

SENATE BILL NO. 365

INTRODUCED BY J. TREBAS, S. FITZPATRICK, D. ZOLNIKOV

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO THE BOARD OF PLUMBING; REPEALING THE BOARD OF PLUMBING; TRANSFERRING THE DUTIES OF THE BOARD OF PLUMBING TO THE DEPARTMENT OF LABOR AND INDUSTRY; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 37-1-332, 37-1-401, 37-69-101, 37-69-202, 37-69-301, 37-69-303, 37-69-304, 37-69-305, 37-69-306, 37-69-308, 37-69-310, 37-69-311, 37-69-319, 37-69-320, 37-69-401, 37-69-403, 50-60-115, 50-60-203, 50-60-204, AND 50-60-510, MCA; AND REPEALING SECTIONS 2-15-1765, 37-69-201, AND 37-69-203, MCA."

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

Section 1. Section 37-1-332, MCA, is amended to read:

"37-1-332. Administrative proceedings to stop unlicensed practice -- board of realty regulation -- state electrical board -- board of plumbers. (1) For the purposes of this section, the term "board" means the board of realty regulation provided for in 2-15-1757, or the state electrical board provided for in 2-15-1764, ~~or the board of plumbers provided for in 2-15-1765.~~

(2) (a) After investigation under 37-1-317, the board may establish a screening panel to determine if there is reasonable cause to believe a person has engaged in or is engaging in any act or practice constituting unlicensed practice of a profession or occupation.

(b) If reasonable cause is found under subsection (2)(a), the board may initiate a contested case proceeding against the person pursuant to the Montana Administrative Procedure Act in Title 2, chapter 4, part 6.

(3) Following a contested case proceeding, the board may apply any of the following sanctions to a person found to have engaged in the unlicensed practice of a profession or occupation:

(a) impose a civil penalty not to exceed \$1,500 for each violation and not to exceed a total of \$5,000 for all related violations; and

1 (b) require the person to pay up to \$5,000 for the costs of the administrative proceedings, including
2 but not limited to costs allowable under Title 25, chapter 10, but excluding the costs of investigation and the
3 board's attorney fees.

4 (4) Judicial review of any contested case under this section must be filed in the district where the
5 violation occurred, pursuant to the Montana Administrative Procedure Act in Title 2, chapter 4, part 7.

6 (5) The remedies provided by this section are in addition to all other remedies or actions that may
7 be taken, including those authorized by 37-1-317. The remedies provided by this section may not be applied
8 either to licensees or to employees of licensees."
9

10 **Section 2.** Section 37-1-401, MCA, is amended to read:

11 **"37-1-401. Uniform regulation for licensing programs without boards -- definitions.** As used in
12 this part, the following definitions apply:

13 (1) "Complaint" means a written allegation filed with the department that, if true, warrants an
14 injunction, disciplinary action against a licensee, or denial of an application submitted by a license applicant.

15 (2) "Department" means the department of labor and industry provided for in 2-15-1701.

16 (3) "Investigation" means the inquiry, analysis, audit, or other pursuit of information by the
17 department, with respect to a complaint or other information before the department, that is carried out for the
18 purpose of determining:

19 (a) whether a person has violated a provision of law justifying discipline against the person;

20 (b) the status of compliance with a stipulation or order of the department;

21 (c) whether a license should be granted, denied, or conditionally issued; or

22 (d) whether the department should seek an injunction.

23 (4) "License" means permission in the form of a license, permit, endorsement, certificate,
24 recognition, or registration granted by the state of Montana to engage in a business activity or practice at a
25 specific level in a profession or occupation governed by:

26 (a) Title 37, chapter 35, 69, 72, or 73; or

27 (b) Title 50, chapter 39, 74, or 76.

28 (5) "Profession" or "occupation" means a profession or occupation regulated by the department

1 under the provisions of:

2 (a) Title 37, chapter 35, 49, 69, 72, or 73; or

3 (b) Title 50, chapter 39, 74, or 76."

4

5 **Section 3.** Section 37-69-101, MCA, is amended to read:

6 **"37-69-101. Definitions.** Unless the context requires otherwise, in this chapter, the following

7 definitions apply:

8 ~~(1)~~ "Board" means the board of plumbers provided for in ~~2-15-1765~~.

9 ~~(2)~~(1) "Department" means the department of labor and industry provided for in Title 2, chapter 15,
10 part 17.

11 ~~(3)~~(2) "Drainage system" means all the piping inside the walls of a building that conveys sewage or
12 other liquid wastes outside the building to the building sewer but that does not extend more than 2 feet outside
13 the building way.

