

HOUSE BILL NO. 581

INTRODUCED BY C. KNUDSEN

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A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING TIMELY ACTION ON PROFESSIONAL AND OCCUPATIONAL LICENSING APPLICATIONS, INCLUDING TIMELY NOTIFICATION OF MISSING APPLICATION INFORMATION; AND AMENDING SECTIONS 37-1-101, 37-1-305, 37-1-307, 37-4-341, 37-17-104, 37-22-305, AND 37-23-201, MCA."

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

Section 1. Section 37-1-101, MCA, is amended to read:

"37-1-101. Duties of department. In addition to the provisions of 2-15-121, the department shall:

(1) establish and provide all the administrative, legal, and clerical services needed by the boards within the department, including corresponding, receiving and processing routine applications for licenses as defined by a board, issuing and renewing routine licenses as defined by a board, disciplining licensees, setting administrative fees, preparing agendas and meeting notices, conducting mailings, taking minutes of board meetings and hearings, and filing;. In issuing routine licenses for a board, the department shall issue a license within 45 days from the time of receiving a completed application or, within 10 calendar days, provide notice and response timelines to the applicant of deficiencies in the application or provide information as to any exigent circumstances that may delay issuing a license. For nonroutine licenses, the department shall confer with the board to which the licensure application is made and provide an expected timeline to an applicant for issuing a license, including notifying the applicant from that time forward of any deviations from the expected timeline.

(2) standardize policies and procedures and keep in Helena all official records of the boards;

(3) make arrangements and provide facilities in Helena for all meetings, hearings, and examinations of each board or elsewhere in the state if requested by the board;

(4) contract for or administer and grade examinations required by each board;

(5) investigate complaints received by the department of illegal or unethical conduct of a member of the profession or occupation under the jurisdiction of a board or a program within the department;

(6) assess the costs of the department to the boards and programs on an equitable basis as determined by the department;



1 (7) adopt rules setting administrative fees and expiration, renewal, and termination dates for licenses;

2 (8) issue a notice to and pursue an action against a licensed individual, as a party, before the licensed
3 individual's board after a finding of reasonable cause by a screening panel of the board pursuant to
4 37-1-307(1)(d);

5 (9) (a) provide notice to the board and to the appropriate legislative interim committee when a board
6 cannot operate in a cost-effective manner;

7 (b) suspend all duties under this title related to the board except for services related to renewal of
8 licenses;

9 (c) review the need for a board and make recommendations to the legislative interim committee with
10 monitoring responsibility for the boards for legislation revising the board's operations to achieve fiscal solvency;
11 and

12 (d) notwithstanding 2-15-121, recover the costs by one-time charges against all licensees of the board
13 after providing notice and meeting the requirements under the Montana Administrative Procedure Act;

14 (10) monitor a board's cash balances to ensure that the balances do not exceed two times the board's
15 annual appropriation level and adjust fees through administrative rules when necessary. [This subsection does
16 not apply to the board of public accountants, except that the department may monitor the board's cash balances.]

17 (11) establish policies and procedures to set fees for administrative services, as provided in 37-1-134,
18 commensurate with the cost of the services provided. Late penalty fees may be set without being commensurate
19 with the cost of services provided.

20 (12) adopt uniform rules for all boards and department programs to comply with the public notice
21 requirements of 37-1-311 and 37-1-405. The rules may require the posting of only the licensee's name and the
22 fact that a hearing is being held when the information is being posted on a publicly available website prior to a
23 decision leading to a suspension or revocation of a license or other final decision of a board or the department.
24 (Bracketed language terminates September 30, 2019--sec. 10, Ch. 427, L. 2015.)"

25

26 **Section 2.** Section 37-1-305, MCA, is amended to read:

27 **"37-1-305. Temporary practice permits.** (1) (a) A board may issue a temporary practice permit to a
28 person licensed in another state that has licensing standards substantially equivalent to those of this state if the
29 board determines that there is no reason to deny the license under the laws of this state governing the profession
30 or occupation.

1 **(b)** The board shall issue a temporary practice permit as provided in this section within 45 calendar days
 2 of receiving a completed application. The board shall notify an applicant within 10 days of receiving an application
 3 under this section of deficiencies in the application or provide information as to any exigent circumstances that
 4 may delay issuing a temporary practice permit.

5 **(c)** The person may practice under the permit until a license is granted or until a notice of proposal to
 6 deny a license is issued.

