

HOUSE BILL NO. 115

INTRODUCED BY B. MERCER

BY REQUEST OF THE DEPARTMENT OF LABOR AND INDUSTRY

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO LICENSING BOARDS; CONSOLIDATING AND CLARIFYING PENALTIES FOR UNLICENSED PRACTICE; ESTABLISHING A POLICY ALLOWING THE DEPARTMENT TO ISSUE CEASE AND DESIST ORDERS; PROVIDING FOR UNIFORM CIVIL PENALTIES FOR VIOLATIONS; ALLOCATING PENALTIES TO SPECIAL REVENUE AND GENERAL FUNDS; ALLOWING BOARDS AND THE DEPARTMENT OF LABOR AND INDUSTRY TO ISSUE INJUNCTIONS; PROVIDING FOR CRIMINAL PENALTIES; ESTABLISHING ACTS THAT ARE CONSIDERED UNPROFESSIONAL CONDUCT FOR PHARMACISTS; REPEALING PENALTY PROVISIONS IN INDIVIDUAL BOARD STATUTES; AMENDING SECTIONS 37-7-1513, 37-33-501, 37-60-301, 37-68-316, 37-69-310, 37-69-402, 37-72-101, AND 37-73-226, MCA; AND REPEALING SECTIONS 37-1-317, 37-1-318, 37-1-332, 37-3-325, 37-3-326, 37-4-326, 37-4-327, 37-4-328, 37-6-312, 37-7-323, 37-7-407, 37-7-510, 37-7-711, 37-8-443, 37-8-444, 37-9-312, 37-10-312, 37-10-313, 37-11-302, 37-11-322, 37-12-324, 37-13-315, 37-13-316, 37-14-323, 37-15-322, 37-15-323, 37-16-413, 37-17-312, 37-17-313, 37-18-501, 37-18-502, 37-18-703, 37-19-501, 37-19-831, 37-20-104, 37-24-311, 37-26-414, 37-27-325, 37-28-302, 37-29-411, 37-29-412, 37-31-334, 37-33-504, 37-34-307, 37-35-204, 37-36-205, 37-40-312, 37-47-344, 37-50-342, 37-50-401, 37-51-323, 37-51-608, 37-53-307, 37-53-506, 37-60-411, 37-65-322, 37-65-323, 37-66-322, 37-67-332, 37-68-322, 37-69-324, 37-72-102, AND 37-73-227, MCA."

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

NEW SECTION. Section 1. Cease and desist -- injunction -- criminal penalties. (1) The department may issue a cease and desist order if the department determines through the receipt of credible evidence that a person is acting, has acted, or is about to act related to a profession or occupation in Title 37:

- (a) without the license required to practice the profession or occupation;
- (b) with a restricted title or designation of the profession or occupation without meeting the

1 requirements for that use; or

2 (c) in violation of a statute or rule of the profession or occupation.

3 (2) A cease and desist order issued under this section must be served pursuant to Rule 4,
4 M.R.Civ.P. The order is effective upon service. Proof of service constitutes notice to the person of the existence
5 and contents of the order.

6 (3) The screening panel of a board or the department on behalf of a program may assess a
7 penalty of not more than \$1,000 a day for each day a cease and desist order issued under this section is
8 violated. Fifty percent of the penalty must be deposited in the state special revenue fund of the board or
9 program, and the remainder must be deposited in the state general fund.

10 (4) (a) A board, following a vote of its screening panel, or the department, on behalf of a program,
11 may institute and maintain in the name of the state an action for injunction or another civil remedy in district
12 court to enforce a cease and desist order issued under this section. Proof of inadequacy of a legal remedy or
13 proof of substantial or irreparable damage from continued violation is not required.

14 (b) The board or department is entitled to its costs, including the costs of investigation and attorney
15 fees, incurred in seeking a district court order under this section.

16 (c) A person who knowingly or purposely violates a district court injunction under this section is
17 guilty of a felony and subject to the penalties set forth in 46-18-213.

18 (5) An officer, agent, partner, or member of a business entity who knowingly and personally
19 participates in a violation of this section is subject to the penalties prescribed by this section.

20 (6) The remedies provided by this section are in addition to and do not limit the remedies and
21 actions otherwise permitted or required by law.

22

23 **Section 2.** Section 37-7-1513, MCA, is amended to read:

24 **"37-7-1513. Unlawful acts -- ~~sanctions-unprofessional conduct~~ -- civil penalties.** (1) A
25 pharmacist who fails to submit prescription drug order information to the board as required by 37-7-1503 or who
26 willfully submits incorrect prescription drug order information ~~must be referred to the board for consideration of~~
27 ~~administrative sanctions~~ commits unprofessional conduct.

