

## HOUSE BILL NO. 363

INTRODUCED BY T. BERRY

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4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO THE BOARD OF  
5 REALTY REGULATION; PROVIDING THAT THE BOARD IS ATTACHED TO THE DEPARTMENT OF LABOR  
6 AND INDUSTRY ONLY FOR PLANNING AND COORDINATION PURPOSES; EXEMPTING THE BOARD OF  
7 REALTY REGULATION FROM CERTAIN DEPARTMENT OVERSIGHT; REQUIRING THE BOARD TO  
8 COORDINATE WITH VARIOUS ENTITIES ON ITS BIENNIAL BUDGET; CREATING A SPECIAL REVENUE  
9 ACCOUNT; PROVIDING A STATUTORY APPROPRIATION; ALLOWING THE BOARD TO HIRE ITS OWN  
10 STAFF; EXEMPTING BOARD EMPLOYEES FROM THE STATE CLASSIFICATION AND PAY PLAN;  
11 ALLOWING THE BOARD TO COLLECT CRIMINAL JUSTICE INFORMATION; PROVIDING RULEMAKING  
12 AUTHORITY; AMENDING SECTIONS 2-15-1757, 2-18-103, 17-7-502, 37-1-101, 37-1-130, 37-1-303, 37-51-102,  
13 37-51-201, 37-51-204, 37-51-205, 37-51-207, 37-51-208, 37-51-209, 37-51-302, 37-51-305, 37-51-306,  
14 37-51-308, 37-51-309, 37-51-311, 37-51-324, 37-51-603, 37-51-605, 37-53-104, 37-53-301, AND 37-53-302,  
15 MCA; AND PROVIDING AN EFFECTIVE DATE."

16

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

18

19 **Section 1.** Section 2-15-1757, MCA, is amended to read:20 **"2-15-1757. Board of realty regulation.** (1) There is a board of realty regulation.

21 (2) The board consists of seven members appointed by the governor with the consent of the senate. Five  
22 members must be licensed real estate brokers, salespeople, or property managers who are actively engaged in  
23 the real estate business as a broker, a salesperson, or a property manager in this state. Two members must be  
24 representatives of the public who are not state government officers or employees and who are not engaged in  
25 business as a real estate broker, a salesperson, or a property manager. The members must be residents of this  
26 state.

27 ~~———— (3) Not more than five members, including the presiding officer, may be from the same political party.~~

28 ~~(4)(3) The members shall serve staggered terms of 4 years. A member may serve more than two terms~~  
29 ~~but may not serve more than two consecutive 4-year terms ~~or any portion of two terms.~~~~

30 ~~(5)(4) The board is allocated to the department for administrative the purposes only as prescribed in~~

1 ~~2-15-124~~ of planning and coordination. The governance, management, and control of the board are vested in the  
 2 board. The board is a state agency as defined in 2-15-102 and retains the immunity provided in 2-9-108 and  
 3 ~~2-9-305~~. The department shall provide services requested by the board and shall charge the board an amount  
 4 that is commensurate with the reasonable cost of the services provided.

5 (5) The board is exempt from the provisions of 2-15-121 except for 2-15-121(1)(a) and may hire its own  
 6 staff."

7  
 8 **Section 2.** Section 2-18-103, MCA, is amended to read:

9 **"2-18-103. Officers and employees excepted.** Parts 1 through 3 and 10 do not apply to the following  
 10 officers and employees in state government:

- 11 (1) elected officials;
- 12 (2) county assessors and their chief deputies;
- 13 (3) employees of the office of consumer counsel;
- 14 (4) judges and employees of the judicial branch;
- 15 (5) members of boards and commissions appointed by the governor, the legislature, or other elected  
 16 state officials;
- 17 (6) officers or members of the militia;
- 18 (7) agency heads appointed by the governor;
- 19 (8) academic and professional administrative personnel with individual contracts under the authority of  
 20 the board of regents of higher education;
- 21 (9) academic and professional administrative personnel and live-in houseparents who have entered into  
 22 individual contracts with the state school for the deaf and blind under the authority of the state board of public  
 23 education;
- 24 (10) investment officer, assistant investment officer, executive director, and five professional staff  
 25 positions of the board of investments;
- 26 (11) four professional staff positions under the board of oil and gas conservation;
- 27 (12) assistant director for security of the Montana state lottery;
- 28 (13) executive director and employees of the state compensation insurance fund;
- 29 (14) state racing stewards employed by the executive secretary of the Montana board of horseracing;
- 30 (15) executive director of the Montana wheat and barley committee;

- 1 (16) commissioner of banking and financial institutions;
- 2 (17) training coordinator for county attorneys;
- 3 (18) employees of an entity of the legislative branch consolidated, as provided in 5-2-504;
- 4 (19) chief information officer in the department of administration;
- 5 (20) chief business development officer and six professional staff positions in the office of economic
- 6 development provided for in 2-15-218;
- 7 (21) chief public defender appointed by the public defender commission pursuant to the Montana Public
- 8 Defender Act, Title 47, chapter 1, and the employees in the positions listed in 47-1-201(3)(a), who are appointed
- 9 by the chief public defender; ~~and~~
- 10 (22) chief appellate defender in the office of appellate defender; and
- 11 (23) the executive director of the board of realty regulation, legal counsel for the board, and board staff
- 12 provided for in 39-51-209."
- 13

14 **Section 3.** Section 17-7-502, MCA, is amended to read:

15 **"17-7-502. Statutory appropriations -- definition -- requisites for validity.** (1) A statutory

16 appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the

17 need for a biennial legislative appropriation or budget amendment.

