

HOUSE BILL NO. 98
INTRODUCED BY MCKENNEY
BY REQUEST OF THE DEPARTMENT OF LABOR AND INDUSTRY

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATING TO PROFESSIONAL AND OCCUPATIONAL LICENSING; PROVIDING THAT THE ADOPTION OF CERTAIN RULES BY THE BOARD OF ATHLETICS IS DISCRETIONARY; PROVIDING THAT CERTAIN BOXING AND WRESTLING LICENSES ARE NOT RENEWABLE; PROVIDING THAT THE ADOPTION OF CERTAIN RULES BY THE BOARD OF PUBLIC ACCOUNTANTS IS DISCRETIONARY; PROVIDING THAT THE CREDENTIALS OF A FOREIGN ACCOUNTANT BE RECOGNIZED RATHER THAN REGISTERED; EXPANDING THE GROUNDS FOR WAIVING AN EXAMINATION FOR FOREIGN OR OUT-OF-STATE CERTIFIED PUBLIC ACCOUNTANTS AND LICENSED PUBLIC ACCOUNTANTS; PROVIDING THAT THE BOARD OF REALTY REGULATION MAY REQUIRE ~~EXAMINATION~~ SPECIFIC PERFORMANCE LEVELS OF LICENSEES WHO TAKE CERTAIN KINDS OF CONTINUING EDUCATION COURSES; REQUIRING FINGERPRINT CHECKS FOR LICENSE APPLICANTS BY THE BOARD OF PRIVATE SECURITY PATROL OFFICERS AND INVESTIGATORS; CLARIFYING LICENSE APPLICATION REQUIREMENTS FOR APPLICANTS OTHER THAN INDIVIDUALS APPLYING FOR LICENSURE BY THE BOARD OF PRIVATE SECURITY PATROL OFFICERS AND INVESTIGATORS; DEFINING "MASTER OF RECORD" WITH RESPECT TO A MASTER PLUMBER; ELIMINATING THE REQUIREMENT FOR MAINTAINING A DIRECTORY OF REAL ESTATE BROKERS AND SALESPERSONS; ELIMINATING THE REQUIREMENT FOR MAINTAINING A ROSTER OF LICENSED AND CERTIFIED REAL ESTATE APPRAISERS; AMENDING SECTIONS 23-3-405, 23-3-501, 37-50-102, 37-50-203, 37-50-301, 37-50-311, 37-50-312, 37-50-313, 37-50-335, 37-51-204, 37-60-303, 37-60-304, 37-69-101, AND 37-69-305, MCA; REPEALING SECTIONS 37-51-307 AND 37-54-110, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

Section 1. Section 23-3-405, MCA, is amended to read:

"23-3-405. Rules. (1) The board may adopt rules for the administration and enforcement of this chapter.

(2) (a) The rules must include ~~but are not limited to the following:~~

———(a) the granting, ~~renewal~~, suspension, and revocation of licenses and the qualification requirements for

those to be licensed to conduct matches or exhibitions or to be licensed as referees, managers, or judges. ~~Such~~ License qualifications must include appropriate knowledge, experience, and integrity.

(b) The rules may include but are not limited to the following:

~~(b)~~(i) the labeling of a match as a championship match;

~~(c)~~(ii) the number and length of rounds and the weight of gloves;

~~(d)~~(iii) the extent and timing of the physical examination of contestants;

~~(e)~~(iv) the attendance of a referee and ~~his~~ the referee's powers and duties; and

~~(f)~~(v) review of decisions made by officials.

(3) The rules ~~shall~~ must meet or exceed the safety codes required by recognized professional boxing and wrestling organizations and provide reasonable measures for the fair conduct of the matches or exhibitions and for the protection of the health and safety of the contestants. The rules ~~shall~~ must require a physical examination of each contestant prior to each match or exhibition and the attendance of a licensed physician at ringside and ~~shall~~ must provide for the qualifications of judges, referees, and seconds and for ~~the~~ their payment ~~of such officials~~ by the promoter."

Section 2. Section 23-3-501, MCA, is amended to read:

"23-3-501. Licenses -- fees. (1) The board may issue a ~~renewable~~ license to a professional or semiprofessional boxing or wrestling promoter, whether an individual or organization, for the sole purpose of conducting professional or semiprofessional matches or exhibitions.

(2) The board may issue ~~renewable~~ licenses to qualified referees, managers, boxers, wrestlers, seconds, trainers, and judges.