7 **(d)** The permit may be issued in the board's discretion if the applicant verifies or states in the application
 8 that the applicant has requested verification from the state or states in which the person is licensed that the
 9 person is currently licensed and is not subject to pending charges or final disciplinary action for unprofessional
 10 conduct or impairment. If the board or its screening panel finds reasonable cause to believe that the applicant
 11 falsely affirmed or stated that the applicant has requested verification from the other state or states, the board
 12 may summarily suspend the ~~license~~ permit pending further action to discipline or revoke the ~~license~~ permit.

13 (2) A board may issue a temporary practice permit to a person seeking licensure in this state who has
 14 met all licensure requirements other than passage of the licensing examination. Except as provided in 37-68-311
 15 and 37-69-306, a permit is valid until the person either fails the first license examination for which the person is
 16 eligible following issuance of the permit or passes the examination and is granted a license. Determination
 17 regarding whether the applicant has met all licensure requirements except passage of the licensing examination
 18 must occur within 45 calendar days on a routine, complete application."

19

20 **Section 3.** Section 37-1-307, MCA, is amended to read:

21 **"37-1-307. Board authority.** (1) A board may:

22 (a) hold hearings as provided in this part;

23 (b) issue subpoenas requiring the attendance of witnesses or the production of documents and
 24 administer oaths in connection with investigations and disciplinary proceedings under this part. Subpoenas must
 25 be relevant to the complaint and must be signed by a member of the board. Subpoenas may be enforced as
 26 provided in 2-4-104.

27 (c) authorize depositions and other discovery procedures under the Montana Rules of Civil Procedure
 28 in connection with an investigation, hearing, or proceeding held under this part;

29 (d) establish a screening panel to determine whether there is reasonable cause to believe that a licensee
 30 has violated a particular statute, rule, or standard justifying disciplinary proceedings. A screening panel is an

1 agency for purposes of summary suspensions under 2-4-631. A screening panel shall specify in writing the
2 particular statute, rule, or standard that the panel believes may have been violated. The screening panel shall
3 also state in writing the reasonable grounds that support the panel's finding that a violation may have occurred.
4 The assigned board members may not subsequently participate in a hearing of the case. The final decision on
5 the case must be made by a majority of the board members who did not serve on the screening panel for the
6 case.

7 (e) grant or deny a license within 45 calendar days of receiving a complete application, including the
8 confidential criminal justice information report, and notify an applicant within 10 days of receiving an application
9 of any deficiencies for an incomplete application or provide information as to any exigent circumstances that may
10 delay issuing a license in the 45 days; and;

11 (f) upon a finding of unprofessional conduct by an applicant or license holder, impose a sanction
12 provided by this chapter.

13 (2) Each board is designated as a criminal justice agency within the meaning of 44-5-103 for the purpose
14 of obtaining confidential criminal justice information, as defined in 44-5-103, regarding the board's licensees and
15 license applicants and regarding possible unlicensed practice, but the board may not record or retain any
16 confidential criminal justice information without complying with the provisions of the Montana Criminal Justice
17 Information Act of 1979, Title 44, chapter 5.

18 (3) A board may contact and request information from the department of justice, which is designated as
19 a criminal justice agency within the meaning of 44-5-103, for the purpose of obtaining criminal history record
20 information regarding the board's licensees and license applicants and regarding possible unlicensed practice.

21 (4) (a) A board that is statutorily authorized to obtain a criminal background check as a prerequisite to
22 the issuance of a license shall require the applicant to submit fingerprints for the purpose of fingerprint checks
23 by the Montana department of justice and the federal bureau of investigation.

24 (b) The applicant shall sign a release of information to the board and is responsible to the department
25 of justice for the payment of all fees associated with the criminal background check.

26 (c) Upon completion of the criminal background check, the department of justice shall forward all criminal
27 history record information, as defined in 44-5-103, in any jurisdiction to the board as authorized in 44-5-303.

28 (d) At the conclusion of any background check required by this section, the board must receive the
29 criminal background check report but may not receive the fingerprint card of the applicant. Upon receipt of the
30 criminal background check report, the department of justice shall promptly destroy the fingerprint card of the

1 applicant.

2 [(5) Each board shall require a license applicant to provide the applicant's social security number as a
3 part of the application. Each board shall keep the social security number from this source confidential, except that
4 a board may provide the number to the department of public health and human services for use in administering
5 Title IV-D of the Social Security Act.] (Bracketed language terminates on occurrence of contingency--sec. 1, Ch.
6 27, L. 1999.)"

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8 **Section 4.** Section 37-4-341, MCA, is amended to read:

9 **"37-4-341. Licensure of out-of-state volunteer dentists and dental hygienists without examination.**

10 (1) The board may issue a restricted temporary license to a nonresident dentist or dental hygienist, without
11 examination, to practice in a clinic listed in 37-4-103(6) if the applicant:

12 (a) has graduated from a dental or dental hygiene program or school accredited by the commission on
13 dental accreditation;

14 (b) is currently licensed in another state as an actively practicing dentist or dental hygienist; and

15 (c) is in good standing and does not have a disciplinary action pending in the other state.