18 (2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both

19 of the following provisions:

20 (a) The law containing the statutory authority must be listed in subsection (3).

21 (b) The law or portion of the law making a statutory appropriation must specifically state that a statutory

22 appropriation is made as provided in this section.

23 (3) The following laws are the only laws containing statutory appropriations: 2-17-105; 5-11-120;

24 5-11-407; 5-13-403; 7-4-2502; 10-1-108; 10-1-1202; 10-1-1303; 10-2-603; 10-3-203; 10-3-310; 10-3-312;

25 10-3-314; 10-4-301; 15-1-121; 15-1-218; 15-31-906; 15-35-108; 15-36-332; 15-37-117; 15-39-110; 15-65-121;

26 15-70-101; 15-70-369; 15-70-601; 16-11-509; 17-3-106; 17-3-112; 17-3-212; 17-3-222; 17-3-241; 17-6-101;

27 18-11-112; 19-3-319; 19-6-404; 19-6-410; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506;

28 19-20-604; 19-20-607; 19-21-203; 20-8-107; 20-9-534; 20-9-622; 20-26-1503; 22-3-1004; 23-4-105; 23-5-306;

29 23-5-409; 23-5-612; 23-7-301; 23-7-402; 30-10-1004; 37-43-204; [section 13]; 37-51-501; 39-71-503; 41-5-2011;

30 42-2-105; 44-4-1101; 44-12-206; 44-13-102; 50-4-623; 53-1-109; 53-9-113; 53-24-108; 53-24-206; 60-11-115;

1 61-3-415; 69-3-870; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 76-13-416; 77-1-108; 77-2-362; 80-2-222;  
2 80-4-416; 80-11-518; 81-1-112; 81-7-106; 81-10-103; 82-11-161; 85-20-1504; 85-20-1505; 87-1-230; 87-1-603;  
3 87-1-621; 90-1-115; 90-1-205; 90-1-504; 90-3-1003; 90-6-331; and 90-9-306.

4 (4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing,  
5 paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued  
6 pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana  
7 to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state  
8 treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory  
9 appropriation authority for the payments. (In subsection (3): pursuant to sec. 10, Ch. 360, L. 1999, the inclusion  
10 of 19-20-604 terminates when the amortization period for the teachers' retirement system's unfunded liability is  
11 10 years or less; pursuant to sec. 10, Ch. 10, Sp. L. May 2000, secs. 3 and 6, Ch. 481, L. 2003, and sec. 2, Ch.  
12 459, L. 2009, the inclusion of 15-35-108 terminates June 30, 2019; pursuant to sec. 17, Ch. 593, L. 2005, and  
13 sec. 1, Ch. 186, L. 2009, the inclusion of 15-31-906 terminates January 1, 2015; pursuant to sec. 73, Ch. 44, L.  
14 2007, the inclusion of 19-6-410 terminates upon the death of the last recipient eligible under 19-6-709(2) for the  
15 supplemental benefit provided by 19-6-709; pursuant to sec. 8, Ch. 330, L. 2009, the inclusion of 87-1-621  
16 terminates June 30, 2013; pursuant to sec. 14, Ch. 374, L. 2009, the inclusion of 53-9-113 terminates June 30,  
17 2015; pursuant to sec. 8, Ch. 427, L. 2009, the inclusion of 87-1-230 terminates June 30, 2013; pursuant to sec.  
18 5, Ch. 442, L. 2009, the inclusion of 90-6-331 terminates June 30, 2019; pursuant to sec. 47, Ch. 19, L. 2011,  
19 the inclusion of 87-1-621 terminates June 30, 2013; pursuant to sec. 16, Ch. 58, L. 2011, the inclusion of  
20 30-10-1004 terminates June 30, 2017; pursuant to sec. 6, Ch. 61, L. 2011, the inclusion of 76-13-416 terminates  
21 June 30, 2019; and pursuant to sec. 13, Ch. 339, L. 2011, the inclusion of 81-1-112 and 81-7-106 terminates  
22 June 30, 2017.)"

23

24 **Section 4.** Section 37-1-101, MCA, is amended to read:

25 **"37-1-101. Duties of department.** In addition to the provisions of 2-15-121, the department shall:

26 (1) establish and provide all the administrative, legal, and clerical services needed by the boards within  
27 the department, including corresponding, receiving and processing routine applications for licenses as defined  
28 by a board, issuing and renewing routine licenses as defined by a board, disciplining licensees, setting  
29 administrative fees, preparing agendas and meeting notices, conducting mailings, taking minutes of board  
30 meetings and hearings, and filing;