(3) A license issued in accordance with subsections (1) and (2) expires on the date set by department rule and ~~may be renewed upon payment of a fee set by the board.~~

(4) Each application for a license under this section must be accompanied by a fee, commensurate with costs for that license, as provided in 37-1-134, as set by the board, ~~commensurate with costs related to the particular license as provided in 37-1-134."~~

Section 3. Section 37-50-102, MCA, is amended to read:

"37-50-102. Exemptions. ~~Nothing contained in this~~ This chapter shall ~~does not prohibit any person who~~ is not a certified public accountant or licensed public accountant from serving as an employee of or an assistant to a certified public accountant or a licensed public accountant holding a permit to practice under 37-50-314, ~~or~~

a partnership or corporation composed of certified public accountants or licensed public accountants registered under this chapter, or a foreign accountant ~~registered whose credentials have been recognized under 37-50-313,~~ ~~provided that such~~ However, the employee or assistant ~~shall~~ may not issue any accounting or financial statement ~~over his~~ in the employee's or assistant's name."

Section 4. Section 37-50-203, MCA, is amended to read:

"37-50-203. Rules of the board. (1) The board may adopt rules, consistent with the purposes of this chapter, as it considers necessary.

(2) The board shall adopt:

(a) rules of professional conduct appropriate to establish and maintain a high standard of integrity, dignity, and competency in the profession of public accounting, including competency in specific fields of public accounting;

(b) rules of procedure governing the conduct of matters before the board;

(c) rules governing education requirements, as provided in 37-50-305, for issuance of the certificate of a certified public accountant and the license for licensed public accountant;

~~(d) rules governing partnerships and corporations practicing public accounting, including but not limited to rules concerning their style, name, title, and affiliation with any other organization and establishing reasonable standards with respect to professional liability insurance and unimpaired capital and prescribing joint and several liability for torts relating to professional services for shareholders of any corporation failing to comply with the standards;~~

~~(e)~~(d) rules defining requirements for accounting experience, not exceeding 2 years, for issuance of the initial permit; and

~~(f)~~(e) rules to enforce the provisions of this chapter. The purpose of the rules must be to provide for the monitoring of the profession of public accounting and to maintain the quality of the accounting profession.

(3) The board may adopt rules:

(a) governing partnerships, corporations, and other types of entities practicing public accounting, including but not limited to rules concerning style, name, title, and affiliation with other organizations;

(b) (i) establishing reasonable standards with respect to professional liability insurance and unimpaired capital; and

(ii) prescribing joint and several liability for torts relating to professional services for shareholders of a corporation or owners of other types of entities that fail to comply with standards established pursuant to

subsection (3)(b)(i); and

(c) establishing education and experience qualifications for out-of-state and foreign accountants seeking authorization to practice in Montana."

Section 5. Section 37-50-301, MCA, is amended to read:

"37-50-301. Illegal use of title. (1) A person may not assume or use the title or designation "certified public accountant" or the abbreviation "CPA" or any other title, designation, words, letters, abbreviation, sign, card, or device indicating that the person is a certified public accountant unless the person holds a current certificate as a certified public accountant under this chapter. However, a foreign accountant ~~who has registered~~ whose credentials are recognized under the provisions of 37-50-313 shall use the title under which the foreign accountant is generally known in the foreign country, followed by the name of the country from which the foreign accountant's certificate, license, or degree was received.

(2) A partnership or corporation may not assume or use the title or designation "certified public accountant" or the abbreviation "CPA" or any other title, designation, words, letters, abbreviation, sign, card, or device indicating that the partnership or corporation is composed of certified public accountants pursuant to the requirements of 37-50-330 unless it is registered as required under 37-50-335.

(3) A person may not assume or use the title or designation "licensed public accountant", "public accountant", or any other title, designation, words, letters, abbreviation, sign, card, or device indicating that the person is a public accountant unless the person holds a current license as a licensed public accountant under this chapter.

(4) A partnership or corporation may not assume or use the title or designation "licensed public accountant", "public accountant", or any other title, designation, words, letters, abbreviation, sign, card, or device indicating that the partnership or corporation is composed of public accountants unless it is registered as required under 37-50-335.

