

HOUSE BILL NO. 528

INTRODUCED BY F. MOORE

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A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE PERMITTING OF VETERINARY RETAIL FACILITIES; PROVIDING FOR REGISTRATION OF VETERINARY DISPENSING TECHNICIANS; PROVIDING CONTINUING EDUCATION REQUIREMENTS; PROVIDING DEFINITIONS, EXEMPTIONS, AND PENALTIES; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 37-7-103, 37-18-104, 50-32-401, AND 80-8-207, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

NEW SECTION. **Section 1. Definitions.** Unless the context requires otherwise, in [sections 1 through 8], the following definitions apply:

- (1) "Board" means the board of pharmacy provided for in 2-15-1733.
- (2) "Compounding" means the preparation, mixing, assembling, packaging, or labeling of a drug or device.
- (3) "Controlled substance" means a substance designated in Schedules II through V of Title 50, chapter 32, part 2.
- (4) "Dispensing" means the delivery of veterinary prescription drugs pursuant to the lawful order of a veterinarian licensed pursuant to 37-18-301 and the associated recordkeeping that is relevant to that practice.
- (5) "Extralabel use" means the use of an approved drug in a manner that is not in accordance with the approved label directions.
- (6) "Veterinary dispensing technician" means a nonpharmacist registered by the board to dispense veterinary prescription drugs in a veterinary retail facility.
- (7) "Veterinary prescription drugs" means drugs that are to be used or prescribed by a veterinarian to a client who is the owner or caretaker of the animal in need of treatment. Veterinary prescription drugs are those drugs restricted by federal law to use by or on the order of a licensed veterinarian.
- (8) "Veterinary retail facility" means an establishment registered by the board employing a registered veterinary dispensing technician authorized to dispense veterinary prescription drugs pursuant to bona fide orders of licensed veterinarians.



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2 **NEW SECTION. Section 2. Exemptions.** The provisions of [sections 1 through 8] do not apply to:

3 (1) a licensed veterinarian or a veterinarian's practice; or

4 (2) a licensed pharmacist or a pharmacy.

5

6 **NEW SECTION. Section 3. Veterinary retail facility -- permit required.** (1) A person, partnership,
7 association, corporation, or limited liability company may not open, establish, operate, maintain, or do business
8 as a veterinary retail facility without first obtaining a permit from the board.

9 (2) The board shall prescribe the permit application form.

10 (3) An application must be accompanied by a fee not to exceed \$300.

11 (4) A permit must be renewed annually. The board shall set the renewal fee not to exceed \$300.

12 (5) Separate applications and separate permits are required for each veterinary retail facility opened,
13 established, operated, or maintained by the same owner and for a change of location, name, or ownership of an
14 existing veterinary retail facility.

15 (6) The board may adopt rules to implement this section.

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17 **NEW SECTION. Section 4. Standards for veterinary retail facilities.** (1) Veterinary prescription drugs
18 dispensed by a veterinary retail facility pursuant to a licensed veterinarian's prescription are for use on livestock
19 only.

20 (2) A veterinary dispensing technician may not:

21 (a) dispense controlled substances;

22 (b) compound veterinary prescription drugs for the dispensing of a prescription;

23 (c) repackage veterinary prescription drugs for the dispensing of a prescription, except that a veterinary
24 dispensing technician may break down case lots of veterinary prescription drugs if the seals on the individual
25 containers are not broken;

26 (d) open a container and count out or measure out any quantity of a veterinary prescription drug; or

27 (e) dispense medication for extralabel use.

28 (3) Veterinary prescription drugs returned to a veterinary retail facility from a client must be treated as
29 damaged or outdated drugs. Returned drugs may not be returned to stock or dispensed, distributed, or resold.

30 (4) A veterinary dispensing technician may dispense veterinary prescription drugs for use on livestock

1 on the basis of a written, electronically transmitted, or oral order received from a licensed veterinarian or
2 authorized agent of a licensed veterinarian.

3 (5) A veterinary dispensing technician may refill a prescription only if the initial prescription is issued
4 indicating that a specific number of refills are authorized. A prescription may not be refilled 12 or more months
5 after the issuance date of the initial order.