- 1 (2) standardize policies and procedures and keep in Helena all official records of the boards unless  
2 otherwise specified;
- 3 (3) make arrangements and provide facilities in Helena for all meetings, hearings, and examinations of  
4 each board or elsewhere in the state if requested by the board;
- 5 (4) contract for or administer and grade examinations required by each board;
- 6 (5) investigate complaints received by the department of illegal or unethical conduct of a member of the  
7 profession or occupation under the jurisdiction of a board or a program within the department;
- 8 (6) assess the costs of the department to the boards and programs on an equitable basis as determined  
9 by the department, including the charges required that are made under contract or specific agreement for boards  
10 attached only for planning and coordination purposes;
- 11 (7) adopt rules setting administrative fees and expiration, renewal, and termination dates for licenses;
- 12 (8) issue a notice to and pursue an action against a licensed individual, as a party, before the licensed  
13 individual's board after a finding of reasonable cause by a screening panel of the board pursuant to  
14 37-1-307(1)(d);
- 15 (9) (a) provide notice to the board and to the appropriate legislative interim committee when a board  
16 cannot operate in a cost-effective manner;
- 17 (b) suspend all duties under this title related to the board except for services related to renewal of  
18 licenses;
- 19 (c) review the need for a board and make recommendations to the legislative interim committee with  
20 monitoring responsibility for the boards for legislation revising the board's operations to achieve fiscal solvency;  
21 and
- 22 (d) notwithstanding 2-15-121, recover the costs by one-time charges against all licensees of the board  
23 after providing notice and meeting the requirements under the Montana Administrative Procedure Act;
- 24 (10) monitor a board's cash balances to ensure that the balances do not exceed two times the board's  
25 annual appropriation level and adjust fees through administrative rules when necessary;
- 26 (11) establish policies and procedures to set fees for administrative services, as provided in 37-1-134,  
27 commensurate with the cost of the services provided. Late penalty fees may be set without being commensurate  
28 with the cost of services provided.
- 29 (12) adopt uniform rules for all boards and department programs to comply with the public notice  
30 requirements of 37-1-311 and 37-1-405. The rules may require the posting of only the licensee's name and the

1 fact that a hearing is being held when the information is being posted on a publicly available website prior to a  
 2 decision leading to a suspension or revocation of a license or other final decision of a board or the department."

3

4 **Section 5.** Section 37-1-130, MCA, is amended to read:

5 **"37-1-130. Definitions.** As used in this part, the following definitions apply:

6 (1) "Administrative fee" means a fee established by the department to cover the cost of administrative  
 7 services as provided for in 37-1-134.

8 (2) "Board" means a licensing board created under Title 2, chapter 15, that regulates a profession or  
 9 occupation and that is administratively attached to the department as provided in 2-15-121. Unless specifically  
 10 excluded, the term means a licensing board that regulates a profession or occupation and that is attached only  
 11 for planning and coordination purposes to the department.

12 (3) "Board fee" means:

13 (a) a fee established by ~~the~~ a board to cover program area costs as provided in 37-1-134; and

14 (b) any other legislatively prescribed fees specific to boards and department programs.

15 (4) "Department" means the department of labor and industry established in 2-15-1701.

16 (5) "Department program" means a program administered by the department pursuant to this title and  
 17 not affiliated with a board.

18 (6) "Expired license" means a license that is not reactivated within the period of 46 days to 2 years after  
 19 the renewal date for the license.

20 (7) "Lapsed license" means a license that is not renewed by the renewal date and that may be  
 21 reactivated within the first 45-day period after the renewal date for the license.

22 (8) "License" means permission granted under a chapter of this title to engage in or practice at a specific  
 23 level in a profession or occupation, regardless of the specific term used for the permission, including permit,  
 24 certificate, recognition, or registration.

25 (9) "Planning and coordination purposes" means the functions of the department carried out on behalf  
 26 of all professional and occupational licensees that are not specific to any one board and that include but are not  
 27 limited to maintaining a website for all boards and licensees, publishing rules adopted by the boards, and  
 28 providing information technology services and other services for which coordination must be consistent across  
 29 boards and for which the department is reimbursed by contract or a specific agreement.

30 ~~(9)~~(10) "Terminated license" means a license that is not renewed or reactivated within 2 years of the

1 license lapsing."

2

3 **NEW SECTION. Section 6. Limited scope.** (1) Except as provided in subsection (2), the provisions  
4 of Title 37, chapter 1, part 2, and this part do not apply to a board that is attached only for planning and  
5 coordination purposes to the department and to which only 2-15-121(1)(a) applies.

6 (2) The following do apply to a board that is attached only for planning and coordination purposes:

7 (a) 37-1-101(6) and (12), 37-1-106, 37-1-130, 37-1-131(1)(a) through (1)(c), 37-1-132, 37-1-135,  
8 37-1-138, and 37-1-142; and

9 (b) part 2 in its entirety.

10

11 **Section 7.** Section 37-1-303, MCA, is amended to read:

12 **"37-1-303. Scope.** (1) This part governs the licensure, the practice and unauthorized practice, and the  
13 discipline of professions and occupations governed by this title unless otherwise provided by statutes relating to  
14 a specific board and the profession or occupation it regulates. The provisions of this chapter must be construed  
15 to supplement the statutes relating to a specific board and the profession it regulates. The method for initiating  
16 and judging a disciplinary proceeding, specified in 37-1-307(1)(d), must be used by a board in all disciplinary  
17 proceedings involving licensed professionals.

18 (2) Unless specifically stated in Title 37, chapter 51, this part does not apply to chapter 51."

19

20 **Section 8.** Section 37-51-102, MCA, is amended to read:

21 **"37-51-102. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions  
22 apply:

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

24 (2) (a) "Adverse material fact" means a fact that should be recognized by a broker or salesperson as  
25 being of enough significance as to affect a person's decision to enter into a contract to buy or sell real property  
26 and may be a fact that:

27 (i) materially affects the value, affects structural integrity, or presents a documented health risk to  
28 occupants of the property; or

29 (ii) materially affects the buyer's ability or intent to perform the buyer's obligations under a proposed or  
30 existing contract.

1 (b) The term does not include the fact that an occupant of the property has or has had a communicable  
2 disease or that the property was the site of a suicide or felony.

3 (3) "Board" means the board of realty regulation provided for in 2-15-1757.