28 (2) A person or entity authorized to possess registry information pursuant to 37-7-1504 through 37-

1 7-1506 who willfully discloses or uses the registry information in violation of 37-7-1504 through 37-7-1506 or a
2 rule adopted pursuant to this part ~~must be referred to the appropriate licensing board or regulatory agency for~~
3 ~~consideration of administrative sanctions~~ commits unprofessional conduct.

4 (3) In addition to ~~the administrative sanction provided~~ actions based on unprofessional conduct
5 described in subsection (2), a person or entity who willfully discloses or uses information from the registry in
6 violation of 37-7-1504 through 37-7-1506 or a rule adopted pursuant to this part is liable for a civil penalty of up
7 to \$10,000 for each violation.

8 (4) ~~The~~ In addition to the provisions of [section 1], the board may institute and maintain in the
9 name of the state any enforcement proceedings under this section. Upon request of the department, the
10 attorney general shall petition the district court to impose, assess, and recover the civil penalty.

11 (5) An action under subsection (3) or to enforce this part or a rule adopted under this part may be
12 brought in the district court of any county where a violation occurs.

13 (6) Civil penalties collected pursuant to this part must be deposited into the state special revenue
14 account created pursuant to 37-7-1511 and must be used to defray the expenses of the board in establishing
15 and maintaining the registry and in discharging its administrative and regulatory duties in relation to this part."

16

17 **Section 3.** Section 37-33-501, MCA, is amended to read:

18 **"37-33-501. License required -- ~~enjoining unlawful practice~~ title protection.** (1) A person may not
19 practice or purport to practice massage therapy without first obtaining a license under the provisions of 37-33-
20 502.

21 (2) A person who is not licensed as a massage therapist, whose license has been suspended or
22 revoked, or whose license has lapsed and has not been revived may not use the words or letters "massage
23 therapist", "licensed massage therapist", "L.M.T.", "masseur", or "masseuse" or any other letters, words, or
24 insignia indicating or implying that the person is a licensed massage therapist or in any way, orally, in writing, or
25 in print or by sign, directly or by implication, purport to be a massage therapist.

26 ~~(3) A person who knowingly violates the provisions of this section is guilty of a misdemeanor as~~
27 ~~provided in 37-33-504."~~

28

1 **Section 4.** Section 37-60-301, MCA, is amended to read:

2 "**37-60-301. License required -- process server registration required.** (1) (a) Except as provided in
3 37-60-105, it is unlawful for any person to act as or perform the duties, as defined in 37-60-101, of a contract
4 security company, a proprietary security organization, an electronic security company, a branch office, a private
5 investigator, a security alarm installer, an alarm response runner, a resident manager, a certified firearms
6 instructor, or a private security guard without having first obtained a license from the board.

7 (b) Except as provided in 25-1-1101(2), it is unlawful for any person to act as or perform the duties
8 of a process server for more than 10 services of process in a calendar year without being issued a certificate of
9 registration by the board.

10 (2) It is unlawful for any unlicensed person to act as, pretend to be, or represent to the public that
11 the person is licensed as a contract security company, a proprietary security organization, an electronic security
12 company, a branch office, a private investigator, a security alarm installer, an alarm response runner, a resident
13 manager, a certified firearms instructor, or a private security guard.

14 (3) A person appointed by the court as a confidential intermediary under 42-6-104 is not required
15 to be licensed under this chapter. A person who is licensed under this chapter is not authorized to act as a
16 confidential intermediary, as defined in 42-1-103, without meeting the requirements of 42-6-104.

17 ~~(4) A person who knowingly engages an unlicensed contract security company, proprietary security
18 organization, electronic security company, branch office, private investigator, security alarm installer, alarm
19 response runner, resident manager, certified firearms instructor, or private security guard is guilty of a
20 misdemeanor punishable under 37-60-411."~~

21

22 **Section 5.** Section 37-68-316, MCA, is amended to read:

23 "**37-68-316. Citation and fine for failure to display license.** (1) A citation for failure to display an
24 electrician's license or proof of licensure issued by an employee of the department must include:

25 (a) the time and date on which the citation is issued;

26 (b) the name, address, mailing address, and signature of the person to whom the citation is
27 issued;

28 (c) reference to the statutory authority to issue the citation;

1 (d) the name, title, affiliation, and signature of the person issuing the citation;

2 (e) information explaining the procedure for the person to follow in order to pay the fine or to
3 demonstrate proof of licensure; and

4 (f) the amount of the applicable fine.

5 (2) The applicable civil fines for failing to display a license or proof of licensure are as follows:

6 (a) \$100 for the first offense, unless the provisions of subsection (4)(b) apply;

7 (b) \$250 for the second offense; and

8 (c) \$500 for the third and any subsequent offense.

9 (3) Each day of violation constitutes a separate offense. The person issuing the citation is
10 responsible for determining, by means of an up-to-date list or through telephone or other communication with
11 the board office, whether the citation being issued is for a first, second, or subsequent offense.