6 (6) A veterinary dispensing technician must file or cause to be filed a prescription or copy of a
7 prescription that has been dispensed by the veterinary retail facility. The prescription or copy of prescription must
8 be preserved for at least 3 years after it has been filled. A veterinary dispensing technician shall furnish a copy
9 of any prescription to the party presenting it on the request of that party only.

10 (7) Records of receipt and dispensing must be kept for 3 years and may be audited by the board.

11 (8) (a) All veterinary prescription drugs must be properly labeled when dispensed.

12 (b) A complete label must include the following information:

13 (i) name, address, and telephone number of the prescribing licensed veterinarian;

14 (ii) the name of the client;

15 (iii) identification of animals or herds treated;

16 (iv) the date of treatment, prescription, or dispensing of the drug;

17 (v) the name and quantity of the drug to be prescribed or dispensed;

18 (vi) the dosage and duration directions for use;

19 (vii) cautionary statements, as needed;

20 (viii) the expiration date.

21 (c) If the information in subsection (8)(b) is already included on the manufacturer's label, it is
22 unnecessary to repeat it on the prescription label. If there is inadequate space on the label for complete
23 instructions, the veterinary dispensing technician shall provide additional information to accompany the drug
24 dispensed or prescribed.

25 (9) Veterinary prescription drugs must be stored separately from over-the-counter drugs. Drugs must be
26 stored under conditions recommended by the manufacturer.

27

28 **NEW SECTION. Section 5. Veterinary dispensing technicians -- educational requirements.** A
29 veterinary dispensing technician shall successfully complete:

30 (1) an academic program approved by the board; or

1 (2) a certification program approved by the board.

2

3 **NEW SECTION. Section 6. Veterinary dispensing technician -- registration requirements.** (1) A
4 veterinary dispensing technician shall register with the board on an annual basis.

5 (2) The board shall provide to each veterinary dispensing technician a registration number, an annual
6 registration card, a registration certificate, and a pocket identification card.

7 (3) The veterinary dispensing technician certificate and annual registration card must be displayed and
8 visible to the public in the veterinary retail facility where the veterinary dispensing technician is employed.

9 (4) A veterinary dispensing technician shall wear a name badge while in the veterinary retail facility that
10 clearly identifies the person as a veterinary dispensing technician.

11 (5) A veterinary dispensing technician shall inform the board of a change in address or place of
12 employment within 15 days after the change. The board shall subsequently adjust the board's records.

13 (6) A registered veterinary dispensing technician may go on inactive status and continue to hold a
14 certificate of registration provided the inactive technician does not practice within the state. A technician on
15 inactive status is not required to meet the continuing education requirements under [section 7]. A person on
16 inactive status shall complete 8 hours of approved continuing education to reactivate the registration.

17 (7) The board may adopt rules to implement this section.

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19 **NEW SECTION. Section 7. Veterinary dispensing technician -- continuing education.** (1) Each
20 registered veterinary dispensing technician shall complete no fewer than 8 hours of approved continuing
21 education every year as a condition of registration renewal. At least 4 hours of continuing education must be
22 approved by the board of pharmacy, and another 4 hours of continuing education must be approved by the board
23 of veterinary medicine provided for in 2-15-1742.

24 (2) A veterinary dispensing technician shall maintain a record of continuing education on a form provided
25 by the board. The records must be maintained for a 2-year period.

26 (3) The requirements of this section do not apply to a veterinary dispensing technician applying for a first
27 renewal of registration.

28 (4) The board of pharmacy may grant a waiver to the requirements of this section upon application by
29 a registered veterinary dispensing technician.

30 (5) Upon request from the board of pharmacy, proof of compliance with this section must be furnished

1 to the board.

2 (6) The board may adopt rules to implement this section.

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4 NEW SECTION. Section 8. Penalties for violations. A person, partnership, association, corporation,
5 or limited liability company violating the provisions of [sections 1 through 8] is guilty of a misdemeanor. Upon
6 conviction for any violation of [sections 1 through 8], the board may revoke a permit or registration issued
7 pursuant to [sections 1 through 8] or issue other disciplinary action pursuant to 37-1-136.

