

Unofficial Draft Copy

As of: July 21, 2006 (5:47pm)

LC7799

**** Bill No. ****

Introduced By *****

By Request of the *****

A Bill for an Act entitled: "An Act providing a procedure for creating a new professional or occupational licensing board or program; requiring a letter of intent to accompany a bill draft request for a new professional or occupational licensing board or program; providing that a letter of intent may be submitted when adding professions or occupations to existing licensing boards; **requiring a fee for review of letter of intent and to develop projected costs and fees for a new or combined board or program;** providing a procedure for consolidating boards **and reviewing administrative attachment of boards to a department.**"

WHEREAS, licensing boards or programs provide for self-regulation by professions or occupations and are authorized by the state through its role of protecting public health, safety, or welfare or providing for the common good; and

WHEREAS, documentation regarding the rationale for licensing a profession or occupation is helpful for legislators to use in determining whether the potential increase in cost to the public and limitation on competition is outweighed by the prospective protection of public health, safety, or welfare or provision for the common good; and

WHEREAS, advance information on costs better serves both potential licensees and legislators in determining the cost of a

board or a program.

Be it enacted by the Legislature of the State of Montana:

NEW SECTION. **Section 1. Purpose.** It is the intent of the legislature to:

(1) only exercise the police power of the state through the establishment of licensing boards when regulation of a profession or occupation serves the health, welfare, safety, or common good of the state's residents;

(2) recognize those professions or occupations that require specialized skill or training; and

(3) provide the public with a means to determine whether practitioners have met competency standards and to complain if the competency is suspect.

NEW SECTION. **Section 2. Intent to license new board.** (1) Except as provided in [section 3], a bill draft request to create a licensing board must include a letter of intent not exceeding 1,000 words that address the criteria in subsections (2) and (3).

(2) The letter of intent must contain the following descriptions:

(a) how licensing would protect and benefit the public and, in particular, how the unregulated practice of the profession or occupation would pose a hazard to public health, safety, welfare, or the common good;

(b) the extent of practitioners' autonomy, as indicated by

the degree of independent judgment that a practitioner must exercise or the extent of skill or experience required in making the independent judgment;

(c) the distinguishable scope of practice;

(d) the overlap or shared practices with an existing, licensed occupation or profession;

(e) the degree, if any, to which licensing would restrict entry into the profession or occupation for reasons other than public health, safety, welfare, or the common good;

(f) the specialized skills or training required for the profession;

(g) the proposed qualifications for licensure;

(h) whether a grandfather clause would be provided to existing practitioners and whether those eligible for the grandfather clause would be required to meet proposed qualifications at a certain time;

(i) a list of other states that license the profession or occupation;

(j) regulatory alternatives other than licensing that are available to the practitioners of the profession or occupation; and

(k) previous efforts, if any, to regulate the profession or occupation.

(3) In order to help in the determination of licensing costs, the letter of intent must contain a good faith effort to answer the following questions:

(a) how many licensees are anticipated, including the number

of practitioners in Montana; and

(b) what is the proposed makeup of the licensing board?

(4) For the purposes of this section, a letter of intent is a public record.

NEW SECTION. **Section 3. Fee -- refund -- rule --**

nonpayment of fee. (1) Individuals or a group seeking to create a board or program by requesting draft legislation and providing a letter of intent as required in [section 2 or section 4] shall pay a fee established by the department to pay for a review of the costs of a new or combined board or program and the projected fee structure for licensees under a new or combined board or program.

(2) The department shall refund any unused portion to the applicant.

(3) The department shall set by rule the amount of the fee, which may not exceed \$6,500.

(4) (a) A legislator who requests draft legislation for a new or combined board on behalf of unlicensed individuals who do not provide a letter of intent or a fee is not responsible for paying the fee.

(b) If the legislature creates a new board or program under [section 2] or combines a new profession or occupation with an existing board as provided in [section 4], the department shall prorate the cost of the uncompensated review against new licensees of the new or combined board in the initial year of licensure.

NEW SECTION. **Section 4. Intent to combine profession or occupation with existing board.** (1) A bill draft request that proposes to license a profession or occupation by combining that profession or occupation with an existing board must contain a letter of intent if one of the following conditions applies:

(a) the profession or occupation to be licensed falls under the supervisory authority of a profession or occupation with an existing board; or

(b) the profession or occupation to be licensed has an overlapping scope of practice or dual licensure with a profession or occupation under an existing board.

(2) A letter of intent to combine with an existing board must contain responses to the questions provided in [section 3].

(3) A letter of intent under this section is a public record.

NEW SECTION. **Section 5. Periodic board, program review -- criteria -- termination -- consolidation.** (1) The legislative interim committee responsible for monitoring licensing boards and programs shall periodically review the need for boards and programs **and the administrative attachment of boards and programs.**

(2) The review must address the need for a board or a program:

(a) to protect public health, safety, or welfare;

(b) to assure the public of competency standards; and

(c) to provide a forum for addressing complaints arising from the practice of the profession or occupation.

(3) If the legislative interim committee reviewing the board or program determines that a need no longer exists for the board or the program, the committee shall propose legislation to terminate the board or the program.

(4) If the legislative interim committee determines a need for the board or program but the board or program has fewer than 200 licensees or a limited number of complaints each year, the legislative interim committee shall direct the department to begin consolidation discussions with a board that has one or more of the following criteria:

(a) related professional or occupational skills;

(b) a degree of supervisory authority over the board or program with fewer than 200 licensees; or

(c) dual licensure between the boards and board and program.

(5) The legislative interim committee shall review the recommendations of the department on consolidation, hold a hearing, and propose legislation, if any, to consolidate boards or a board and a program.

(6) The legislative interim committee after a review of the administrative attachment of a board or program may propose legislation to administratively attach the board or program to a department that has responsibilities related to the board or program.

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NEW SECTION. Section 6. {standard} Codification

instruction. [Sections 1 through 4] are intended to be codified as an integral part of Title 2, chapter 8, and the provisions of Title 2, chapter 8, apply to [sections 1 through 4].

NEW SECTION. Section 7. {standard} Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

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