

**SENATE JOURNAL  
65TH LEGISLATURE  
EIGHTEENTH LEGISLATIVE DAY**

Helena, Montana  
January 25, 2017

Senate Chambers  
State Capitol

Senate convened at 1:00 p.m. President Sales presiding. Invocation by Senator Webb. Pledge of Allegiance to the Flag.

Roll Call. Fifty members present. Quorum present.

**BILLS AND JOURNALS** (Keenan, Chair):

1/25/2017

Correctly printed: **SB 32, SB 36, SB 39, SB 100, SB 101, SB 103, SB 115, SB 143, SB 144, SB 145, SB 146, SJ 2, SR 18, SR 19, HB 39, HB 42.**

Correctly engrossed: **SB 12, SB 50, SB 51, SB 82, SB 91, SB 131.**

Transmitted to the House: **SB 10, SB 15, SB 53, SB 83, SB 85.**

**REPORTS OF STANDING COMMITTEES**

**BUSINESS, LABOR, AND ECONOMIC AFFAIRS** (Buttrey, Chair):

1/25/2017

**HB 88**, be concurred in.

**HB 120**, be concurred in.

**HB 122**, be amended as follows:

1. Title, page 1, line 8.

**Following:** "37-51-309,"

**Insert:** "37-51-313,"

2. Page 5, line 17.

**Following:** line 16

**Insert:** "**Section 5.** Section 37-51-313, MCA, is amended to read:

**"37-51-313. Duties, duration, and termination of relationship between broker or salesperson and buyer or seller.** (1) The provisions of this chapter and the duties described in this section govern the relationships between brokers or salespersons and buyers or sellers and are intended to replace the duties of agents as provided elsewhere in state law and replace the common law as applied to these relationships. The terms "buyer agent", "dual agent" and "seller agent", as used in this chapter, are defined in 37-51-102 and are not related to the term "agent" as used elsewhere in state law. The duties of a broker or salesperson vary depending upon the relationship with a party to a real estate transaction and are as provided in this section.

(2) A seller agent is obligated to the seller to:

(a) act solely in the best interests of the seller, except that a seller agent, after written disclosure to the seller and with the seller's written consent, may represent multiple sellers of property or list properties for sale that may compete with the seller's property without breaching any

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obligation to the seller;

(b) obey promptly and efficiently all lawful instructions of the seller;

(c) disclose all relevant and material information that concerns the real estate transaction and that is known to the seller agent and not known or discoverable by the seller, unless the information is subject to confidentiality arising from a prior or existing agency relationship on the part of the seller agent with a buyer or another seller;

(d) safeguard the seller's confidences;

(e) exercise reasonable care, skill, and diligence in pursuing the seller's objectives and in complying with the terms established in the listing agreement;

(f) fully account to the seller for any funds or property of the seller that comes into the seller agent's possession; and

(g) comply with all applicable federal and state laws, rules, and regulations.

(3) A seller agent is obligated to the buyer to:

(a) disclose to a buyer or the buyer agent any adverse material facts that concern the property and that are known to the seller agent, except that the seller agent is not required to inspect the property or verify any statements made by the seller;

(b) disclose to a buyer or the buyer agent when the seller agent has no personal knowledge of the veracity of information regarding adverse material facts that concern the property;

(c) act in good faith with a buyer and a buyer agent; and

(d) comply with all applicable federal and state laws, rules, and regulations.

(4) A buyer agent is obligated to the buyer to:

(a) act solely in the best interests of the buyer, except that a buyer agent, after written disclosure to the buyer and with the buyer's written consent, may represent multiple buyers interested in buying the same property or properties similar to the property in which the buyer is interested or show properties in which the buyer is interested to other prospective buyers without breaching any obligation to the buyer;

(b) obey promptly and efficiently all lawful instructions of the buyer;

(c) disclose all relevant and material information that concerns the real estate transaction and that is known to the buyer agent and not known or discoverable by the buyer, unless the information is subject to confidentiality arising from a prior or existing agency relationship on the part of the buyer agent with another buyer or a seller;

(d) safeguard the buyer's confidences;

(e) exercise reasonable care, skill, and diligence in pursuing the buyer's objectives and in complying with the terms established in the buyer broker agreement;

(f) fully account to the buyer for any funds or property of the buyer that comes into the buyer agent's possession; and

(g) comply with all applicable federal and state laws, rules, and regulations.