(5) A person, corporation, or partnership may not assume or use the title or designation "certified accountant", "chartered accountant", "enrolled accountant", "licensed accountant", "registered accountant", or any other title or designation likely to be confused with "certified public accountant", "licensed public accountant", "public accountant" or any of the abbreviations "CA", "EA", "LA", or "RA" or similar abbreviations likely to be confused with "CPA". However, a foreign accountant ~~who has registered~~ whose credentials are recognized under 37-50-313 shall use the title under which the foreign accountant is generally known in the foreign country, followed by the name of the country from which the foreign accountant's certificate, license, or degree was

received, and a person who is licensed as an enrolled agent by the internal revenue service may use the title "enrolled agent" or the abbreviation "EA".

(6) A person may not sign or affix the person's name or any trade or assumed name used by the person in the person's profession or business with any wording indicating that the person has expert knowledge in accounting or auditing to any accounting or financial statement or to any opinion on, report on, or certificate to any accounting or financial statement unless the person holds a current permit issued under 37-50-314 and all of the person's offices in this state for the practice of public accounting are maintained and registered under 37-50-335. However, the provisions of this subsection do not prohibit any officer, employee, partner, or principal of any organization from affixing a signature to any statement or report in reference to the financial affairs of that organization with any wording designating the position, title, or office that the person holds in that organization, nor do the provisions of this subsection prohibit any act of a public official or public employee in the performance of the official's or employee's public duties.

(7) A person may not sign or affix a partnership or corporation name with any wording indicating that it is a partnership or corporation composed of persons having expert knowledge in accounting or auditing to any accounting or financial statement or to any report on or certificate to any accounting or financial statement unless the partnership or corporation conforms to the requirements of 37-50-330 and is registered as required under 37-50-335.

(8) A person may not assume or use the title or designation "certified public accountant" or "public accountant" in conjunction with names indicating or implying that there is a partnership or corporation or in conjunction with the designation "and company" or "and co." or a similar designation if there is in fact no bona fide partnership or corporation that has been formed subject to the provisions of 37-50-330 and registered under 37-50-335. However, it is lawful for a sole proprietor to continue the use of a deceased's name in connection with the sole proprietor's business for a reasonable period of time after the death of a former partner."

Section 6. Section 37-50-311, MCA, is amended to read:

"37-50-311. Certified public accountants -- waiver of examination for holders of foreign or out-of-state licenses, certificates, permits, or degrees. The board in its discretion may waive the examination and issue a certificate as a certified public accountant to any person otherwise eligible therefor who is the holder of:

(1) a certificate, license, or permit as a certified public accountant, then in full force and effect, issued under the laws of any state; or

~~(2) is the holder of a certificate, license, or degree in a foreign country constituting a recognized qualification for the practice of public accounting in such that country, comparable to that of a certified public accountant in this state, which is then in full force and effect, where the requirements entitling him to practice as such certified public accountant were substantially equivalent to those in force in the state of Montana at the time the certificate was originally issued; or~~

(3) a certificate, license, or degree that the board considers to be subject to requirements or qualifications substantially equivalent to or greater than the requirements of this state at the time of the holder's application."

Section 7. Section 37-50-312, MCA, is amended to read:

"37-50-312. Public accountants -- waiver of examination for holders of out-of-state license. The board in its discretion may waive the examination and register as a licensed public accountant any person otherwise eligible ~~therefor~~ who is the holder of:

(1) a license as a licensed public accountant, then in full force and effect, issued under the laws of any state; or is

~~(2) the holder of a license or degree in a foreign country constituting a recognized qualification for the practice of public accounting in such that country, comparable to that of a licensed public accountant in this state, which is then in full force and effect, where the requirements entitling him to practice as such licensed public accountant were substantially equivalent to those in force in the state of Montana at the time the license was originally issued; or~~

(3) a certificate, license, or degree that the board considers to be subject to requirements or qualifications substantially equivalent to or greater than the requirements of this state at the time of the holder's application."

Section 8. Section 37-50-313, MCA, is amended to read:

"37-50-313. ~~Registration~~ Recognition of credentials of foreign accountants -- restriction on title used -- practice. (1) The board may in its discretion ~~permit the registration~~ recognize the credentials of any person of good moral character who is the holder of a certificate, license, or degree in a foreign country constituting a recognized qualification for the practice of public accounting in ~~such that~~ country. A person ~~so registered~~ whose credentials are recognized ~~shall~~ may use only the title under which ~~he~~ the person is generally known in ~~his~~ that country, followed by the name of the country from which ~~he~~ the person received ~~his~~ the

certificate, license, or degree.

