

## HOUSE BILL NO. 118

INTRODUCED BY T. HENRY

BY REQUEST OF THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES

A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING THE DISPENSING OF CONTRACEPTIVES BY A REGISTERED NURSE EMPLOYED BY A FAMILY PLANNING CLINIC UNDER CONTRACT WITH THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES; AND AMENDING SECTIONS 37-2-104, 37-7-103, AND 50-31-307, MCA."

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

**Section 1.** 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 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 ~~oral~~ contraceptives 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)."

**Section 2.** Section 37-7-103, MCA, is amended to read:

**"37-7-103. (Temporary) Exemptions.** Subject only to 37-7-401 and 37-7-402, this chapter does not:

(1) subject a person who is licensed in this state to practice medicine, dentistry, or veterinary medicine to inspection by the board, prevent the person from compounding or using drugs, medicines, chemicals, or poisons in the person's practice, or prevent a person who is licensed to practice medicine from furnishing to a patient drugs, medicines, chemicals, or poisons that the person considers proper in the treatment of the patient;

(2) prevent the sale of drugs, medicines, chemicals, or poisons at wholesale;

(3) prevent the sale of drugs, chemicals, or poisons at either wholesale or retail for use for commercial purposes or in the arts;

(4) change any of the provisions of this code relating to the sale of insecticides and fungicides;

(5) prevent the sale of common household preparations and other drugs if the stores selling them are licensed under the terms of this chapter;

(6) apply to or interfere with manufacture, wholesaling, vending, or retailing of flavoring extracts, toilet articles, cosmetics, perfumes, spices, and other commonly used household articles of a chemical nature for use for nonmedicinal purposes;

(7) prevent a registered nurse employed by a family planning clinic under contract with the department of public health and human services from dispensing factory prepackaged ~~oral~~ contraceptives if the dispensing is in accordance with a physician's written protocol specifying the circumstances under which dispensing is appropriate and is in accordance with the board's requirements for labeling, storage, and recordkeeping of drugs; or

(8) prevent a certified agency from possessing, or a certified euthanasia technician or support personnel under the supervision of the employing veterinarian from administering, any controlled substance authorized by the board of veterinary medicine for the purpose of euthanasia pursuant to Title 37, chapter 18, part 6. (Terminates January 1, 2008--sec. 11, Ch. 60, L. 2003.)

**37-7-103. (Effective January 1, 2008) Exemptions.** Subject only to 37-7-401 and 37-7-402, this chapter does not:

(1) subject a person who is licensed in this state to practice medicine, dentistry, or veterinary medicine to inspection by the board, prevent the person from compounding or using drugs, medicines, chemicals, or

poisons in the person's practice, or prevent a person who is licensed to practice medicine from furnishing to a patient drugs, medicines, chemicals, or poisons that the person considers proper in the treatment of the patient;

(2) prevent the sale of drugs, medicines, chemicals, or poisons at wholesale;

(3) prevent the sale of drugs, chemicals, or poisons either at wholesale or retail for use for commercial purposes or in the arts or changes any of the provisions of this code relating to the sale of insecticides and fungicides, and does not prevent the sale of common household preparations and other drugs if the stores selling them are licensed under the terms of this chapter;

(4) apply to or interfere with manufacture, wholesaling, vending, or retailing of flavoring extracts, toilet articles, cosmetics, perfumes, spices, and other commonly used household articles of a chemical nature for use for nonmedicinal purposes;

(5) prevent a registered nurse employed by a family planning clinic under contract with the department of public health and human services from dispensing factory prepackaged oral contraceptives if the dispensing is in accordance with a physician's written protocol specifying the circumstances under which dispensing is appropriate and is in accordance with the board of pharmacy's requirements for labeling, storage, and recordkeeping of drugs."

**Section 3.** 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) If the drug is a factory prepackaged ~~oral~~ contraceptive, 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) 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."

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