14 ~~(4)~~(3) "Field of plumbing" means the business, trade, or work having to do with the installation,
15 removal, alteration, or repair of plumbing and drainage systems or parts of plumbing and drainage systems.

16 ~~(5)~~(4) "Journeyman plumber" means a person who is authorized to make installation of all sanitary
17 plumbing and potable water supply piping and appliances connected to the plumbing and piping.

18 ~~(6)~~(5) "Master plumber" means a person who is authorized by this chapter to plan, estimate, bid,
19 contract for, and supervise plumbing work and who may do the work of a journeyman plumber.

20 ~~(7)~~(6) (a) "Plumbing system" means all potable water supply and distribution pipes, plumbing fixtures
21 and traps, drainage and vent pipes, and building drains, including their respective joints and connections,
22 devices, receptacles, and appurtenances within the property lines of any premises, up to 20 feet beyond the
23 building foundation line, and includes potable water piping, water heaters, and vents for the premises.

24 (b) The term does not include water services installed and maintained by water districts or water
25 user associations in which water service is installed by any qualified person appointed or hired by the
26 administrative authority of the water system.

27 ~~(8)~~(7) "Public sewer system" means any common sewer carrying liquid wastes from two or more
28 dwellings or any other facility that serves the public.

1 ~~(9)~~(8) "Public water supply" means any community well, water hauler for cisterns, water bottling plant,
2 water dispenser, or other water supply that serves 10 or more families or 25 or more persons on a regular and
3 continuous basis."
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5 **Section 4.** Section 37-69-202, MCA, is amended to read:

6 "**37-69-202. Rulemaking power -- records.** ~~(1)~~ The ~~board~~department may adopt rules necessary to
7 carry out this chapter.

8 ~~(2) The board shall adopt rules for the transaction of its business, and the department shall keep a~~
9 ~~record of the board's official actions."~~

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11 **Section 5.** Section 37-69-301, MCA, is amended to read:

12 "**37-69-301. License required.** (1) Except as provided in 37-69-102, a person working at the field of
13 plumbing in this state, either as a master plumber or as a journeyman plumber, shall first obtain a license as
14 provided in Title 37, chapter 69, part 3.

15 (2) A person who receives a license under the provisions of this chapter shall carry the license, or
16 proof of licensure, at all times while working on a job site and performing work that requires a license.
17 Acceptable proof of licensure must be determined by the ~~board~~department and made known by the
18 department to each licensee when a license is issued."

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20 **Section 6.** Section 37-69-303, MCA, is amended to read:

21 "**37-69-303. Application -- contents -- requirements.** A person, firm, or corporation desiring to
22 engage in or work in the field of plumbing in this state, either as a master plumber or as a journeyman plumber,
23 shall make application to the department by filing a written application stating the applicant's place of residence,
24 age, and experience and the place where the applicant has acquired experience and must at a time and place
25 designated by the ~~board~~department be examined as to the qualifications for a license."
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27 **Section 7.** Section 37-69-304, MCA, is amended to read:

28 "**37-69-304. Qualifications of applicants for journeyman plumber's license -- restriction on**

1 **authority.** (1) The following requirements must be met by applicants for a journeyman plumber's license:

2 (a) a specific record of 5 years of legally obtained experience in the field of plumbing. This
3 experience requirement may be fulfilled by:

4 (i) working 5 years in a major phase of the plumbing business, verified by time or pay records; or

5 (ii) completing an apprenticeship program meeting the standards set by the department or the
6 United States department of labor, bureau of apprenticeship. Credit toward this experience requirement may be
7 given for time spent attending an accredited trade or other school specializing in training of value in the field of
8 plumbing and approved by the ~~board~~ department.

9 (b) satisfactory completion of a written examination prescribed by the ~~board~~ department and
10 conducted by the department, subject to 37-1-101(4), testing the applicant's knowledge of techniques and
11 methods employed in the field of plumbing and, if required by the ~~board~~ department, a practical demonstration
12 establishing competence in the special skills required in the field of plumbing.