16 (2) A dentist or dental hygienist holding a restricted temporary license under this section:

17 (a) may not receive monetary or other compensation for providing services; and

18 (b) may serve only those persons served by the clinics listed in 37-4-103(6).

19 (3) An application for a restricted temporary license must be submitted on a form approved by the board.

20 (4) The board shall issue a restricted temporary license within ~~60~~ 45 calendar days of receipt of a
21 completed application that demonstrates that the applicant meets the requirements of this section. A ~~temporary~~
22 restricted temporary license may be renewed annually.

23 (5) A restricted temporary license is not intended as a means to allow an applicant to practice in this state
24 before a permanent license is granted or as a means to obtain a permanent license when the applicant does not
25 otherwise meet the requirements for permanent licensure.

26 (6) The board may adopt rules to implement this section, including but not limited to rules to:

27 (a) establish the scope of practice for a dentist or dental hygienist practicing with a restricted temporary
28 license;

29 (b) establish a limitation on the number of days a dentist or dental hygienist may practice with a restricted
30 temporary license during any 12-month period; and

1 (c) set fees for issuance of the restricted temporary license that must be commensurate with costs."

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3 **Section 5.** Section 37-17-104, MCA, is amended to read:

4 **"37-17-104. Exemptions.** (1) Except as provided in subsection (2), this chapter does not prevent:

5 (a) qualified members of other professions, such as physicians, social workers, lawyers, pastoral
6 counselors, professional counselors licensed under Title 37, chapter 23, marriage and family therapists licensed
7 under Title 37, chapter 37, or educators, from doing work of a psychological nature consistent with their training
8 if they do not hold themselves out to the public by a title or description incorporating the words "psychology",
9 "psychologist", "psychological", or "psychologic";

10 (b) the activities, services, and use of an official title clearly delineating the nature and level of training
11 on the part of a person in the employ of a federal, state, county, or municipal agency or of other political
12 subdivisions or an educational institution, business corporation, or research laboratory insofar as these activities
13 and services are a part of the duties of the office or position within the confines of the agency or institution;

14 (c) the activities and services of a student, intern, or resident in psychology pursuing a course of study
15 at an accredited university or college or working in a generally recognized training center if these activities and
16 services constitute a part of the supervised course of study of the student, intern, or resident in psychology;

17 (d) the activities and services of a person who is not a resident of this state in rendering consulting
18 psychological services in this state when these services are rendered for a period which does not exceed, in the
19 aggregate, 60 days during a calendar year or 45 consecutive calendar days if the person is authorized under the
20 laws of the state or country of that person's residence to perform these activities and services. However, these
21 persons shall report to the department the nature and extent of the services in this state prior to providing those
22 services if the services are to exceed 10 days in a calendar year.

23 (e) a person authorized by the laws of the state or country of the person's former residence to perform
24 activities and services, who has recently become a resident of this state and who has submitted a completed
25 application for a license in this state, from performing the activities and services pending disposition of the
26 person's application; and

27 (f) the offering of lecture services.

28 (2) Those qualified members of other professions described in subsection (1)(a) may indicate and hold
29 themselves out as performing psychological testing, evaluation, and assessment, as described in
30 37-17-102(4)(b), provided that they are qualified to administer the test and make the evaluation or assessment.

1 (3) The board of behavioral health shall adopt rules that qualify a licensee under Title 37, chapter 22,
2 23, or 37, to perform psychological testing, evaluation, and assessment. The rules for licensed clinical social
3 workers, professional counselors, and licensed marriage and family therapists must be consistent with the
4 guidelines of their respective national associations. A qualified licensee providing services under this exemption
5 shall comply with the rules no later than 1 year from the date of adoption of the rules."
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7 **Section 6.** Section 37-22-305, MCA, is amended to read:

8 **"37-22-305. Representation to public as licensed clinical social worker -- limitations on use of title**
9 **-- limitations on practice.** (1) Upon issuance of a license in accordance with this chapter, a licensee may use
10 the title "licensed clinical social worker". Except as provided in subsection (2), a person may not represent that
11 the person is a licensed clinical social worker by adding the letters "LSW" or "LCSW" after the person's name or
12 by any other means unless licensed under this chapter.

13 (2) Individuals licensed in accordance with this chapter before October 1, 1993, who use the title
14 "licensed social worker" or "LSW" may use the title "licensed clinical social worker" or "LCSW".