8

9 **Section 9.** Section 37-7-103, MCA, is amended to read:

10 **"37-7-103. Exemptions.** Subject ~~only~~ to 37-7-401 and 37-7-402 and except as provided in [sections 1
11 through 8], this chapter does not:

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

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

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

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

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

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

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

30 (8) prevent a certified agency from possessing, or a certified euthanasia technician or support personnel

1 under the supervision of the employing veterinarian from administering, any controlled substance authorized by
 2 the board of veterinary medicine for the purpose of euthanasia pursuant to Title 37, chapter 18, part 6."

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4 **Section 10.** Section 37-18-104, MCA, is amended to read:

5 **"37-18-104. Exemptions -- rules.** (1) This chapter does not apply to:

6 (a) a veterinarian in the performance of the veterinarian's official duties, either civil or military, in the
 7 service of the United States unless the veterinarian is engaged in the practice of veterinary medicine in a private
 8 capacity;

9 (b) laboratory technicians and veterinary research workers, as distinguished from veterinarians, in the
 10 employ of this state or the United States and engaged in labors in laboratories under the direct supervision of the
 11 board of livestock, Montana state university-Bozeman, or the United States;

12 (c) a veterinarian practicing in another state or country and authorized under the laws of that state or
 13 country to practice veterinary medicine, whose practice in this state is limited to an occasional case as that term
 14 is defined in board rule;

15 (d) the employment of a veterinary medical student who has successfully completed 3 years of the
 16 professional curriculum in veterinary medicine at a college having educational standards equal to those approved
 17 by the American veterinary medical association, if the student is employed by and works under the immediate
 18 supervision of a veterinarian licensed and registered under this chapter; ~~or~~

19 (e) a person advising with respect to or performing acts that the board defines by rule as accepted
 20 livestock management practices; or

21 (f) a veterinary dispensing technician who is registered and subject to [sections 1 through 8].

22 (2) The operations known and designated as castrating or dehorning of cattle, sheep, horses, and swine
 23 are not the practice of veterinary medicine within the meaning of this chapter.

24 (3) Nonsurgical embryo transfers in bovines may be performed under the supervision of a veterinarian
 25 licensed and residing in Montana. At a minimum, board rules regarding nonsurgical embryo transfers in bovines
 26 must address:

27 (a) minimum education requirements;

28 (b) minimum requirements of practical experience;

29 (c) continuing education requirements;

30 (d) limitations on practices and procedures that may be performed by certified individuals;

- 1 (e) the use of specific drugs necessary for safe and proper practice of certified procedures;
- 2 (f) content and administration of the certification test, including written and practical testing;
- 3 (g) application and reexamination procedures; and
- 4 (h) conduct of certified individuals, including rules for suspension, revocation, and denial of certification.
- 5 (4) This chapter does not prohibit a person from caring for and treating the person's own farm animals
- 6 or being assisted in this treatment by the person's full-time employees, as defined in 2-18-601, employed in the
- 7 conduct of the person's business or by other persons whose services are rendered gratuitously in case of
- 8 emergency.
- 9 (5) This chapter does not prohibit the selling of veterinary remedies and instruments by a registered
- 10 pharmacist at the pharmacist's regular place of business.
- 11 (6) This chapter does not prohibit an employee of a licensed veterinarian from performing activities
- 12 determined by board rule to be acceptable, when performed under the supervision of the employing veterinarian.
- 13 (7) This chapter does not prohibit an employee of a licensed veterinarian from rendering care for that
- 14 veterinarian's animal patients in cases of emergency. Permissible emergency employee activities under this
- 15 subsection include activities determined by board rule to be acceptable but do not include the performance of
- 16 surgery or the rendering of diagnoses.
- 17 (8) This chapter does not prohibit a certified agency from possessing, or a certified euthanasia technician
- 18 from administering, any controlled substance authorized by the board for the purpose of euthanasia pursuant to
- 19 part 6 of this chapter."

