

**Unofficial Draft Copy**

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LCCF09

\*\*\*\* Bill No. \*\*\*\*

Introduced By \*\*\*\*\*

By Request of the \*\*\*\*\*

A Bill for an Act entitled: "An Act prohibiting the dispensing of a prescription for a controlled substance to a minor; providing exceptions; and amending sections 37-2-101, 37-2-104, 37-7-401, 50-31-307, and 50-32-208, MCA."

Be it enacted by the Legislature of the State of Montana:

NEW SECTION. **Section 1. Dispensing to minor prohibited -- exceptions -- requirements of medical practitioners.** (1) Except as otherwise provided in this section, a pharmacist or medical practitioner may dispense a controlled substance prescribed for a minor only to:

(a) the minor's parent or legal guardian;

(b) an adult authorized by a parent or legal guardian to obtain health care treatment for the minor;

(c) a foster parent of a minor who is in a placement approved by the state of Montana; or

(d) an employee of any of the following facilities when the employee has been authorized by the facility to obtain the prescription on behalf of a minor in the care or custody of the facility:

(i) a facility in which a youth has been placed pursuant to the youth court act provided for in Title 41, chapter 5;

(ii) a health care facility as defined in 50-5-101;  
(iii) a youth care facility as defined in 52-2-602; or  
(iv) a facility operated by or under contract with the department of corrections.

(2) The requirements of this section do not apply to:

(a) a controlled substance provided in an emergency pursuant to 37-2-104(2)(a);  
(b) an emancipated minor as defined in 41-1-401; or  
(c) prescriptions for a minor who obtained health services pursuant to 41-1-402 or Title 50, chapter 20, part 5.

(3) A pharmacist may dispense a controlled substance prescription to a minor who is 16 years of age or older and who is known to the pharmacist.

(4) A medical practitioner writing a controlled substance prescription for a minor must indicate on the prescription whether the prescription may be dispensed to the minor or an adult other than the parent or legal guardian under the exceptions provided for in this section. The practitioner must identify by name the person to whom the prescription may be dispensed.

(5) A medical practitioner who sells or gives a drug listed in 37-7-402(1) to a minor or to an adult other than the minor's parent or legal guardian must document in the minor's health record the person to whom the drug was provided and the reason the drug was provided to that person.

(6) An out-of-state mail service pharmacy as defined in 37-7-702 is subject to the provisions of this section and must

establish procedures for delivering a controlled substances prescription for a minor to a person who is authorized under this section to obtain the prescription on behalf of the minor.

**Section 2.** Section 37-2-101, MCA, is amended to read:

**"37-2-101. Definitions.** As used in this part, the following definitions apply:

(1) "Community pharmacy", when used in relation to a medical practitioner, means a pharmacy situated within 10 miles of any place at which the medical practitioner maintains an office for professional practice.

(2) "Controlled substance" means a substance designated in Schedules II through V of Title 50, chapter 32, part 2, or 21 CFR, part 1308.

~~(2)~~(3) "Device" means any instrument, apparatus, or contrivance intended:

(a) for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans;

(b) to affect the structure or any function of the body of humans.

~~(3)~~(4) "Drug" has the same meaning as provided in 37-7-101.

~~(4)~~(5) "Drug company" means any person engaged in the manufacturing, processing, packaging, or distribution of drugs. The term does not include a pharmacy.

~~(5)~~(6) "Medical practitioner" means any person licensed by the state of Montana to engage in the practice of medicine, dentistry, osteopathy, podiatry, optometry, or a nursing

specialty as described in 37-8-202 and in the licensed practice to administer or prescribe drugs.

~~(7)~~ "Minor" means an individual under 18 years of age.

~~(6)~~~~(8)~~ "Person" means any individual and any partnership, firm, corporation, association, or other business entity.

~~(7)~~~~(9)~~ "Pharmacy" has the same meaning as provided in 37-7-101.

~~(8)~~~~(10)~~ "State" means the state of Montana or any political subdivision of the state."

{ Internal References to 37-2-101:

27-1-736x	37-6-105x	37-7-101x	37-7-502x
45-8-110x	52-2-736x	}	

**Section 3.** Section 37-2-104, MCA, is amended to read:

**"37-2-104. Dispensing of drugs by medical practitioners unlawful -- exceptions.** (1) Except as otherwise provided by this section, it is unlawful for a medical practitioner to engage, directly or indirectly, in the dispensing of drugs.

(2) ~~This~~ Except as provided in [section 1], this section does not prohibit:

(a) a medical practitioner from furnishing a patient any drug in an emergency;

(b) the administration of a unit dose of a drug to a patient by or under the supervision of a medical practitioner;

(c) dispensing a drug to a patient by a medical practitioner whenever there is no community pharmacy available to the patient;

(d) the dispensing of drugs occasionally, but not as a

usual course of doing business, by a medical practitioner;

(e) a medical practitioner from dispensing drug samples;

(f) the dispensing of factory prepackaged contraceptives, other than mifepristone, by a registered nurse employed by a family planning clinic under contract with the department of public health and human services if the dispensing is in accordance with:

(i) a physician's written protocol specifying the circumstances under which dispensing is appropriate; and

(ii) the drug labeling, storage, and recordkeeping requirements of the board of pharmacy;

(g) a contract physician at an urban Indian clinic from dispensing drugs to qualified patients of the clinic. The clinic may not stock or dispense any dangerous drug, as defined in 50-32-101, or any controlled substance. The contract physician may not delegate the authority to dispense any drug for which a prescription is required under 21 U.S.C. 353(b).