(5) A buyer agent is obligated to the seller to:

(a) disclose any adverse material facts that are known to the buyer agent and that concern the ability of the buyer to perform on any purchase offer;

(b) disclose to the seller or the seller agent when the buyer agent has no personal knowledge of the veracity of information regarding adverse material facts that concern the property ability of the buyer to perform on any purchase offer;

(c) act in good faith with a seller and a seller agent; and

(d) comply with all applicable federal and state laws, rules, and regulations.

(6) A statutory broker is not the agent of the buyer or seller but nevertheless is obligated

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to them to:

(a) disclose to:

(i) a buyer or a buyer agent any adverse material facts that concern the property and that are known to the statutory broker, except that the statutory broker is not required to inspect the property or verify any statements made by the seller;

(ii) a seller or a seller agent any adverse material facts that are known to the statutory broker and that concern the ability of the buyer to perform on any purchase offer;

(b) exercise reasonable care, skill, and diligence in putting together a real estate transaction; and

(c) comply with all applicable federal and state laws, rules, and regulations.

(7) A dual agent is obligated to a seller in the same manner as a seller agent and is obligated to a buyer in the same manner as a buyer agent under this section except that a dual agent has a duty to disclose to a buyer or seller any adverse material facts that are known to the dual agent, regardless of any confidentiality considerations.

(8) A dual agent may not disclose the following information without the written consent of the person to whom the information is confidential:

(a) the fact that the buyer is willing to pay more than the offered purchase price;

(b) the fact that the seller is willing to accept less than the purchase price that the seller is asking for the property;

(c) factors motivating either party to buy or sell; and

(d) any information that a party indicates in writing to the dual agent is to be kept confidential.

(9) While managing properties for owners, a licensed real estate broker or licensed real estate salesperson is only required to meet the requirements of part 6 of this chapter, other than those requirements for the licensing of property managers, and the rules adopted by the board to govern licensed property managers.

(10) A licensed broker or salesperson must obtain an appropriate written buyer broker agreement or written listing agreement prior to performing the acts of a buyer agent or a seller agent. A licensed broker or salesperson who is acting as a buyer agent or a seller agent without a written buyer broker agreement or written listing agreement is nevertheless obligated to comply with the requirements of this chapter.

(11) (a) The agency relationship of a buyer agent, seller agent, or dual agent continues until the earliest of the following dates:

(i) completion of performance by the agent;

(ii) the expiration date agreed to in the listing agreement or buyer broker agreement; or

(iii) the occurrence of any authorized termination of the listing agreement or buyer broker agreement.

(b) A statutory broker's relationship continues until the completion, termination, or abandonment of the real estate transaction giving rise to the relationship.

(12) Upon termination of an agency relationship, a broker or salesperson does not have any further duties to the principal, except as follows:

(a) to account for all money and property of the principal;

(b) to keep confidential all information received during the course of the agency relationship that was made confidential at the principal's direction, except for:

(i) subsequent conduct by the principal that authorizes disclosure;

(ii) disclosure of any adverse material facts that concern the principal's property or the ability

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of the principal to perform on any purchase offer;

(iii) disclosure required by law or to prevent the commission of a crime;

(iv) the information being disclosed by someone other than the broker or salesperson; and

(v) the disclosure of the information being reasonably necessary to defend the conduct of the broker or salesperson, including employees, independent contractors, and subagents.

(13) Consistent with the licensee's duties as a buyer agent, a seller agent, a dual agent, or a statutory broker, a licensee shall endeavor to ascertain all pertinent facts concerning each property in any transaction in which the licensee acts so that the licensee may fulfill the obligation to avoid error, exaggeration, misrepresentation, or concealment of pertinent facts."

**Renumber:** subsequent sections

And, as amended, be concurred in.

**HB 132**, be concurred in.

**HB 197**, be concurred in.

**ENERGY AND TELECOMMUNICATIONS** (Ankney, Chair):

1/24/2017

**SB 12**, introduced bill, be amended as follows:

1. Page 3, line 2.

**Following:** "utility;"

**Strike:** "and"

**Insert:** "(c) advancements in the use of metering technology to allow for the transfer of data electronically through two-way communications between the owner of distribution facilities and inverters used on customer-generators' net metering systems; and"

2. Page 3, line 3.

**Strike:** "(c)"

**Insert:** "(d)"

**Following:** "technologies"

**Insert:** ", including those that promote two-way communications,"

3. Page 3, line 4.

**Following:** "operability"

**Insert:** ", line stability, safety,"

And, as amended, do pass.