12 (4) (a) The person who issues the citation is authorized to collect the fine, but the person who is
13 issued a citation may pay the fine to the appropriate authority identified on the citation within 5 business days of
14 the date of issuance.

15 (b) The board may not impose a fine for a first offense on a licensee who produces proof of
16 licensure to the department within 5 days of the citation. In other cases, the board may, upon finding that the
17 person has demonstrated acceptable proof of licensure, waive or refund the fine.

18 (5) A person who ~~refuses to sign and accept a citation commits a misdemeanor, punishable in the~~
19 ~~same manner as provided in 37-1-318~~ violates this section is also subject to the provisions of [section 1]."

20

21 **Section 6.** Section 37-69-310, MCA, is amended to read:

22 **"37-69-310. Citation and fine for failure to display license.** (1) A citation for failure to display a
23 plumber's license or proof of licensure issued by an employee of the department must include:

24 (a) the time and date on which the citation is issued;

25 (b) the name, address, mailing address, and signature of the person to whom the citation is
26 issued;

27 (c) reference to the statutory authority to issue the citation;

28 (d) the name, title, affiliation, and signature of the person issuing the citation;

1 (e) information explaining the procedure for the person to follow in order to pay the fine or to
2 demonstrate proof of licensure; and

3 (f) the amount of the applicable fine.

4 (2) The applicable civil fines for failing to display a license or proof of licensure are as follows:

5 (a) \$100 for the first offense, unless the provisions of subsection (4)(b) apply;

6 (b) \$250 for the second offense; and

7 (c) \$500 for the third and any subsequent offense.

8 (3) Each day of violation constitutes a separate offense. The person issuing the citation is
9 responsible for determining, by means of an up-to-date list or through telephone or other communication with
10 the board office, whether the citation being issued is for a first, second, or subsequent offense.

11 (4) (a) The person who issues the citation is authorized to collect the fine, but the person who is
12 issued a citation may pay the fine to the board within 5 business days of the date of issuance.

13 (b) The board may not impose a fine for a first offense on a licensee who produces proof of
14 licensure to the department within 5 days of the citation. In other cases, the board may, upon finding that the
15 person has demonstrated acceptable proof of licensure, waive or refund the fine.

16 (5) A person who ~~refuses to sign and accept a citation commits a misdemeanor, punishable in the~~
17 ~~same manner as provided in 37-1-318~~ violates this section is also subject to the provisions of [section 1]."

18

19 **Section 7.** Section 37-69-402, MCA, is amended to read:

20 **"37-69-402. Requirements for installation of medical gas piping.** (1) ~~After April 1, 1996, a A~~
21 person may not install pipe used solely to transport gases used for medical purposes unless the person holds a
22 valid medical gas piping installation endorsement pursuant to 37-69-401.

23 (2) A violation of this section is punishable pursuant to ~~37-69-324~~ [section 1]."

24

25 **Section 8.** Section 37-72-101, MCA, is amended to read:

26 **"37-72-101. Construction blasting restrictions -- license required -- definitions -- exemptions.**

27 (1) A person may not engage in the practice of construction blasting unless licensed or under the supervision of
28 a person licensed as a construction blaster by the department.

1 (2) For the purposes of this chapter:

2 (a) "construction blaster" means a person who engages in construction blasting;

3 (b) "construction blasting" means the use of explosives to:

4 (i) reduce, destroy, or weaken any residential, commercial, or other building; or

5 (ii) excavate any ditch, trench, cut, or hole or reduce, destroy, weaken, or cause a change in grade
6 of any land formation in the construction of any building, highway, road, pipeline, sewerline, or electric or other
7 utility line;

8 (c) "department" means the department of labor and industry;

9 (d) "explosive" has the meaning provided in 61-9-102.

10 (3) This chapter does not apply to the private or commercial use of explosives by persons engaged
11 in farming, ranching, logging, geophysical work, drilling or development of water, oil, or gas wells, or mining of
12 any kind or to the private use of explosives in the removal of stumps and rocks from land owned by the person
13 using the explosives, except that the persons exempted from this chapter by this subsection shall comply with
14 rules adopted under 37-72-201(1)(c) and the provisions of ~~37-72-402~~ section 1 apply to a violation of those
15 rules by an exempted person.

16 (4) This chapter does not apply to persons conducting blasting operations when the persons and
17 operations are subject to rules adopted under 82-4-231(10)(e)."

18

19 **Section 9.** Section 37-73-226, MCA, is amended to read:

20 **"37-73-226. Failure to display license.** (1) A citation issued by an employee of the department for
21 failure to display an elevator mechanic's license or proof of licensure must include:

22 (a) the time and date on which the citation is issued;

23 (b) the name, residential address, and signature of the person to whom the citation is issued;

24 (c) reference to the statutory authority to issue the citation;

25 (d) the name, title, affiliation, and signature of the person issuing the citation;

26 (e) information explaining the procedure for the person to follow in order to pay the fine or to
27 demonstrate proof of licensure; and

28 (f) the amount of the applicable fine.