(h) a medical practitioner from dispensing a drug if the medical practitioner has prescribed the drug and verified that the drug is not otherwise available from a community pharmacy. A drug dispensed pursuant to this subsection (2)(h) must meet the labeling requirements of the board of pharmacy."

{ *Internal References to 37-2-104:*  
37-2-103x            37-20-404x }

**Section 4.** Section 37-7-401, MCA, is amended to read:

**"37-7-401. Restrictions on prescriptions.** (1) (a) An

authorized prescriber may not sell, give to, or prescribe for any person any opium, morphine, alkaloid-cocaine, alpha or beta eucaine, codeine, heroin, or any derivative, mixture, or preparation of any of them, except to a patient believed in good faith to require opium, morphine, alkaloid-cocaine, alpha or beta eucaine, codeine, heroin, or any derivative, mixture, or preparation of the enumerated substances for medical use and in quantities proportioned to the needs of the patient.

(b) A controlled substance listed in this subsection (1) that is intended for a minor may only be provided as allowed in [section 1].

~~(2)~~(3) A prescription must be written so that the prescription can be compounded by any registered pharmacist. The coding of any prescription is a violation of this section.

~~(3)~~(4) A prescription marked "non repetatur", "non rep", or "N.R." cannot be refilled. A prescription marked to be refilled may be filled by any registered pharmacist the number of times marked on the prescription. A prescription not bearing any refill instructions may not be refilled without first obtaining permission from the prescriber. A prescription may not be refilled for more than 1 year from the date the prescription was originally written. A Schedule II prescription may not be refilled."

{ Internal References to 37-7-401:  
37-7-103x            37-7-402x }

**Section 5.** Section 50-31-307, MCA, is amended to read:

**"50-31-307. Dispensing of prescription drugs.** (1) A drug intended for use by humans that is included in one of the categories in subsection (2) may be dispensed only:

(a) upon a written prescription of a practitioner licensed by law to administer the drug;

(b) upon an oral prescription of the practitioner that is reduced promptly to writing and filed by the pharmacist; or

(c) by refilling a written or oral prescription if the refilling is authorized by the practitioner, either in the original prescription or by an oral order that is reduced promptly to writing and filed by the pharmacist.

(2) A drug must be dispensed as provided in subsection (1) if the drug:

(a) is a habit-forming drug to which 50-31-306(1)(d) applies;

(b) because of its toxicity or other potentiality for harmful effect, the method of its use, or the collateral measures necessary to its use, is not safe for use except under the supervision of a practitioner licensed by law to administer the drug; or

(c) is limited by an approved application under section 505 of the federal act (21 U.S.C. 355) or 50-31-311 to use under the professional supervision of a practitioner licensed by law to administer the drug.

(3) A habit-forming drug to which 50-31-306(1)(d) applies and that has been prescribed for a minor must be dispensed in accordance with [section 1].

~~(3)~~(4) If the drug is a factory prepackaged contraceptive, other than mifepristone, it may be dispensed as provided in subsection (1) or by a registered nurse employed by a family planning clinic under contract with the department of public health and human services pursuant to a physician's written protocol specifying the circumstances under which dispensing is appropriate and pursuant to the board of pharmacy's rules concerning labeling, storage, and recordkeeping of drugs.

~~(4)~~(5) The act of dispensing a drug contrary to the provisions of this section is considered an act that results in a drug being misbranded while held for sale."

{ Internal References to 50-31-307:

50-31-103x	50-31-306x	50-31-306x	50-31-308x
50-31-309x	50-31-309x	50-31-310x	50-42-102x }

**Section 6.** Section 50-32-208, MCA, is amended to read:

**"50-32-208. Prescription and medical requirements for scheduled drugs -- penalty.** (1) No dangerous drug in Schedule II may be dispensed without the written prescription of a practitioner.

(2) In emergency situations, as defined by rule of the board, Schedule II drugs may be dispensed upon a practitioner's oral prescription reduced promptly to writing and filed by the pharmacy. Prescriptions shall be retained in conformity with the requirements of 50-32-309. No prescription for a Schedule II drug may be refilled.

(3) A dangerous drug included in Schedule III or IV, which is a prescription drug as determined under the federal or Montana



food, drug, and cosmetic acts, shall not be dispensed without a written or oral prescription of a practitioner. The prescription shall not be filled or refilled more than 6 months after the date thereof or be refilled more than five times unless renewed by the practitioner.

(4) A dangerous drug included in Schedule V shall not be distributed or dispensed other than for a medical purpose.

(5) A dangerous drug that is included in Schedule II, III, IV, or V and is prescribed for a minor must be dispensed in accordance with [section 1].

~~(5)~~(6) Any person who violates the provisions of this section is guilty of a misdemeanor and upon conviction may be fined not to exceed \$1,000 or be imprisoned in county jail for a term not to exceed 1 year, or both fined and imprisoned."

{Internal References to 50-32-208: None.x}

NEW SECTION. **Section 7. {standard} Codification**

**instruction.** [Section 1] is intended to be codified as an integral part of Title 37, chapter 2, part 1, and the provisions of Title 37, chapter 2, part 1, apply to [section 1].

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