**FISH AND GAME** (Fielder, Chair):

1/24/2017

**SB 50**, introduced bill, be amended as follows:

1. Page 1.

**Following:** line 14

**Insert:** "(2) Electronic validation of licenses pursuant to this section may not include the collection of hunter location data through the use of a global positioning system."

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**Renumber:** subsequent subsections

And, as amended, do pass.

**SB 51**, introduced bill, be amended as follows:

1. Page 2, line 19.

**Following:** "~~(a)~~"

**Insert:** "(a)"

2. Page 2, line 19 through line 21.

**Strike:** "." on line 19 through "(b)" on line 21

3. Page 2, line 24.

**Following:** "and"

**Insert:** "and"

4. Page 2, line 25.

**Strike:** subsection (iv) in its entirety

**Renumber:** subsequent subsection

5. Page 2, line 26.

**Following:** "locations"

**Insert:** "or addresses"

**Strike:** ", and"

**Insert:** "."

6. Page 2, line 27.

**Strike:** "(c)"

**Insert:** "(b)"

**Strike:** "on"

**Insert:** "On"

**Following:** "shall"

**Insert:** "a licensee who sells fish or eggs shall"

7. Page 2, line 30.

**Following:** line 29

**Insert:** "(c) If the purchaser is not the owner of the pond to which the fish or eggs are being transferred, the purchaser shall provide to the department the fish pond license number of the pond to which the fish or eggs are transferred."

And, as amended, do pass.

**SB 91**, introduced bill, be amended as follows:

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1. Page 1, line 28.

**Following:** "ground"

**Insert:** "and whose body is"

And, as amended, do pass.

**JUDICIARY** (Regier, Chair):

1/25/2017

**SB 45**, do pass.

**SB 59**, do pass.

**SB 60**, do pass.

**SB 67**, do pass.

**SB 71**, do pass.

**SB 107**, do pass.

**SJ 3**, do pass.

Without objection, the committee reports were adopted.

**MESSAGES FROM THE OTHER HOUSE**

**House bills** passed and transmitted to the Senate for concurrence:

1/24/2017

**HB 49**, introduced by B. Brown

**HB 108**, introduced by B. Smith

**HB 156**, introduced by F. Mandeville

**HB 172**, introduced by R. Fitzgerald

**HB 200**, introduced by D. Fern

**FIRST READING AND COMMITMENT OF BILLS**

The following Senate bills were introduced, read first time, and referred to committees:

**SB 147**, introduced by D. Sands, referred to Judiciary.

**SB 148**, introduced by S. Malek, referred to Business, Labor, and Economic Affairs.

**SB 149**, introduced by D. Kary, referred to State Administration.

**SB 150**, introduced by D. Brown, referred to Taxation.

**SB 151**, introduced by D. Brown, D. Ankney, M. Blasdel, E. Buttrey, S. Hinebauch, B. Keenan, referred to Local Government.

**SB 152**, introduced by J. Sesso, referred to State Administration.

**SB 153**, introduced by M. MacDonald, referred to Judiciary.

**SB 154**, introduced by M. Lang, A. Redfield, referred to Energy and Telecommunications.

**SB 155**, introduced by M. Lang, D. Bartel, B. Beard, M. Blasdel, R. Cook, B. Hamlett, S. Hinebauch, B. Hoven, C. Knudsen, F. Moore, G. Pierson, A. Redfield, N. Swandal, R. Tempel, K. White, referred to Agriculture, Livestock and Irrigation.

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The following House bills were introduced, read first time, and referred to committees:

**HB 49**, introduced by B. Brown (by request of the Water Policy Interim Committee), referred to Natural Resources.

**HB 108**, introduced by B. Smith (by request of the Department of Fish, Wildlife, and Parks), referred to Fish and Game.

**HB 156**, introduced by F. Mandeville, referred to Natural Resources.

**HB 172**, introduced by R. Fitzgerald, referred to Business, Labor, and Economic Affairs.

**HB 200**, introduced by D. Fern, F. Garner, referred to Local Government.

The following House bill, previously introduced, was referred to committee:

**HB 100**, introduced by B. Bennett (by request of the Legislative Council), referred to Legislative Administration.

**SECOND READING OF BILLS  
(COMMITTEE OF THE WHOLE)**

Majority Leader Thomas moved the Senate resolve itself into a Committee of the Whole for consideration of business on second reading. Motion carried. Senator Sands in the chair.