15 (3) Subsection (1) does not prohibit:

16 (a) qualified members of other professions, such as physicians, psychologists, lawyers, pastoral
17 counselors, educators, or the general public engaged in social work like activities, from doing social work
18 consistent with their training if they do not hold themselves out to the public by a title or description incorporating
19 the words "licensed social worker" or "licensed clinical social worker";

20 (b) activities, services, and use of an official title by a person in the employ of or under a contract with
21 a federal, state, county, or municipal agency, an educational, research, or charitable institution, or a health care
22 facility licensed under the provisions of Title 50, chapter 5, that are a part of the duties of the office or position;

23 (c) an employer from performing social work like activities performed solely for the benefit of employees;

24 (d) activities and services of a student, intern, or resident in social work pursuing a course of study at
25 an accredited university or college or working in a generally recognized training center if the activities and
26 services constitute a part of the supervised course of study;

27 (e) activities and services by a person who is not a resident of this state that are rendered for a period
28 that does not exceed, in the aggregate, 60 days during a calendar year or 45 consecutive calendar days if the
29 person is authorized under the law of the state or country of residence to perform the activities and services.
30 However, the person shall report to the department the nature and extent of the activities and services if they

1 exceed 10 days in a calendar year.

2 (f) pending disposition of the application for a license, activities and services by a person who has
3 recently become a resident of this state, has applied for a license within 90 days of taking up residency in this
4 state, and is licensed to perform the activities and services in the state of former residence; or

5 (g) activities or services of a social worker licensure candidate, professional counselor licensure
6 candidate, or marriage and family therapist licensure candidate."

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8 **Section 7.** Section 37-23-201, MCA, is amended to read:

9 **"37-23-201. Representation or practice as licensed clinical professional counselor -- license**

10 **required.** (1) Upon issuance of a license in accordance with this chapter, a licensee may use the title "licensed
11 clinical professional counselor" or "professional counselor".

12 (2) Except as provided in subsection (3), a person may not represent that the person is a licensed
13 professional counselor or licensed clinical professional counselor by adding the letters "LPC" or "LCPC" after the
14 person's name or by any other means, engage in the practice of professional counseling, or represent that the
15 person is engaged in the practice of professional counseling, unless licensed under this chapter.

16 (3) Individuals licensed in accordance with this chapter before October 1, 1993, who use the title
17 "licensed professional counselor" or "LPC" may use the title "licensed clinical professional counselor" or "LCPC".

18 (4) Subsection (2) does not prohibit:

19 (a) a qualified member of another profession, such as a physician, lawyer, pastoral counselor, probation
20 officer, court employee, nurse, school counselor, educator, chemical dependency counselor accredited by a
21 federal agency, or addiction counselor licensed pursuant to Title 37, chapter 35, from performing duties and
22 services consistent with the person's licensure or certification and the code of ethics of the person's profession
23 or, in the case of a qualified member of another profession who is not licensed or certified or for whom there is
24 no applicable code of ethics, from performing duties and services consistent with the person's training, as long
25 as the person does not represent by title that the person is engaging in the practice of professional counseling;

26 (b) an activity or service or use of an official title by a person employed by or acting as a volunteer for
27 a federal, state, county, or municipal agency or an educational, research, or charitable institution that is a part
28 of the duties of the office or position;

29 (c) an activity or service of an employee of a business establishment performed solely for the benefit of
30 the establishment's employees;

1 (d) an activity or service of a student, intern, or resident in mental health counseling pursuing a course
2 of study at an accredited university or college or working in a generally recognized training center if the activity
3 or service constitutes a part of the supervised course of study;

4 (e) an activity or service of a person who is not a resident of this state, which activity or service is
5 rendered for a period that does not exceed, in the aggregate, 60 days during a calendar year or 45 consecutive
6 calendar days, if the person is authorized under the law of the state or country of residence to perform the activity
7 or service. However, the person shall report to the department of labor and industry the nature and extent of the
8 activity or service if it exceeds 10 days in a calendar year.

9 (f) pending disposition of the application for a license, the activity or service by a person who has recently
10 become a resident of this state, has applied for a license within 90 days of taking up residency in this state, and
11 is licensed to perform the activity or service in the state of the person's former residence;

12 (g) an activity or service of a person who is a social worker licensure candidate, professional counselor
13 licensure candidate, or marriage and family therapist licensure candidate; or

14 (h) an activity or service performed by a licensed social worker, licensed psychiatrist, or licensed
15 psychologist when performing the activity or service in a manner consistent with the person's license and the code
16 of ethics of the person's profession."

17 - END -