4 (4) "Broker" includes an individual who:

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

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

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

14 (d) makes the advertising, sale, lease, or other real estate information available by public display to  
15 potential buyers and who aids, attempts, or offers to aid, for a fee, any person in locating or obtaining any real  
16 estate for purchase or lease;

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

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

21 (g) advertises or represents to the public that the individual is engaged in any of the activities referred  
22 to in subsections (4)(a) through (4)(f).

23 (5) "Buyer" means a person who is interested in acquiring an ownership interest in real property or who  
24 has entered into an agreement to acquire an interest in real property. The term includes tenants or potential  
25 tenants with respect to leases or rental agreements of real property.

26 (6) "Buyer agent" means a broker or salesperson who, pursuant to a written buyer broker agreement,  
27 is acting as the agent of the buyer in a real estate transaction and includes a buyer subagent and an in-house  
28 buyer agent designate.

29 (7) "Buyer broker agreement" means a written agreement in which a prospective buyer employs a broker  
30 to locate real estate of the type and with terms and conditions as designated in the written agreement.

1 (8) "Buyer subagent" means a broker or salesperson who, pursuant to an offer of a subagency, acts as  
2 the agent of a buyer.

3 ~~(9) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.~~

4 ~~(10)~~(9) "Dual agent" means a broker or salesperson who, pursuant to a written listing agreement or buyer  
5 broker agreement or as a buyer or seller subagent, acts as the agent of both the buyer and seller with written  
6 authorization, as provided in 37-51-314. An in-house buyer or seller agent designate may not be considered a  
7 dual agent.

8 ~~(11)~~(10) "Franchise agreement" means a contract or agreement by which:

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

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

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

15 ~~(12)~~(11) "In-house buyer agent designate" means a broker or salesperson employed by or associated  
16 as an independent contractor with a broker and designated by the broker as the exclusive agent for a buyer for  
17 a designated transaction and who may not be considered to be acting for other than the buyer with respect to the  
18 designated transaction.

19 ~~(13)~~(12) "In-house seller agent designate" means a broker or salesperson employed by or associated  
20 as an independent contractor with a broker and designated by the broker as the exclusive agent for a seller for  
21 a designated transaction and who may not be considered to be acting for other than the seller with respect to the  
22 designated transaction.

23 ~~(14)~~(13) "Listing agreement" means a written agreement between a seller and broker for the sale of real  
24 estate, with the terms and conditions set out in the agreement.

25 ~~(15)~~(14) "Negotiations" means:

26 (a) efforts to act as an intermediary between parties to a real estate transaction;

27 (b) facilitating and participating in contract discussions;

28 (c) completing forms for offers, counteroffers, addendums, and other writings; and

29 (d) presenting offers and counteroffers.

30 ~~(16)~~(15) "Person" includes individuals, partnerships, associations, and corporations, foreign and

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

2 ~~(17)~~(16) "Property manager" includes a person who for a salary, commission, or compensation of any  
3 kind engages in the business of leasing, renting, subleasing, or other transfer of possession of real estate  
4 belonging to others without transfer of the title to the property, pursuant to 37-51-601 and 37-51-602.

5 ~~(18)~~(17) "Real estate" includes leaseholds as well as any other interest or estate in land, whether  
6 corporeal, incorporeal, freehold, or nonfreehold and whether the real estate is situated in this state or elsewhere.

7 ~~(19)~~(18) "Real estate transaction" means the sale, exchange, or lease or grant of an option for the sale,  
8 exchange, or lease of an interest in real estate and includes all communication, interposition, advisement,  
9 negotiation, and contract development and closing.

10 ~~(20)~~(19) "Salesperson" includes an individual who for a salary, commission, or compensation of any kind  
11 is associated, either directly, indirectly, regularly, or occasionally, with a real estate broker to sell, purchase, or  
12 negotiate for the sale, purchase, exchange, or renting of real estate.

13 ~~(21)~~(20) "Seller" means a person who has entered into a listing agreement to sell real estate and includes  
14 landlords who have an interest in or are a party to a lease or rental agreement.

15 ~~(22)~~(21) "Seller agent" means a broker or salesperson who, pursuant to a written listing agreement, acts  
16 as the agent of a seller and includes a seller subagent and an in-house seller agent designate.

17 ~~(23)~~(22) "Seller subagent" means a broker or salesperson who, pursuant to an offer of a subagency, acts  
18 as the agent of a seller.

19 ~~(24)~~(23) (a) "Statutory broker" means a broker or salesperson who assists one or more parties to a real  
20 estate transaction without acting as an agent or representative of any party to the real estate transaction.

21 (b) A broker or salesperson is presumed to be acting as a statutory broker unless the broker or  
22 salesperson has entered into a listing agreement with a seller or a buyer broker agreement with a buyer or has  
23 disclosed, as required in this chapter, a relationship other than that of a statutory broker.

24 ~~(25)~~(24) "Supervising broker" means a licensed broker with whom a licensed salesperson is associated,  
25 directly, indirectly, regularly, or occasionally, to sell, purchase, or negotiate for the sale, purchase, exchange, or  
26 renting of real estate.

27 ~~(26)~~(25) "Supervising broker endorsement" means an endorsement to a broker's license that is required  
28 of any licensed broker who supervises licensed salespersons performing real estate activity."

