

HOUSE BILL NO. 322

INTRODUCED BY K. SWANSON

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A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING CITATIONS AS AN ENFORCEMENT OPTION FOR UNLICENSED PRACTICE OF A PROFESSION OR OCCUPATION; PROVIDING GRADUATED FINES FOR CITATIONS; REQUIRING PEACE OFFICER QUALIFICATIONS FOR PERSONS ISSUING CITATIONS; AND AMENDING SECTIONS 37-1-317 AND 37-1-412, MCA."

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

Section 1. Section 37-1-317, MCA, is amended to read:

"37-1-317. Practice without license -- investigation of complaint -- injunction -- penalties. (1) The department shall investigate complaints or other information received concerning practice by an unlicensed person of a profession or occupation for which a license is required by this title.

(2) (a) Unless otherwise provided by statute, a board may file an action to enjoin a person from practicing, without a license, a profession or occupation for which a license is required by this title. In addition to the penalty provided for in 37-1-318, a person violating an injunction issued pursuant to this section may be held in contempt of court.

(b) A person subject to an injunction for practicing without a license may also be subject to criminal prosecution. In a complaint for an injunction or in an affidavit, information, or indictment alleging that a person has engaged in unlicensed practice, it is sufficient to charge that the person engaged in the unlicensed practice of a licensed profession or occupation on a certain day in a certain county without averring further or more particular facts concerning the violation.

(3) Unless otherwise provided by statute, ~~a person practicing the practice of~~ a licensed profession or occupation in this state ~~without complying that does not comply~~ with the licensing provisions of this title is ~~guilty~~ of a misdemeanor punishable by a fine of not less than \$250 or more than \$1,000, imprisonment in the county jail for not less than 90 days or more than 1 year, or both. Each violation of the provisions of this chapter constitutes a separate offense.

(4) The department may issue a citation to and collect a fine, as provided in 37-68-316 and 37-69-310, from a person at a job site who is performing plumbing or electrical work and who fails to display a license or

1 proof of licensure at the request of an employee of the department who bears responsibility for compliance with
2 licensure requirements.

3 (5) (a) The department may, after investigation as provided in subsection (1), issue a citation to a person
4 who has been found to have practiced a profession or an occupation in this state without a license issued by the
5 board that regulates the profession or occupation. The citation must describe whether the offense with which the
6 person is charged is a first, second, or subsequent charge of practicing a licensed profession or occupation
7 without a license. The citation also must contain instructions for the person charged to report to the nearest justice
8 of the peace or to pay a fine as provided in subsection (5)(b). The department shall send the original citation to
9 the nearest justice of the peace.

10 (b) The fine for a citation issued under this section is:

11 (i) \$250 for the first offense;

12 (ii) \$500 for the second offense; and

13 (iii) \$1,000 for a third and any subsequent offense.

14 (6) The person authorized by the department to issue a citation under this section must meet the
15 qualifications of a peace officer, as provided in 7-32-303(2)(a) through (2)(i). The department shall require a
16 formal oath of office and shall report to the Montana public safety officer standards and training council the name
17 of the person appointed to issue citations under this section within 10 days of the person's appointment,
18 termination, resignation, or death."

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20 **Section 2.** Section 37-1-412, MCA, is amended to read:

21 **"37-1-412. Violation of injunction -- penalty.** (1) A person who has been enjoined and who violates
22 an injunction issued pursuant to a proceeding under this part may be held in contempt of court and shall pay a
23 civil penalty, as determined by the court, of not more than \$5,000. Fifty percent of the penalty must be deposited
24 in the general fund of the county in which the injunction is issued, and 50% must be deposited in the state general
25 fund.

26 (2) A person subject to an injunction for practicing without a license may also be subject to criminal
27 prosecution. In a complaint for an injunction or in an affidavit, information, or indictment alleging that a person has
28 engaged in unlicensed practice, it is sufficient to charge that the person engaged in the unlicensed practice of
29 a licensed profession or occupation on a certain day in a certain county without averring further or more particular
30 facts concerning the violation.

1 (3) Unless otherwise provided by statute, ~~a person practicing the practice of~~ a licensed profession or
2 occupation in this state ~~without complying that does not comply~~ with the licensing provisions of this title is guilty
3 of a misdemeanor punishable by a fine of not less than \$250 or more than \$1,000, imprisonment in the county
4 jail for not less than 90 days or more than 1 year, or both. Each violation of the provisions of this chapter
5 constitutes a separate offense.

6 (4) (a) The department may, after investigation, issue a citation to a person found by a review panel to
7 have practiced a profession or an occupation in this state without a license issued by a licensing program that
8 is not under a board. The citation must describe whether the offense with which the person is charged is a first,
9 second, or subsequent charge of practicing a licensed profession or occupation without a license. The citation
10 also must contain instructions for the person charged to report to the nearest justice of the peace or to pay a fine
11 as provided in subsection (4)(b). The department shall send the original citation to the nearest justice of the
12 peace.

13 (b) The fine for a citation issued under this section is:

14 (i) \$250 for the first offense;

15 (ii) \$500 for the second offense; and

16 (iii) \$1,000 for a third and any subsequent offense.

17 (5) The person authorized by the department to issue a citation under this section must meet the
18 qualifications of a peace officer, as provided in 7-32-303(2)(a) through (2)(i). The department shall require a
19 formal oath of office and shall report to the Montana public safety officer standards and training council the name
20 of the person appointed to issue citations under this section within 10 days of the person's appointment,
21 termination, resignation, or death."

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