Mr. President: We, your Committee of the Whole, having had under consideration business on second reading, recommend as follows:

**SB 11** - Senator Connell moved **SB 11** do pass. Motion carried as follows:

Yeas: Ankney, Barrett, Blasdel, Brown, Buttrey, Caferro, Cohenour, Connell, Facey, Fielder, Fitzpatrick, Gauthier, Gross, Hinebauch, Hinkle, Hoven, Howard, Jones, Kary, Keenan, Lang, MacDonald, Malek, McClafferty, McNally, Moe, Moore, Olszewski, Osmundson, Phillips, Pomnichowski, Regier, Richmond, Salomon, Sands, Sesso, Small, Smith C, Smith F, Swandal, Tempel, Thomas, Vance, Vincent, Vuckovich, Webb, Welborn, Whitford, Wolken, Mr.President.  
Total 50

Nays: None.  
Total 0

Absent or not voting: None.  
Total 0

Excused: None.  
Total 0

**SB 14** - Senator Cohenour moved **SB 14** do pass. Motion carried as follows:

Yeas: Ankney, Barrett, Blasdel, Brown, Buttrey, Caferro, Cohenour, Connell, Facey, Fielder,

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Fitzpatrick, Gauthier, Gross, Hinebauch, Hinkle, Hoven, Howard, Jones, Kary, Keenan, Lang, MacDonald, Malek, McClafferty, McNally, Moe, Moore, Olszewski, Osmundson, Phillips, Pomnichowski, Regier, Richmond, Salomon, Sands, Sesso, Small, Smith C, Smith F, Swandal, Tempel, Thomas, Vance, Vincent, Vuckovich, Webb, Welborn, Whitford, Wolken, Mr.President.  
Total 50

Nays: None.  
Total 0

Absent or not voting: None.  
Total 0

Excused: None.  
Total 0

**SB 7** - Senator Connell moved **SB 7** do pass. Motion carried as follows:

Yeas: Ankney, Blasdel, Brown, Buttrey, Connell, Fielder, Fitzpatrick, Gauthier, Hinebauch, Hoven, Howard, Jones, Kary, Keenan, Lang, Moore, Olszewski, Osmundson, Regier, Richmond, Salomon, Small, Smith C, Swandal, Tempel, Thomas, Vance, Vincent, Webb, Welborn, Mr.President.  
Total 31

Nays: Barrett, Caferro, Cohenour, Facey, Gross, Hinkle, MacDonald, Malek, McClafferty, McNally, Moe, Phillips, Pomnichowski, Sands, Sesso, Smith F, Vuckovich, Whitford, Wolken.  
Total 19

Absent or not voting: None.  
Total 0

Excused: None.  
Total 0

Majority Leader Thomas moved the committee **rise and report**. Motion carried. Committee arose. Senate resumed. President Sales presiding.

Chair Sands moved the Committee of the Whole report be adopted. Report adopted as follows:

Yeas: Ankney, Barrett, Blasdel, Brown, Buttrey, Caferro, Cohenour, Connell, Facey, Fielder, Fitzpatrick, Gauthier, Gross, Hinebauch, Hinkle, Hoven, Howard, Jones, Kary, Keenan, Lang, MacDonald, Malek, McClafferty, McNally, Moe, Moore, Olszewski, Osmundson, Phillips, Pomnichowski, Regier, Richmond, Salomon, Sands, Sesso, Small, Smith C, Smith F, Swandal, Tempel, Thomas, Vance, Vincent, Vuckovich, Webb, Welborn, Whitford, Wolken, Mr.President.  
Total 50



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Nays: None.

Total 0

Absent or not voting: None.

Total 0

Excused: None.

Total 0

**THIRD READING OF BILLS**

The following bills having been read three several times, title and history agreed to, were disposed of in the following manner:

**SB 32** passed as follows:

Yeas: Ankney, Blasdel, Brown, Buttrey, Connell, Fielder, Fitzpatrick, Gauthier, Hinebauch, Hinkle, Hoven, Howard, Jones, Kary, Keenan, Lang, Moore, Olszewski, Osmundson, Regier, Richmond, Salomon, Small, Smith C, Swandal, Thomas, Vance, Vincent, Webb, Welborn, Mr.President.