20

21 **Section 11.** Section 50-32-401, MCA, is amended to read:

22 **"50-32-401. Report required for precursor to controlled substance.** (1) A manufacturer, wholesaler,

23 retailer, or other person who sells, transfers, or otherwise furnishes any of the following substances to a person

24 in this state shall submit a report to the department of justice detailing all transactions:

- 25 (a) phenyl-2-propanone;
- 26 (b) methylamine;
- 27 (c) d-lysergic acid;
- 28 (d) ergotamine tartrate;
- 29 (e) diethyl malonate;
- 30 (f) malonic acid;

1 (g) ethyl malonate;

2 (h) barbituric acid; and

3 (i) piperidine.

4 (2) The department of justice may adopt, amend, or repeal rules in accordance with the Montana
5 Administrative Procedure Act that add or delete substances on the list of regulated substances in subsection (1)
6 if the substance is a precursor to a dangerous drug as defined in 50-32-101.

7 (3) This section does not apply to any of the following:

8 (a) a pharmacist, veterinary dispensing technician, or other authorized person who sells or furnishes the
9 substance upon the prescription of a physician, dentist, podiatrist, or veterinarian;

10 (b) a physician, dentist, podiatrist, or veterinarian who administers or furnishes the substance to patients;

11 (c) a manufacturer or wholesaler licensed by the board of pharmacy who sells, transfers, or otherwise
12 furnishes the substance to a licensed pharmacist, physician, dentist, podiatrist, or veterinarian;

13 (d) transfers of the substances listed in subsection (1) within any college or university to an employee
14 or student of the college or university for the purpose of teaching or research authorized by the college or
15 university."

16

17 **Section 12.** Section 80-8-207, MCA, is amended to read:

18 **"80-8-207. Dealers.** (1) A person may not sell, offer for sale, deliver, or have delivered within the state
19 a pesticide without first obtaining a license from the department for each calendar year or portion of a year. A
20 separate dealer's license and fee is required for each location or outlet from which pesticides are distributed, sold,
21 held for sale, or offered for sale. Pesticide field personnel or salespeople employed directly out of the same
22 location or outlet and under a licensed dealer are not required to obtain a license. The dealer shall furnish the
23 department with the names and addresses of the dealer's field personnel and salespeople selling pesticides
24 within the state.

25 (2) The department shall require an applicant for a dealer's license to show, upon written examination,
26 that the person possesses adequate knowledge related to the responsibilities of a pesticide dealer. Licensed
27 dealers are not required to repeat an examination to renew their license provided they have earned the required
28 recertification credits for renewal of that license.

29 (3) The application for a license must be accompanied by a fee of \$75. A dealer applying for renewal
30 of a license shall apply on or before March 1 of the calendar year. A dealer applying for renewal of a license after

1 March 1 must be assessed a \$25 late licensing fee.

2 (4) The dealer shall require the purchaser of a restricted pesticide to exhibit the purchaser's license or
3 permit issued under authority of this chapter, or the dealer may verify, under procedures authorized by the
4 department, the purchaser's license or permit through a department list or by electronic means before completing
5 a sale. The department may adopt rules concerning dealer verification of licenses and permits.

6 (5) The department shall assess an additional annual license fee of \$10 on dealers to fund the waste
7 pesticide and pesticide container collection, disposal, and recycling program. The department may by rule adjust
8 the disposal fee to maintain adequate funding for the administration of the waste pesticide and pesticide container
9 collection, disposal, and recycling program. The fee may not be less than \$10 a year or more than \$15 a year.
10 Fees collected under this subsection must be deposited in an account in the state special revenue fund pursuant
11 to 80-8-112.

12 (6) Pharmacists licensed as provided for in 37-7-302, veterinarians licensed as provided for in 37-18-302,
13 veterinary dispensing technicians registered as provided in [section 6], and certified pharmacies licensed under
14 37-7-321 are not required to be licensed to sell pesticides if the certified pharmacies and veterinarians register
15 with the department each year. However, the certified pharmacies and veterinarians must meet all other
16 requirements concerning the commercial sale of pesticides. The department shall take into account the
17 professional licensing requirements of pharmacists, certified pharmacies, and veterinarians when adopting rules."

18
19 NEW SECTION. Section 13. Codification instruction. [Sections 1 through 8] are intended to be
20 codified as an integral part of Title 37, and the provisions of Title 37 apply to [sections 1 through 8].

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22 NEW SECTION. Section 14. Effective date. [This act] is effective July 1, 2019.

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