



AN ACT AUTHORIZING AND CLARIFYING A PROCESS FOR FINGERPRINT-BASED CRIMINAL RECORD BACKGROUND CHECKS FOR SPECIFIED OCCUPATIONAL AND PROFESSIONAL LICENSEES AND FOR DEPARTMENT OF LABOR AND INDUSTRY STAFF AUTHORIZED TO OFFSET TAX REFUNDS RELATED TO UNEMPLOYMENT INSURANCE CONTRIBUTIONS OR BENEFIT OVERPAYMENTS; AMENDING SECTIONS 37-1-307, 37-11-312, 37-17-403, AND 39-51-304, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

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

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

- (a) hold hearings as provided in this part;
- (b) issue subpoenas requiring the attendance of witnesses or the production of documents and administer oaths in connection with investigations and disciplinary proceedings under this part. Subpoenas must be relevant to the complaint and must be signed by a member of the board. Subpoenas may be enforced as provided in 2-4-104.
- (c) authorize depositions and other discovery procedures under the Montana Rules of Civil Procedure in connection with an investigation, hearing, or proceeding held under this part;
- (d) establish a screening panel to determine whether there is reasonable cause to believe that a licensee has violated a particular statute, rule, or standard justifying disciplinary proceedings. A screening panel is an agency for purposes of summary suspensions under 2-4-631. A screening panel shall specify in writing the particular statute, rule, or standard that the panel believes may have been violated. The screening panel shall also state in writing the reasonable grounds that support the panel's finding that a violation may have occurred. The assigned board members may not subsequently participate in a hearing of the case. The final decision on the case must be made by a majority of the board members who did not serve on the screening panel for the case.

(e) grant or deny a license and, upon a finding of unprofessional conduct by an applicant or license holder, impose a sanction provided by this chapter.

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

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

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

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

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

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

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

**Section 2.** Section 37-11-312, MCA, is amended to read:

**"37-11-312. Criminal record background check.** (1) As provided in 37-1-307, the board ~~is authorized to shall~~ require each applicant for licensure as a physical therapist or physical therapist assistant to submit a full set of the applicant's fingerprints to the board ~~for the purpose of obtaining a state and federal~~ to facilitate a fingerprint-based criminal history record background check ~~by the Montana department of justice and the federal bureau of investigation.~~ The board may not disseminate criminal history record information resulting from the background check across state lines.

~~(2) Each license applicant is responsible to pay all fees charged in relation to obtaining the state and federal criminal history background check.~~

~~(3)(2) The board may require licensees renewing their licenses to submit a full set of their fingerprints to the board for the purpose of obtaining a state and federal criminal history record background check by the~~

~~———(4) The Montana department of justice may share the fingerprint data gathered under this section with and the federal bureau of investigation."~~

**Section 3.** Section 37-17-403, MCA, is amended to read:

**"37-17-403. License required -- qualifications.** (1) An individual may not represent to the public that the individual is an assistant behavior analyst or a behavior analyst without a license issued under this section.

(2) The board shall license as a behavior analyst or an assistant behavior analyst an individual who:

(a) ~~has submitted~~ submits an application as determined by the board by rule;

(b) ~~has paid~~ pays required applicant fees and subsequent renewal fees;

(c) ~~has passed a state-approved~~ submits a full set of the applicant's fingerprints to the board to facilitate a fingerprint-based criminal record background check ~~by the Montana department of justice and the federal bureau of investigation.~~ The board may not disseminate criminal history record information resulting from the background check across state lines.;

(d) ~~has provided~~ provides evidence of current certification at the appropriate level from the behavior analyst certification board;

(e) is of good moral character; and

(f) attests to abiding by professional and ethical requirements indicated in the Professional and Ethical Compliance Code for Behavior Analysts recognized by the behavior analyst certification board.

(3) To obtain a license as a behavior analyst, an individual must meet the requirements in subsection

(2) and:

(a) have passed the board-certified behavior analyst examination by the behavior analyst certification board;

(b) be currently certified as a behavior analyst by the behavior analyst certification board; and

(c) have met the educational course work and requirements set by the board by rule.

(4) To obtain a license as an assistant behavior analyst, an individual must meet the requirements in subsection (2) and:

(a) have passed the board-certified assistant behavior analyst examination by the behavior analyst certification board;

(b) be currently certified as an assistant behavior analyst by the behavior analyst certification board; and

(c) have met the educational course work and requirements set by the board by rule."

**Section 4.** Section 39-51-304, MCA, is amended to read:

**"39-51-304. Personnel -- criminal record background check.** (1) The department shall hire personnel to administer this chapter in accordance with principles adopted by the department of administration.

(2) Department personnel who have direct access to federal tax information as a result of the department's participation in federal offset programs under 26 U.S.C. 6402 shall submit a full set of fingerprints to the department to facilitate a fingerprint-based criminal record background check by the Montana department of justice and the federal bureau of investigation."

**Section 5. Effective date.** [This act] is effective on passage and approval.

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I hereby certify that the within bill,  
SB 0074, originated in the Senate.

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President of the Senate

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2019.

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Secretary of the Senate

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Speaker of the House

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2019.

SENATE BILL NO. 74  
INTRODUCED BY G. VUCKOVICH  
BY REQUEST OF THE DEPARTMENT OF LABOR AND INDUSTRY

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