1 (2) The applicable civil fines for failing to display a license or proof of licensure are as follows:

2 (a) \$100 for the first offense;

3 (b) \$250 for the second offense; and

4 (c) \$500 for the third and any subsequent offense.

5 (3) Each day of violation constitutes a separate offense. The person issuing the citation is
6 responsible for determining, by means of an up-to-date list or through telephone or other communication with
7 the department, whether the citation being issued is for a first, second, or subsequent offense.

8 (4) The person who issues the citation is authorized to collect the fine, but the person who is
9 issued a citation may pay the fine to the appropriate authority identified on the citation within 5 business days of
10 the date of issuance. The department may waive or refund the fine upon finding that the person has
11 demonstrated acceptable proof of licensure.

12 (5) A person who ~~refuses to sign and accept a citation is subject to the civil penalty provided for in~~
13 ~~37-1-318~~ violates this section is also subject to the provisions of [section 1]."

14

15 NEW SECTION. Section 10. Repealer. The following sections of the Montana Code Annotated are
16 repealed:

17 37-1-317. Practice without license -- investigation of complaint -- injunction -- penalties.

18 37-1-318. Violation of injunction -- penalty.

19 37-1-332. Administrative proceedings to stop unlicensed practice -- board of realty regulation -- state
20 electrical board -- board of plumbers.

21 37-3-325. Violations -- penalties.

22 37-3-326. Injunctive relief -- manner of charging violation.

23 37-4-326. Acts constituting misdemeanors.

24 37-4-327. Practicing dentistry without license -- penalty.

25 37-4-328. Duty of county attorney -- jurisdiction of justices' courts -- injunction.

26 37-6-312. Penalty.

27 37-7-323. Penalty -- enforcement.

28 37-7-407. Penalty.

1	37-7-510.	Penalty.
2	37-7-711.	Penalty.
3	37-8-443.	Violation of chapter -- penalties.
4	37-8-444.	Injunctions.
5	37-9-312.	Violation.
6	37-10-312.	Duty of county attorneys and attorney general.
7	37-10-313.	Penalty for violations -- deposit of fines.
8	37-11-302.	False oath or fraudulent representation to obtain license.
9	37-11-322.	Penalties.
10	37-12-324.	Penalty for violation.
11	37-13-315.	Enjoining unlawful practice.
12	37-13-316.	Penalty.
13	37-14-323.	Penalty for violation.
14	37-15-322.	Penalty.
15	37-15-323.	Injunction of unlawful practice.
16	37-16-413.	Penalty for unlawful practice -- injunction.
17	37-17-312.	Penalty.
18	37-17-313.	Injunction for unlawful practice.
19	37-18-501.	Penalty.
20	37-18-502.	(Temporary) Injunction.
21	37-18-703.	(Effective January 1, 2023) Penalties.
22	37-19-501.	Penalty provision.
23	37-19-831.	Penalty -- injunction.
24	37-20-104.	Unlicensed practice -- penalties.
25	37-24-311.	Penalty.
26	37-26-414.	Enforcement -- penalty.
27	37-27-325.	Violation -- penalties -- injunction -- manner of charging violation.
28	37-28-302.	Penalty.

- 1 37-29-411. Injunction.
- 2 37-29-412. Violation and penalty.
- 3 37-31-334. Penalty -- injunction.
- 4 37-33-504. Penalty.
- 5 37-34-307. Violation -- penalties -- injunction -- manner of charging violation.
- 6 37-35-204. Penalty.
- 7 37-36-205. Violation -- penalties.
- 8 37-40-312. Penalty.
- 9 37-47-344. Penalties.
- 10 37-50-342. Violation.
- 11 37-50-401. False statements by certified public accountants -- misdemeanor -- penalty.

12

13 NEW SECTION. **Section 11. Repealer.** The following sections of the Montana Code Annotated are

14 repealed:

- 15 37-51-323. Penalties -- criminal -- civil.
- 16 37-51-608. Penalties -- criminal -- civil.
- 17 37-53-307. Illegal practices.
- 18 37-53-506. Criminal proceedings.
- 19 37-60-411. Penalties -- investigation -- enforcement -- review.
- 20 37-65-322. Penalty.
- 21 37-65-323. Injunction.
- 22 37-66-322. Penalty.
- 23 37-67-332. Violations -- penalties -- enforcement.
- 24 37-68-322. Penalty.
- 25 37-69-324. Penalty.
- 26 37-72-102. Penalty -- injunction.
- 27 37-73-227. Penalty.

28