13 (2) A licensed journeyman plumber may perform work only in the employment of a licensed master
14 plumber unless otherwise permitted by rule of the ~~board~~ department. Performing work in the employment of a
15 licensed master plumber means the licensed master plumber shall observe the journeyman plumber's work at
16 different times over the course of employment and for different levels of plumbing work."
17

18 **Section 8.** Section 37-69-305, MCA, is amended to read:

19 **"37-69-305. Qualifications of applicants for master plumber's license -- restriction on authority.**

20 (1) The following requirements must be met by an applicant for a master plumber's license:

21 (a) evidence of 4 years of experience as a licensed journeyman plumber in the field of plumbing,
22 verified by time or pay records of actual plumbing experience;

23 (b) evidence of 3 years of experience, which may run concurrently with the requirement in
24 subsection (1)(a):

25 (i) working with a licensed master plumber; or

26 (ii) in a supervisory capacity in the field of plumbing; and

27 (c) satisfactory completion of an examination prescribed by the ~~board~~ department for master
28 plumbers testing the applicant's knowledge of the field of plumbing and demonstrating skill and ability in the

1 field of plumbing.

2 (2) For purposes of subsection (1), 1 year of experience is 1,500 hours or more of work in a
3 continuous 12-month period.

4 (3) A master plumber may not allow the master plumber's license to be used by any person or firm,
5 corporation, or business other than the master plumber's own for the purpose of obtaining permits or for doing
6 plumbing work under the license."

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8 **Section 9.** Section 37-69-306, MCA, is amended to read:

9 **"37-69-306. Examination -- issuance of license.** (1) An applicant for a license to work in the field of
10 plumbing must be examined as to the applicant's qualifications by the department, subject to 37-1-101(4). The
11 department shall examine each applicant for a license to determine the applicant's skill and qualifications as a
12 master plumber or journeyman plumber.

13 (2) The applicant must, upon successfully passing an examination prescribed by the ~~board~~
14 department, be issued a license authorizing the applicant to engage in the field of plumbing as a master
15 plumber or journeyman plumber in the state of Montana.

16 (3) In the case of a firm or corporation, the examination and issuance of a license to an individual
17 of the firm or to a principal of the firm or corporation satisfies the requirements of this chapter as to master
18 plumbers but not as to journeyman plumbers. An individual, firm, or corporation may not do the work of a
19 master plumber unless licensed under this chapter.

20 (4) In addition to the temporary permits authorized in 37-1-305, the ~~board~~department may, on a
21 case-by-case basis at the ~~board's~~department's discretion in accordance with criteria determined by the ~~board~~
22 department, renew a temporary practice permit for a person who fails the first license examination for which the
23 person is eligible."

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25 **Section 10.** Section 37-69-308, MCA, is amended to read:

26 **"37-69-308. Deposit of fees and fines.** (1) Money paid for license fees under this chapter must be
27 deposited in the state special revenue fund for the use of the ~~board~~department, subject to 37-1-101(6).

28 (2) Fines collected under this chapter must be deposited in the state general fund."

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Section 11. Section 37-69-310, MCA, is amended to read:

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

- (a) the time and date on which the citation is issued;
- (b) the name, address, mailing address, and signature of the person to whom the citation is issued;
- (c) reference to the statutory authority to issue the citation;
- (d) the name, title, affiliation, and signature of the person issuing the citation;
- (e) information explaining the procedure for the person to follow in order to pay the fine or to demonstrate proof of licensure; and
- (f) the amount of the applicable fine.

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

- (a) \$100 for the first offense, unless the provisions of subsection (4)(b) apply;
- (b) \$250 for the second offense; and
- (c) \$500 for the third and any subsequent offense.

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

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

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

(5) A person who refuses to sign and accept a citation commits a misdemeanor, punishable in the same manner as provided in 37-1-318."

Section 12. Section 37-69-311, MCA, is amended to read:

1 **"37-69-311. License of retirement status.** (1) A licensee who no longer practices plumbing may
2 apply to the department for retirement status.

3 (2) Upon receiving an application for retirement status accompanied by the fee established by the
4 ~~board~~ department, the department shall issue a license of retirement status to the applicant and record the
5 applicant's name in the appropriate database as a holder of a license of retirement status, along with the date
6 on which the licensee received retirement status.

7 (3) A license of retirement status does not allow a holder to practice plumbing under this chapter.

8 (4) The department shall reissue an active license to a holder of a license of retirement status who
9 pays the appropriate active license renewal fee and meets any competency requirements established by rule
10 by the department."
11

12 **Section 13.** Section 37-69-319, MCA, is amended to read:

13 **"37-69-319. Proof of license -- citation and fine.** (1) An employee of a private or public employment
14 agency or labor union, a building code compliance inspector, an employee of the department, a person who is
15 professionally responsible for a job site, or a plumber licensed under Title 37, chapter 69, has the right to ask a
16 person working at a job site doing work that requires a plumber's license to provide proof of licensure. If the
17 person performing the work is unable to furnish proof of licensure, the requesting person may report that fact to
18 ~~the board or~~ the department.