29

30 **Section 9.** Section 37-51-201, MCA, is amended to read:

1           **"37-51-201. Presiding Board duties and responsibilities -- presiding officer -- seal -- records --**  
2 **prohibition on membership in real estate associations -- criminal justice agency designation --**  
3 **rulemaking.** ~~(1) The members of the board shall elect a presiding officer from among their number.~~  
4           ~~(2)~~(1) The board shall:  
5           (a) adopt a seal of a design that it prescribes. Copies of records and papers kept by the ~~department~~  
6 ~~board~~, certified by the presiding officer, and authenticated by the seal of the board must be received in evidence  
7 in courts with the same effect as the original. Records of the board are open to public inspection under rules ~~it~~  
8 ~~the board~~ prescribes.  
9           (b) set and enforce standards and rules governing the licensing, certification, registration, and conduct  
10 of licensees under the board's jurisdiction;  
11           (c) grant or deny a license and, upon a finding of unprofessional conduct as provided in 37-1-316 by an  
12 applicant or license holder, impose a sanction provided by this chapter;  
13           (d) (i) establish qualifications for applicants taking the licensure examination and determine the  
14 standards, content, type, and method of examination required for licensure or reinstatement of a license; and  
15           (ii) establish the acceptable level of performance for each examination and the standards and limitations  
16 for reexamination if an applicant fails an examination;  
17           (e) examine applicants for licensure at reasonable places and times or enter into contracts with  
18 third-party testing agencies to administer examinations;  
19           (f) establish license renewal, late renewal, lapse, expiration, and termination procedures for licenses  
20 issued under board jurisdiction;  
21           (g) require continuing education for its licensees;  
22           (h) annually prepare a budget and ensure that revenue and expenditures are necessary to carry out the  
23 provisions of this chapter. The budget for the purposes of this chapter is not to be included in the budget  
24 submitted to the governor as provided in 17-7-111. However, the board shall report the details of the budget to  
25 the department of labor and industry for inclusion in the report to the governor under 37-1-106 and shall report  
26 to the budget director and the legislative fiscal analyst as provided in Title 17, chapter 7.  
27           (i) comply with all recordkeeping, reporting, and relevant administrative and clerical requirements of the  
28 state;  
29           (j) establish and collect fees and deposit them in the proper fund or account. The fees may not be  
30 diverted from the fund or the account except by majority vote of the board.

1 ~~\_\_\_\_\_~~ (3) The department:

2 ~~(a)(k)~~ shall keep a record of proceedings, transactions, communications, and official acts of the board;

3 ~~(b)(l)~~ is function as the custodian of the records of the board; ~~and~~

4 ~~\_\_\_\_\_~~ (c) shall perform other duties that the board, on the written request of two or more members of the board  
5 or at other times that the presiding officer, considers necessary:

6 (m) establish and provide for all administrative, legal, and clerical services needed by the board;

7 (n) sit in judgment in hearings for the suspension, revocation, or denial of a license of an actual or  
8 potential member of the real estate profession subject to the board's jurisdiction. At the request of a party, the  
9 hearing must be conducted by a hearing examiner when the board holds a contested case hearing. The hearing  
10 examiner shall conduct the hearing in a proper and legal manner and shall report any findings to the board. The  
11 board shall conduct the hearings and impose penalties as provided in 37-1-308 through 37-1-318 and 37-1-320.

12 (o) issue subpoenas requiring the attendance of witnesses or the production of documents and  
13 administer oaths in connection with investigations and disciplinary proceedings under this chapter. Subpoenas  
14 must be relevant to the complaint and must be signed by a member of the board. Subpoenas may be enforced  
15 as provided in 2-4-104.

16 (p) establish a screening panel to determine whether there is reasonable cause to believe that a licensee  
17 has violated a particular statute, rule, or standard that justifies disciplinary proceedings. A screening panel shall  
18 specify in writing the particular statute, rule, or standard that the panel believes may have been violated. The  
19 screening panel shall also state in writing the reasonable grounds that support the panel's finding that a violation  
20 may have occurred. The board members assigned to the screening panel may not subsequently participate in  
21 an adjudication of the case. The final decision on the case must be made by a majority of the board members  
22 who did not serve on the screening panel for the case.

23 (q) require a license applicant to provide the applicant's social security number as a part of the  
24 application. The board shall keep the social security number confidential except that the board may provide the  
25 number to the department of public health and human services for use in administering Title IV-D of the Social  
26 Security Act.

27 (2) The board shall elect a presiding officer from among its members.

28 ~~(4)(3)~~ The presiding officer or an employee of the ~~department~~ board hired to provide services to the  
29 board may not be an officer or paid employee of any real estate association or group of real estate dealers or  
30 brokers.

1           (4) The board may collect confidential criminal justice information, as defined in 44-5-103, regarding the  
 2 board's licensees and license applicants and regarding possible unlicensed practice. The board may not record  
 3 or retain any confidential criminal justice information without complying with Title 44, chapter 5.

4           (5) The board may contact and request information from the department of justice, which is designated  
 5 as a criminal justice agency within the meaning of 44-5-103, for the purpose of obtaining criminal history  
 6 information regarding the board's licensees and license applicants and regarding possible unlicensed practice.

7           (6) The board shall adopt rules necessary to implement this chapter in accordance with the Montana  
 8 Administrative Procedure Act provided for in Title 2, chapter 4, and has the authority to adopt rules specifying  
 9 grounds for disciplinary action subject to the provisions of 37-1-136 and 37-1-137."

10  
 11           **Section 10.** Section 37-51-204, MCA, is amended to read:

12           **"37-51-204. Educational programs.** (1) The board may, ~~subject to 37-1-101,~~ conduct, hold, or assist  
 13 in conducting or holding real estate clinics, meetings, courses, or institutes and incur necessary expenses in this  
 14 connection.