(2) A person whose credentials are recognized by the board may practice public accounting under the terms and conditions established by the board."

Section 9. Section 37-50-335, MCA, is amended to read:

"37-50-335. Registration of offices. Each office established or maintained in this state for the practice of public accounting in this state by a certified public accountant, ~~or by~~ a partnership or corporation of certified public accountants, ~~or by~~ a licensed public accountant, ~~or by~~ a partnership or corporation of licensed public accountants, or by ~~one registered~~ a foreign accountant recognized under 37-50-313 ~~shall~~ must be registered annually with the department. A fee may not be charged for this registration. In addition, each individual engaged in this state in the practice of public accounting must have annually received a permit under 37-50-314."

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

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

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

(3) The board may require an examination SPECIFIED PERFORMANCE LEVELS of a licensee with respect to the subject matter of a continuing education course required under 37-51-310 when the licensee and the instructor of the course are not physically present in the same facility at the time the licensee receives the instruction."

Section 11. Section 37-60-303, MCA, is amended to read:

"37-60-303. License qualifications. (1) Except as ~~otherwise specified in this section~~ provided in subsection (8), an applicant for licensure under this chapter is subject to the provisions of this section and shall submit evidence under oath that the applicant:

(a) is at least 18 years of age;

(b) is a citizen of the United States;

(c) has not been convicted in any jurisdiction of any felony or any crime involving moral turpitude or illegal use or possession of a dangerous weapon, for which a full pardon or similar relief has not been granted;

(d) has not been judicially declared incompetent by reason of any mental defect or disease or, if so declared, has been fully restored;

(e) is not suffering from habitual drunkenness or from narcotics addiction or dependence;

(f) is of good moral character; and

(g) has complied with other experience qualifications as may be set by the rules of the board.

(2) In addition to meeting the qualifications in subsection (1), an applicant for licensure as a private security guard shall:

(a) complete the training requirements of a private security guard training program certified by the board and provide, on a form prescribed by the board, written notice of satisfactory completion of the training; and

(b) fulfill other requirements as the board may by rule prescribe.

(3) In addition to meeting the qualifications in subsection (1), each applicant for a license to act as a private investigator shall submit evidence under oath that the applicant:

(a) is at least 21 years of age;

(b) has at least a high school education or its equivalent;

(c) has not been dishonorably discharged from any branch of the United States military service;

(d) for a period of not less than 3 years:

(i) has been lawfully engaged in the private investigative business;

(ii) has been lawfully employed as a private investigator or been the holder of a certificate of authority to conduct a private investigative business; or

(iii) has been an investigator, detective, special agent, or peace officer of a city, county, or state government or of the United States government; and

(e) has fulfilled any other requirements as the board may by rule prescribe.

(4) Up to one-half of the experience required by subsection (3)(d) may be met by a combination of education and training as accepted by the board. All college credits must be from an accredited college or university and be verified by transcript.

(5) Applicants who will wear or carry firearms in performance of their duties shall submit written notice of satisfactory completion of a firearms training program certified by or satisfactory to the board, as it may by rule prescribe.

~~(6) A corporation applying for a license under this section must be incorporated under the laws of this state or be duly qualified to do business within this state.~~

~~(7)~~(6) The board shall may require an applicant to demonstrate by written examination ~~such~~ additional

qualifications as the board may by rule require.

(7) Except for an applicant subject to the provisions of subsection (8), the board shall require a background investigation of each applicant for licensure under this chapter that includes a fingerprint check by the Montana department of justice and the federal bureau of investigation.

(8) (a) A firm, company, association, partnership, limited liability company, corporation, or other entity that intends to engage in business governed by the provisions of this chapter must be incorporated under the laws of this state or qualified to do business within this state and must be licensed by the board.

(b) The board shall establish by rule the license application procedure and application fee for business entities described in subsection (8)(a).

(c) Individual employees, officers, directors, agents, or other representatives of an entity described in subsection (8)(a) who engage in duties that are subject to the provisions of this part must be licensed pursuant to the requirements of this part."

Section 12. Section 37-60-304, MCA, is amended to read:

"37-60-304. Licenses -- application form and content. (1) ~~Except as provided in 37-60-303(8), an application~~ Application for a license ~~shall must~~ be made on a form prescribed by the board and accompanied by the application fee set by the board.