19 (2) An employee of the department may issue a citation to and collect a fine, as provided in 37-69-
20 310, from a person at a job site where the person is performing plumbing work if the person fails to display a
21 plumber's license or proof of licensure at the request of the department inspector."
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23 **Section 14.** Section 37-69-320, MCA, is amended to read:

24 **"37-69-320. License and endorsement discipline.** (1) The ~~board~~ department may revoke, suspend,
25 restrict, censure, or apply any other disciplinary treatment contemplated by 37-1-136 to any occupational
26 licensee or endorsee under this chapter for any one or more of the following causes:

27 (a) performance of plumbing work in the field of plumbing that is below the standards established
28 by the Uniform Plumbing Code;

- 1 (b) inadequate supervision that causes or allows plumbing work in the field of plumbing that is
2 below the standards established by the Uniform Plumbing Code;
- 3 (c) material deceit in procuring, attempting to procure, or aiding and abetting the procurement of
4 an occupational license or endorsement to practice in the field of plumbing;
- 5 (d) unfitness to provide services in the field of plumbing by reason of negligence or addiction to the
6 use of habit-forming drugs;
- 7 (e) physical or mental incompetence that impairs the licensee's or endorsee's ability to deliver
8 adequate service in the field of plumbing;
- 9 (f) willful or repeated violation of this chapter or rules adopted under this chapter or willful or
10 repeated violation of Title 50, chapter 60, part 5, or rules adopted under that part; or
- 11 (g) unprofessional practice-related conduct as defined by rules adopted by the ~~board~~ department.
- 12 (2) Any licensee or endorsee disciplinary action under the jurisdiction of the ~~board~~ department
13 must be conducted as a contested case under the provisions of the Montana Administrative Procedure Act."
14

15 **Section 15.** Section 37-69-401, MCA, is amended to read:

16 **"37-69-401. Medical gas piping installation endorsement.** (1) A medical gas piping installation
17 endorsement entitles the holder to install pipe used solely for transporting gases used for medical purposes.

18 (2) To be eligible for endorsement under this section, a person must meet all requirements for
19 endorsements established by the ~~board~~ department by rule.

20 (3) A person with a valid medical gas piping installation endorsement from another state may
21 install medical gas piping in this state.

22 (4) The ~~board~~ department shall by rule establish the requirements for obtaining a medical gas
23 piping installation endorsement."
24

25 **Section 16.** Section 37-69-403, MCA, is amended to read:

26 **"37-69-403. Proof of endorsement.** (1) A state or local government plumbing code compliance
27 inspector shall, as part of any inspection, request proof of medical gas piping installation endorsement from any
28 person who is required to hold an endorsement under 37-69-402 or who, in the inspector's judgment, appears

1 to be involved with onsite medical gas piping activity. The inspector shall report any instance of endorsement
 2 violation to the inspector's employing agency, and the employing agency shall report the violation to the ~~board~~
 3 department.

4 (2) An employee of a private or public employment agency or labor union, a person who is
 5 professionally responsible for a job site, or a person who holds a medical gas piping installation endorsement
 6 under Title 37, chapter 69, has the right to ask a person doing work on the job site that requires an
 7 endorsement to provide proof of endorsement. If the person performing the work is unable to furnish proof of
 8 endorsement, the requesting person may report that fact to ~~the board or the department~~."

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10 **Section 17.** Section 50-60-115, MCA, is amended to read:

11 **"50-60-115. Building codes council -- purpose and structure.** (1) There is a building codes council
 12 for the purpose of assisting the department with the application, implementation, and interpretation of the state
 13 building code and building codes adopted by counties, cities, or towns. The council shall work cooperatively
 14 with the department and with representatives of the construction industry, as well as members of the interested
 15 public, to harmonize building codes and related rules with both the needs of the construction industry and the
 16 public interest in efficiency, cost-effectiveness, and safety.