15 ~~— (2) Except as provided in 37-51-302 and subsection (3) of this section, the board may not require~~  
 16 ~~examinations of licensees.~~

17           ~~(3)(2)~~ (2) The board may require specified performance levels of a licensee with respect to the subject  
 18 matter of a continuing education course required by the board when the licensee and the instructor of the course  
 19 are not physically present in the same facility at the time the licensee receives the instruction.

20           ~~(4)(3)~~ (3) Education information obtained electronically by the board or stored in the board's databases may  
 21 be used to determine compliance with education requirements established by the board. ~~The use of the~~  
 22 ~~information may not be considered an audit for purposes of compliance with 37-1-131."~~

23  
 24           **Section 11.** Section 37-51-205, MCA, is amended to read:

25           **"37-51-205. Compensation of members -- expenses.** Each member of the board shall receive  
 26 compensation and travel expenses as provided for in ~~37-1-133~~ 2-18-501 through 2-18-503. Ex officio board  
 27 members must receive travel expenses but may not receive other compensation."

28  
 29           **Section 12.** Section 37-51-207, MCA, is amended to read:

30           **"37-51-207. Schedule of fees.** The board shall adopt a schedule of fees to be charged ~~by the~~

1 department and to be paid into the state special revenue fund for the use of the board. The fees charged must  
 2 be reasonably related to the cost incurred in regulating the real estate industry."

3  
 4 **NEW SECTION. Section 13. State special revenue account.** (1) There is established in the state  
 5 special revenue fund an account for the use of the board. The account must be used to provide payment for the  
 6 governance, management, and operation of the board in regulating the real estate industry under the provisions  
 7 of this chapter. The money in the account is statutorily appropriated as provided in 17-7-502.

8 (2) Money earned on the investment of funds in the account must be credited to the account annually.  
 9 The money may be invested with the board of investments or deposited as provided in 17-6-105.

10  
 11 **Section 14.** Section 37-51-208, MCA, is amended to read:  
 12 **"37-51-208. Deposit of money not otherwise provided for.** Whenever money is received by the board  
 13 ~~or by the department for the use of the board~~ and there is no provision for the disposition or deposit of the money,  
 14 the money is to be deposited in the state special revenue fund for the use of the board."

15  
 16 **Section 15.** Section 37-51-209, MCA, is amended to read:  
 17 **"37-51-209. Executive ~~secretary~~ director and board staff -- hiring and duties.** (1) ~~The department~~  
 18 board may:

19 (a) establish qualifications and hire an executive ~~secretary~~ director and legal counsel to carry out duties  
 20 prescribed by the board pursuant to the board's responsibilities and duties established by law; and

21 (b) authorize the executive director to hire other administrative and clerical employees as may be  
 22 necessary to properly carry out the provisions of this chapter.

23 (2) Employees of the board are state employees for the purposes of benefits but are exempt from the  
 24 state classification and pay plan and grievance provisions in Title 2, chapter 18, parts 1 through 3 and 10. The  
 25 board shall coordinate with the department of administration as an employer for purposes of meeting the  
 26 employer's obligations under Title 2, chapter 18, Title 19, chapters 1 through 3, and Title 39, chapters 51 and 71."

27  
 28 **Section 16.** Section 37-51-302, MCA, is amended to read:  
 29 **"37-51-302. Broker's or salesperson's license -- qualifications of applicant -- supervising broker**  
 30 **endorsement.** (1) Licenses may be granted only to individuals considered by the board to be of good repute and

1 competent to transact the business of a broker or salesperson in a manner that safeguards the interests of the  
2 public.

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

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

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

7 (c) must have been actively engaged as a licensed real estate salesperson for a period of 2 years or  
8 have had experience or special education equivalent to that which a licensed real estate salesperson ordinarily  
9 would receive during this 2-year period as determined by the board, except that if the board finds that an applicant  
10 could not obtain employment as a licensed real estate salesperson because of conditions existing in the area  
11 where the applicant resides, the board may waive this experience requirement;

12 (d) shall file an application for a license with the ~~department~~ board; and

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

18 (3) The board shall require information it considers necessary from an applicant to determine honesty,  
19 trustworthiness, and competency.

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

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

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

24 (iii) shall file an application for a license with the ~~department~~ board; and

25 (iv) shall furnish written evidence that the applicant has completed 60 classroom or equivalent hours in  
26 a course of study approved by the board and taught by instructors approved by the board and has satisfactorily  
27 passed an examination dealing with the material taught in each course. The course of study must include the  
28 subjects of real estate principles, real estate law and ethics, real estate finance, and related topics.

29 (b) The application must be accompanied by the recommendation of a licensed broker with a supervising  
30 broker endorsement by whom the applicant will be employed or placed under contract, certifying that the applicant

1 is of good repute and that the broker will actively supervise and train the applicant during the period the requested  
2 license remains in effect.

3 (5) The ~~department~~ board shall issue to each licensed broker and to each licensed salesperson a license  
4 and a pocket card in a form and size that the board prescribes.

5 (6) (a) An applicant for a supervising broker endorsement must meet the education and experience  
6 requirements established by the board by rule except that continuing education requirements for a supervising  
7 broker endorsement may not be in addition to the continuing education requirements for a licensed broker with  
8 respect to the total number of hours or credits required.

9 (b) The board may not assess a licensing fee for obtaining or renewing a supervising broker  
10 endorsement.

11 (c) The board may adopt rules allowing a salesperson to temporarily associate with a broker with a  
12 supervising broker endorsement other than the supervising broker listed on the salesperson's pocket card."  
13

14 **Section 17.** Section 37-51-305, MCA, is amended to read:

15 **"37-51-305. License -- delivery -- display -- pocket card.** (1) A license must bear the seal of the board.