(2) An application ~~shall must~~ be made under oath and ~~shall must~~ include:

- (a) the full name and address of the applicant;
- (b) the name under which the applicant intends to do business;
- (c) a statement as to the general nature of the business in which the applicant intends to engage;
- (d) a statement as to whether the applicant desires to be licensed as a contract security company, a proprietary security organization, a private investigator, or a private security guard;
- (e) ~~two one~~ one recent ~~photographs~~ photograph of the applicant, of a type prescribed by the board, and two classifiable sets of ~~his~~ the applicant's fingerprints;
- (f) a statement of ~~his~~ the applicant's age and experience qualifications; and
- (g) ~~such~~ other information, evidence, statements, or documents as may be prescribed by the rules of the board; ~~and~~
- ~~— (h) if the applicant is a person other than an individual, the full name and residence address of each of its partners, officers, and directors and its manager.~~

(3) The board shall verify the statements in the application and the applicant's moral character.

(4) The submittal of fingerprints must be a prerequisite to the issuance of a license by means of fingerprint checks by the Montana department of justice and the federal bureau of investigation.

(5) The board shall send written notification to the chief of police, ~~the~~ sheriff, and ~~the~~ county attorney in whose jurisdiction the principal office of the applicant is to be located that an application has been submitted."

Section 13. Section 37-69-101, MCA, is amended to read:

"37-69-101. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Board" means the board of plumbers provided for in 2-15-1765.

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

(3) "Drainage system" means all the piping inside the walls of a building that conveys sewage or other liquid wastes outside the building to the building sewer but that does not extend more than 2 feet outside the building way.

(4) "Field of plumbing" means the business, trade, or work having to do with the installation, removal, alteration, or repair of plumbing and drainage systems or parts of plumbing and drainage systems.

(5) "Journeyman plumber" means a person who is authorized to make installation of all sanitary plumbing and potable water supply piping and appliances connected to the plumbing and piping.

(6) "Master of record" means a master plumber responsible for ensuring that all plumbing work performed under that master plumber's license number by other individuals complies with the state plumbing code and that those individuals are currently licensed as required by this chapter.

~~(6)(7)~~ "Master plumber" means a person who is authorized by this chapter to plan, estimate, bid, contract for, and supervise plumbing work and who may do the work of a journeyman plumber.

~~(7)(8)~~ (a) "Plumbing system" means all potable water supply and distribution pipes, plumbing fixtures and traps, drainage and vent pipes, and building drains, including their respective joints and connections, devices, receptacles, and appurtenances within the property lines of any premises, up to 20 feet beyond the building foundation line, and includes potable water piping, water heaters, and vents for the premises.

(b) The term does not include water services installed and maintained by water districts or water user associations in which water service is installed by any qualified person appointed or hired by the administrative authority of the water system.

~~(8)(9)~~ "Public sewer system" means any common sewer carrying liquid wastes from two or more dwellings or any other facility that serves the public.

~~(9)(10)~~ "Public water supply" means any community well, water hauler for cisterns, water bottling plant, water dispenser, or other water supply that serves 10 or more families or 25 or more persons on a regular and continuous basis."

Section 14. Section 37-69-305, MCA, is amended to read:

"37-69-305. Qualifications of applicants for master plumber's license -- restriction on authority.

(1) The following requirements must be met by an applicant for a master plumber's license:

- (a) evidence of ~~4 years'~~ years of experience as a licensed journeyman plumber in the field of plumbing, verified by time or pay records of actual plumbing experience;
- (b) evidence of ~~3 years'~~ years of experience working with a licensed master plumber or in a supervisory capacity in the field of plumbing, which may run concurrently with the requirement in subsection (1)(a); and
- (c) satisfactory completion of an examination for master plumbers testing ~~his~~ knowledge of the field of plumbing and demonstrating ~~his~~ skill and ability in the field of plumbing.

(2) For purposes of subsection (1), a year's experience is 1,500 hours or more of work in a continuous 12-month period.

(3) A master plumber may not allow ~~his~~ the master plumber's license to be used by any person, ~~or~~ firm, corporation, or business ~~other than his own~~ for the purpose of obtaining permits or for doing plumbing work under ~~his~~ that license unless the master plumber is the master of record for the person, firm, corporation, or business."

NEW SECTION. **Section 15. Repealer.** Sections 37-51-307 and 37-54-110, MCA, are repealed.

NEW SECTION. **Section 16. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

NEW SECTION. **Section 17. Effective date.** [This act] is effective July 1, 2003.

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