Total 31

Nays: Barrett, Caferro, Cohenour, Facey, Gross, MacDonald, Malek, McClafferty, McNally, Moe, Phillips, Pomnichowski, Sands, Sesso, Smith F, Tempel, Vuckovich, Whitford, Wolken.

Total 19

Absent or not voting: None.

Total 0

Excused: None.

Total 0

**SB 36** passed as follows:

Yeas: Ankney, Barrett, Blasdel, Brown, Buttrey, Caferro, Cohenour, Connell, Facey, Fielder, Fitzpatrick, Gauthier, Gross, Hinebauch, Hinkle, Hoven, Howard, Jones, Kary, Keenan, Lang, MacDonald, Malek, McClafferty, McNally, Moe, Moore, Olszewski, Osmundson, Phillips, Pomnichowski, Regier, Richmond, Salomon, Sands, Sesso, Small, Smith C, Smith F, Swandal, Tempel, Thomas, Vance, Vincent, Vuckovich, Webb, Welborn, Whitford, Wolken, Mr.President.

Total 50

Nays: None.

Total 0

Absent or not voting: None.

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Total 0

Excused: None.

Total 0

**SB 39** passed as follows:

Yeas: Ankney, Barrett, Blasdel, Brown, Buttrey, Caferro, Cohenour, Connell, Facey, Fielder, Fitzpatrick, Gauthier, Gross, Hinebauch, Hinkle, Hoven, Howard, Jones, Kary, Keenan, Lang, MacDonald, Malek, McClafferty, McNally, Moe, Moore, Olszewski, Osmundson, Phillips, Pomnichowski, Regier, Richmond, Salomon, Sands, Sesso, Small, Smith C, Smith F, Swandal, Tempel, Thomas, Vance, Vincent, Vuckovich, Webb, Welborn, Whitford, Wolken, Mr.President.  
Total 50

Nays: None.

Total 0

Absent or not voting: None.

Total 0

Excused: None.

Total 0

**SB 101** passed as follows:

Yeas: Ankney, Barrett, Blasdel, Brown, Buttrey, Caferro, Cohenour, Connell, Facey, Fielder, Fitzpatrick, Gauthier, Gross, Hinebauch, Hinkle, Hoven, Howard, Jones, Kary, Keenan, Lang, Malek, McClafferty, McNally, Moe, Moore, Olszewski, Osmundson, Phillips, Pomnichowski, Regier, Richmond, Salomon, Sands, Sesso, Small, Smith C, Swandal, Tempel, Thomas, Vance, Vincent, Vuckovich, Webb, Welborn, Whitford, Wolken, Mr.President.  
Total 48

Nays: MacDonald, Smith F.

Total 2

Absent or not voting: None.

Total 0

Excused: None.

Total 0

**SJ 2** adopted as follows:

Yeas: Ankney, Barrett, Blasdel, Brown, Buttrey, Caferro, Cohenour, Connell, Facey, Fielder, Fitzpatrick, Gauthier, Gross, Hinebauch, Hinkle, Hoven, Howard, Jones, Kary, Keenan, Lang,

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MacDonald, Malek, McClafferty, McNally, Moe, Olszewski, Osmundson, Phillips, Pomnichowski, Regier, Richmond, Salomon, Sands, Sesso, Small, Smith C, Smith F, Swandal, Tempel, Thomas, Vance, Vincent, Vuckovich, Webb, Welborn, Whitford, Wolken, Mr.President.  
Total 49

Nays: Moore.  
Total 1

Absent or not voting: None.  
Total 0

Excused: None.  
Total 0

**MOTIONS**

Majority Leader Thomas moved that **SB 14**, heard under second reading this date, be referred to the Finance and Claims Committee.

Without objection, so ordered.

**UNFINISHED BUSINESS**

Mr. President, I move the following names be **ADDED** as sponsor to **SB 133**. (R. Webb, Chief Sponsor): Senator Olszewski, Representatives Greef, Hill-Smith, Knokey, McKamey, and P. Webb.

Without objection, so ordered.

**ANNOUNCEMENTS**

Committee meetings were announced by the committee chairs.

Majority Leader Thomas moved the Senate adjourn until 1:00 p.m., Thursday, January 26, 2017, the 19th legislative day. Motion carried.

Senate adjourned at 1:40 p.m.

MARILYN MILLER  
Secretary of the Senate

SCOTT SALES  
President of the Senate