16 (2) The license of a real estate salesperson must be delivered or mailed to the salesperson's supervising  
17 broker and must be kept in the custody and control of the supervising broker.

18 (3) A broker shall display the broker's own license conspicuously in the broker's place of business.

19 (4) The ~~department~~ board shall annually prepare and deliver a pocket card certifying that the person  
20 whose name appears is a registered real estate broker or a registered real estate salesperson, stating the period  
21 for which fees have been paid and, on a real estate salesperson's cards only, the name and address of the  
22 salesperson's supervising broker."  
23

24 **Section 18.** Section 37-51-306, MCA, is amended to read:

25 **"37-51-306. Transactions with nonresidents and with nonlicensed brokers or salespersons --**

26 **consent to legal process.** (1) A licensed broker may not employ or compensate, directly or indirectly, a person  
27 for performing the acts regulated by this chapter who is not a licensed broker or licensed salesperson. However,  
28 a licensed broker may pay a commission to a licensed broker of another state or jurisdiction if the nonresident  
29 broker has not conducted and does not conduct in this state a service for which a fee, compensation, or  
30 commission is paid.

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

7

8 **Section 19.** Section 37-51-308, MCA, is amended to read:

9 **"37-51-308. Broker's office -- notice to department of change of address.** (1) A licensed broker shall  
10 maintain a designated physical address where the original license of the broker and, if the broker is a supervising  
11 broker, the original license of each salesperson associated or under contract with the broker must be prominently  
12 displayed. The designated address of the broker must be indicated on the broker's license.

13 (2) In case of removal from the designated address, the broker shall notify the department board before  
14 removal or within 10 days after removal, designating the new physical address and paying the required fee. After  
15 receipt of the information required under this subsection, the department board shall issue a license for the new  
16 location for the unexpired period."

17

18 **Section 20.** Section 37-51-309, MCA, is amended to read:

19 **"37-51-309. Broker -- salesperson -- personal transactions of salesperson -- notice to department**  
20 **of change of association.** (1) A salesperson may not be associated with or under contract to more than one  
21 supervising broker or perform services for a broker with a supervising broker endorsement other than the one  
22 designated on the license issued to the salesperson except on a temporary basis as provided in 37-51-302.

23 (2) When a licensed salesperson desires to change association or contractual relationship from one  
24 supervising broker to another, the salesperson shall notify the department board promptly in writing of these facts,  
25 pay the required fee, and return the salesperson's license, and a new license and pocket card must be issued.  
26 A salesperson may not directly or indirectly work for or with a supervising broker until the salesperson has been  
27 issued a license to work for or with that supervising broker. On termination of a salesperson's association or  
28 contractual relationship, the salesperson shall surrender the salesperson's license to the salesperson's  
29 supervising broker, who shall return it to the department board for cancellation.

30 (3) Only one license may be issued to a salesperson to be in effect at one time.

1 (4) (a) The provisions of this chapter do not prohibit a salesperson from engaging in personal  
 2 transactions, and the provisions of this chapter do not require a supervising broker to exercise any supervision  
 3 or provide any training for a salesperson with respect to personal transactions of the salesperson.

4 (b) A supervising broker is not responsible or liable for the personal transactions of a salesperson if:  
 5 (i) the personal transaction does not involve the salesperson's supervising broker or real estate firm; and  
 6 (ii) prior to entering into a personal transaction, the salesperson discloses in writing to the other party that  
 7 the transaction is a personal transaction with respect to the salesperson and that the transaction does not involve  
 8 the salesperson's supervising broker or real estate firm.

9 (5) For the purposes of this part, "personal transaction" includes the following:

- 10 (a) the sale, purchase, or exchange of real property owned or acquired by the salesperson; and  
 11 (b) the leasing or renting of real property owned by the salesperson."

12

13 **Section 21.** Section 37-51-311, MCA, is amended to read:

14 "**37-51-311. Fees -- deposit of fees.** The fees prescribed by the board must be ~~charged by the~~  
 15 ~~department and~~ paid into the state special revenue fund provided for in [section 13] for the use of the board;  
 16 ~~subject to 37-1-101(6).~~"

17

18 **Section 22.** Section 37-51-324, MCA, is amended to read:

19 "**37-51-324. Penalty for failure to comply with trust account requirements.** (1) An employee of the  
 20 ~~department~~ board may issue a citation to a broker or property manager responsible for maintenance of a trust  
 21 account for failure to comply with trust account maintenance requirements as provided by rule under 37-1-319(4).

22 (2) The citation must include:

- 23 (a) the time and date on which the citation is issued;  
 24 (b) the name, title, mailing address, and signature of the person issuing the citation;  
 25 (c) reference to the statute or rule violated;  
 26 (d) the name, title, and mailing address of the person to whom the citation is being sent, along with  
 27 information explaining the procedure for the person receiving the citation to follow to pay the fine or dispute the  
 28 violation; and

29 (e) the amount of the applicable fine.

30 (3) The applicable civil fine for failure to comply with trust account maintenance requirements is \$50 for

1 each cited violation.

2 (4) The person who issues the citation is authorized to collect the fine and deposit the proceeds in the  
3 state special revenue account to the credit of the board.

4 (5) The person who is issued a citation may pay the fine or file a written dispute of the violation with the  
5 board within 5 business days of the date of issuance.

6 (6) A person who refuses to sign and accept a citation but who does not file a written dispute of the  
7 violation is demonstrating unprofessional conduct within the meaning of 37-1-316."