17 (2) The council consists of 12 members appointed by the governor, unless otherwise specified, as
 18 follows:

- 19 (a) a practicing architect licensed in Montana;
- 20 (b) a practicing professional engineer licensed in Montana;
- 21 (c) a representative from the building contractor industry;
- 22 (d) a county, city, or town building inspector;
- 23 (e) a representative of the manufactured housing industry;
- 24 (f) a member of the general public who does not hold public office and who does not represent the
 25 same industry or agency as another council member;
- 26 (g) the director of the department of public health and human services or the director's designee;
- 27 (h) a licensed electrician selected by the state electrical board;
- 28 (i) a licensed plumber selected by the ~~board of plumbers~~ department of labor and industry;

- 1 (j) a licensed elevator mechanic selected by the department;
- 2 (k) the state fire marshal or the fire marshal's designee; and
- 3 (l) a representative of the home building industry.
- 4 (3) The appointed council members serve at the pleasure of the governor for terms of 3 years.
- 5 (4) The council is allocated to the department for administrative purposes only as provided in 2-15-
- 6 121.
- 7 (5) The council and its members are entitled to compensation as provided in 2-15-122."
- 8

9 **Section 18.** Section 50-60-203, MCA, is amended to read:

10 **"50-60-203. Department to adopt state building code by rule.** (1) (a) The department shall adopt
11 rules relating to the construction of, the installation of equipment in, and standards for materials to be used in all
12 buildings or classes of buildings, including provisions dealing with safety, accessibility to persons with
13 disabilities, sanitation, and conservation of energy. The adoption, amendment, or repeal of a rule is of
14 significant public interest for purposes of 2-3-103.

15 (b) Rules concerning the conservation of energy must conform to the policy established in 50-60-
16 801 and to relevant policies developed under the provisions of Title 90, chapter 4, part 10.

17 (2) The department may adopt by reference nationally recognized building codes in whole or in
18 part, except as provided in subsection (5), and may adopt rules more stringent than those contained in national
19 codes.

20 (3) The rules, when adopted as provided in parts 1 through 4, constitute the "state building code"
21 and are acceptable for the buildings to which they are applicable.

22 (4) The department shall adopt rules that permit the installation of below-grade liquefied petroleum
23 gas-burning appliances.

24 (5) The department may not include in the state building code a requirement for the installation of
25 a fire sprinkler system in a single-family dwelling or a residential building that contains no more than two
26 dwelling units.

27 (6) (a) The department shall, by rule, adopt by reference the most recently published edition of the
28 national fire protection association's publication NFPA 99C for the installation of medical gas piping systems.

1 The department may, by rule, issue plumbing permits for medical gas piping systems and require inspections of
2 medical gas piping systems.

3 (b) A state, county, city, or town building code compliance officer shall, as part of any inspection,
4 request proof of a medical gas piping installation endorsement from any person who is required to hold an
5 endorsement or who, in the inspector's judgment, appears to be involved with onsite medical gas piping activity.
6 The inspector shall report any instance of endorsement violation to the inspector's employing agency, and the
7 employing agency shall report the violation to the ~~board of plumbers~~ department of labor and industry."

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9 **Section 19.** Section 50-60-204, MCA, is amended to read:

10 **"50-60-204. Public hearing required -- effective date of certain rules.** (1) Except as provided in
11 subsection (2), a rule, amendment, or repeal of the state building code is a matter of significant public interest
12 for purposes of 2-3-103 and may not take effect until after a public hearing by the department.

13 (2) If a hearing with adequate public notice pursuant to 2-3-103 has been held by the department
14 of justice with respect to the duties contained in chapter 3 of this title or by the ~~board of plumbers~~ department of
15 labor and industry, the department of public health and human services, or the state electrical board on a
16 proposed rule relating to building and equipment standards in their respective fields, a public hearing by the
17 department is not required. The proposed rule is effective upon approval of the department and filing with the
18 secretary of state as a part of the state building code."

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20 **Section 20.** Section 50-60-510, MCA, is amended to read:

21 **"50-60-510. Inspections to ensure compliance.** All plumbing and drainage systems may be
22 inspected by the department of labor and industry or an authorized representative or by a county, city, or town
23 certified to perform an inspection pursuant to 50-60-302 in order to ensure compliance with the requirements of
24 the state plumbing code. As part of any inspection, the inspector shall request proof of licensure from any
25 person who is required to be licensed who is involved with or, in the inspector's judgment, appears to be
26 involved with plumbing activities if the person is on the site. The inspector shall report any instance of license
27 violation to the inspector's employing agency, and the employing agency shall in turn report the violation to the
28 ~~board of plumbers~~ department of labor and industry."

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NEW SECTION. **Section 21. Repealer.** The following sections of the Montana Code Annotated are

repealed:

- 2-15-1765. Board of plumbers.
- 37-69-201. Presiding officer.
- 37-69-203. Compensation of board members -- expenses.

- END -