenditures
25 made for a principal;

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

28 (h) guaranteeing, authorizing, or permitting a person to guarantee future profits ~~which~~ that may
29 result from the resale of real property;

30 (i) offering real property for sale or lease without the knowledge and consent of the owner or the

1 owner's authorized agent or on terms other than those authorized by the owner or the owner's authorized
2 agent;

3 (j) inducing a party to a contract of sale or lease to break the contract for the purpose of
4 substituting a new contract with another principal;

5 (k) accepting employment or compensation for appraising real property contingent on the reporting
6 of a predetermined value or issuing an appraisal report on real property in which the broker or salesperson
7 has an undisclosed interest;

8 (l) negotiating a sale, exchange, or lease of real property directly with an owner or lessee if the
9 broker or salesperson knows that the owner has a written, outstanding contract in connection with the
10 property granting an exclusive agency to another broker;

11 (m) soliciting, selling, or offering for sale real property by conducting lotteries for the purpose of
12 influencing a purchaser or prospective purchaser of real property;

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

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

17 (p) paying a commission in connection with a real estate sale or transaction to a person who is not
18 licensed as a real estate broker or real estate salesperson under this chapter;

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

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

24 (s) demonstrating unworthiness or incompetency to act as a broker or salesperson; or

25 (t) conviction of a felony.

26 (2) (a) It is unlawful for a broker or salesperson to openly advertise property belonging to others,
27 whether by means of printed material, radio, television, or display or by other means, unless the broker or
28 salesperson has a signed listing agreement from the owner of the property. The listing agreement must be
29 valid as of the date of advertisement.

30 (b) The provisions of subsection (2)(a) do not prevent a broker or salesperson from including

1 information on properties listed by other brokers or salespersons who will cooperate with the selling broker
2 or salesperson in materials dispensed to prospective customers.

3 (c) The license of a broker or salesperson who violates this subsection (2) may be suspended or
4 revoked as provided in subsection (1)."

5
6 **Section 3.** Section 37-51-322, MCA, is amended to read:

7 **"37-51-322. Right to notice and hearing.** When the board has investigated an application for a
8 real estate broker's or ~~salesman's~~ salesperson's license or, subject to 37-1-101 and 37-1-121, investigated
9 the actions of a real estate broker or ~~salesman~~ salesperson on the sworn complaint in writing of a person
10 or on its own motion and the investigation has revealed reasonable grounds for denying the application or
11 reasonable indication of a violation of this chapter as cause for revoking or suspending a license issued to
12 a real estate broker or ~~salesman~~ salesperson or for imposing an administrative fine on a licensee, the board
13 shall, before denying the application, ~~or~~ revoking or suspending the license, or fining the licensee, give
14 notice and set the matter for hearing. Any proceeds derived from fines imposed under 37-51-321 or this
15 section must be deposited in the general fund."

16
17 **NEW SECTION. Section 4. Name change -- directions to code commissioner.** Wherever the term
18 "salesman" appears in Title 37, chapter 51, or in legislation enacted by the 1995 legislature and codified
19 in Title 37, chapter 51, the code commissioner is directed to change the term to "salesperson".

20 -END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0012, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act granting the Board of Realty Regulation the authority to impose administrative fines on licensees, and requiring a hearing before the fines may be imposed.

ASSUMPTIONS:

1. It is anticipated that two formal disciplinary actions per year will result in the imposition of administrative fines at an average of \$1,000 per incident to be credited to the general fund.
2. The current budget for the Board of Realty Regulation provides for contested hearings. Therefore no additional impact on expenditures is anticipated.

FISCAL IMPACT:

Revenues:

	<u>FY96</u> <u>Difference</u>	<u>FY97</u> <u>Difference</u>
General Fund (01)	2,000	2,000

David Lewis 1-2-95
DAVID LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

John Harp
JOHN HARP, PRIMARY SPONSOR DATE
Fiscal Note for SB0012, as introduced

SB 12