8

9 **Section 23.** Section 37-51-603, MCA, is amended to read:

10 **"37-51-603. Qualification of property manager applicants -- examination -- form of licenses.** (1)

11 The board by rule shall require an applicant for licensure to provide information that the board believes is  
12 necessary to ensure that a person granted a property manager license is of good repute and competent to  
13 transact the business of a property manager in a manner that safeguards the welfare and safety of the public.

14 (2) (a) The board shall require an applicant for a property manager license to:

15 (i) apply for licensure to the department board;

16 (ii) furnish written evidence that the applicant has completed the number of classroom hours that the  
17 board determines appropriate in a course of study approved by the board and taught by instructors approved by  
18 the board; and

19 (iii) satisfactorily complete an examination dealing with the material taught in the course of study.

20 (b) The course of study must include the subjects of real estate leasing principles, real estate leasing  
21 law, and related topics.

22 (3) An applicant for licensure as a property manager must be at least 18 years of age and must have  
23 graduated from an accredited high school or completed an equivalent education as determined by the board.

24 (4) The license must bear the seal of the board. A property manager shall display the license  
25 conspicuously in the property manager's place of business.

26 (5) The department board shall prepare and deliver to the licensee a pocket card in a form and at times  
27 prescribed by the board."

28

29 **Section 24.** Section 37-51-605, MCA, is amended to read:

30 **"37-51-605. Property manager's office -- notice of change of address.** A property manager shall

1 maintain a fixed office in this state at which the original license of the property manager must be prominently  
2 displayed. If the property manager changes the location of the office, the property manager shall notify the  
3 ~~department~~ board of the new address within 10 days after the change of address."

4

5 **Section 25.** Section 37-53-104, MCA, is amended to read:

6 **"37-53-104. Rulemaking authority.** The board shall adopt rules to carry out the provisions of this  
7 chapter. The rules may include but are not limited to:

8 (1) registration information that must be supplied;

9 (2) documents acceptable in lieu of registration documents under 37-53-204;

10 (3) qualifications for applicants as provided in 37-53-301;

11 (4) continuing education requirements for renewal of a timeshare salesperson's license;

12 (5) additional information included in a public offering statement; and

13 (6) fees ~~established pursuant to 37-1-134~~ that must be established commensurate with costs."

14

15 **Section 26.** Section 37-53-301, MCA, is amended to read:

16 **"37-53-301. Licensure of timeshare salespersons -- licensee duties.** (1) A person offering timeshare  
17 intervals in a project located in Montana must be licensed as a timeshare salesperson and affiliated with at least  
18 one registered timeshare project unless the offering is exempt under 37-53-205.

19 (2) Licensure may be obtained upon:

20 (a) completion of an application;

21 (b) meeting the qualifications listed in subsection (3);

22 (c) demonstration to the board that the applicant is an individual of good repute and competent to  
23 transact the business of a timeshare salesperson in a manner that safeguards the interests of the public;

24 (d) payment of fees set by the board by rule; and

25 (e) successful completion of a course of education related to the timeshare industry that has been  
26 approved by the board.

27 (3) An applicant for a timeshare salesperson license must:

28 (a) be at least 18 years of age; and

29 (b) have graduated from an accredited high school or completed equivalent education as determined  
30 by the board.

1 (4) The board shall issue a certificate of completion to an applicant who successfully completes the  
 2 course of education provided for in subsection (2)(e) and may issue a license to an applicant meeting the  
 3 qualifications and licensure provisions.

4 (5) A licensed timeshare salesperson shall notify the ~~department~~ board of a change of affiliation within  
 5 10 days of the change, designate the new license affiliation, and pay all required fees.

6 (6) If a timeshare salesperson is no longer affiliated with a timeshare project, the timeshare salesperson  
 7 shall notify the board that the license is inactive and pay the fees required by rule. A timeshare salesperson may  
 8 reactivate an inactive license by filling out an application, listing a new affiliation, and paying all required fees."  
 9

10 **Section 27.** Section 37-53-302, MCA, is amended to read:

11 **"37-53-302. Denial, suspension, or revocation of license or application.** The board may by an order  
 12 deny, suspend, or revoke a timeshare salesperson's license or application for license if the board finds that the  
 13 order is in the public interest and that the applicant or licensee:

14 (1) has filed an application for licensure as a timeshare salesperson that is incomplete or contains any  
 15 statement that is false or misleading;

16 (2) has violated or failed to comply with any provision of Title 37, chapters 4, 51, and 53, or any rules  
 17 adopted by the board if the violation or the failure to comply related to the timeshare business;

18 (3) has been convicted of a felony unless the provisions of Title 37, chapter 1, part 2, are met;

19 (4) is permanently or temporarily enjoined by a court from engaging in or continuing any conduct or  
 20 practice involving an aspect of the timeshare business;

21 (5) has engaged in dishonest or unethical practices related to public health, welfare, and safety as those  
 22 practices apply to the timeshare business; or

23 (6) has not complied with any condition imposed by the board."  
 24

25 **NEW SECTION. Section 28. Codification instruction.** (1) [Section 6] is intended to be codified as  
 26 an integral part of Title 37, chapter 1, part 1, and the provisions of Title 37, chapter 1, part 1, apply to [section 6].

27 (2) [Section 13] is intended to be codified as an integral part of Title 37, chapter 51, and the provisions  
 28 of Title 37, chapter 51, apply to [section 13].  
 29

30 **NEW SECTION. Section 29. Effective date.** [This act] is effective July 1, 2013.

31 - END -