

Unofficial Draft Copy

As of: June 30, 2006 (4:08pm)

LC9831

**** Bill No. ****

Introduced By *****

By Request of the *****

A Bill for an Act entitled: "An Act generally revising licensing boards; providing for a periodic review of licensing boards and programs; removing quasi-judicial status from certain boards; revising department duties toward boards; changing the Board of athletics to a program; combining the Board of Landscape Architects with the Board of Architects; terminating the program for athletic agents; combining the Board of Hearing Aid Dispensers with the Board of Medical Examiners; repealing sections 2-15-1772, 2-15-1762, 2-15-1740, 37-16-201, 37-16-203, 37-66-201, 37-66-202, 37-76-101, 37-76-102, 37-76-103, 37-76-104, 37-76-105, 37-76-106, 37-76-107, 37-76-108, 37-76-109, 37-76-113, 37-76-114, 37-76-115, 37-76-116, 37-76-117, 37-76-118, 37-76-119, 37-76-101, 37-76-121, 37-76-122, 37-76-123, MCA."

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

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

Section 2. Section 2-15-1730, MCA, is amended to read:

"2-15-1730. Alternative health care board -- composition -- terms -- allocation. (1) There is an alternative health care board.

(2) The board consists of six members appointed by the

governor with the consent of the senate. The members are:

(a) two persons from each of the health care professions regulated by the board who have been actively engaged in the practice of their respective professions for at least 3 years preceding appointment to the board;

(b) one public member who is not a member of a profession regulated by the board; and

(c) one member who is a Montana physician whose practice includes obstetrics.

(3) The members must have been residents of this state for at least 3 years before appointment to the board.

(4) All members shall serve staggered 4-year terms. The governor may remove a member from the board for neglect of a duty required by law, for incompetency, or for unprofessional or dishonorable conduct.

(5) The board is allocated to the department for administrative purposes only, as prescribed in 2-15-121.

~~(6) The board is designated a quasi-judicial board for the purposes of 2-15-124, except that one member of the board need not be an attorney licensed to practice law in this state."~~

{ Internal References to 2-15-1730:
37-26-103 37-27-103 }

Section 3. Section 2-15-1753, MCA, is amended to read:

"2-15-1753. Board of clinical laboratory science practitioners. (1) There is a board of clinical laboratory science practitioners.

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(2) The board is composed of five members who have been residents of this state for at least 2 years prior to appointment and who are actively engaged in their respective practices.

(3) Members are appointed by the governor, with consent of the senate. The members are:

(a) one physician who is qualified to direct a high complexity laboratory as provided for in the federal clinical laboratory regulations set forth in 42 CFR part 493;

(b) three clinical laboratory science practitioners who, except for the initial appointments, hold active licenses as clinical laboratory science practitioners in Montana; and

(c) one public member who is not associated with or financially interested in the practice of clinical laboratory science.

(4) Following the initial appointments of members to the board, all members shall serve 4-year terms. The terms of the initial appointments must be staggered, with three members serving a 4-year term and two members serving a 2-year term. A member may not serve more than two consecutive terms.

(5) Whenever a vacancy occurs on the board during a term of office, the governor shall appoint a successor with similar qualifications for the remainder of the unexpired term.

(6) The board is allocated to the department for administrative purposes only, as provided in 2-15-121.

~~(7) The board is designated a quasi-judicial board for the purposes of 2-15-124, except that a member of the board need not be an attorney licensed to practice law in this state.~~

~~(8)~~ (7) Members of the board are entitled to compensation and travel expenses as provided by law."

{ Internal References to 2-15-1753:
37-34-103 }

Section 4. Section 2-15-1750, MCA, is amended to read:

"2-15-1750. Board of respiratory care practitioners. (1)

There is a board of respiratory care practitioners. The board consists of five members appointed by the governor. Each member must be a citizen of the United States and a resident of this state. The governor may request advice from the Montana society for respiratory care in making appointments to the board.

(2) The board consists of:

(a) three respiratory care practitioners, each of whom has engaged in the practice of respiratory care for a period of at least 3 years immediately preceding their appointment to the board. At least one of these members must have passed the registry examination for respiratory therapists administered by the national board for respiratory care and at least one of these members must have passed the entry-level examination for respiratory therapy technicians administered by the national board for respiratory care.

(b) one physician licensed in Montana who has a special interest in the treatment of cardiopulmonary diseases; and

(c) one member of the public who is not a member of a health care profession.

~~(3) The board is a quasi-judicial board, except that one~~

~~member of the board need not be an attorney licensed to practice law in this state.~~ Members are appointed, serve, are compensated, and are subject to removal as provided in 2-15-124.

(4) The board is allocated to the department of labor and industry for administrative purposes only as provided in 2-15-121."

{ Internal References to 2-15-1750:
37-28-102 }

Section 5. Section 2-15-1761, MCA, is amended to read:

"2-15-1761. Board of architects. (1) There is a board of architects.

(2) The board consists of ~~four~~ six members appointed by the governor with the consent of the senate. The members are:

(a) two registered architects who have been in continuous practice for 3 years before their appointment;

(b) one registered architect who is on the staff of the Montana state university-Bozeman school of architecture; ~~and~~

(c) one representative of the public who is not engaged in or directly connected with the practice of architecture; and

(d) two licensed landscape architects.

(3) Each member must have been a resident of Montana for 4 years prior to appointment.

(4) Each member shall serve for a term of 3 years.

(5) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121."

{ Internal References to 2-15-1761:
37-65-102 }

Section 6. Section 2-15-1744, MCA, is amended to read:

"2-15-1744. Board of social work examiners and professional counselors. (1) (a) The governor shall appoint a board of social work examiners and professional counselors consisting of seven members.

(b) Three members must be licensed social workers, and three must be licensed professional counselors.

(c) One member must be appointed from and represent the general public and may not be engaged in social work.

(d) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121.

(e) ~~The board is designated a quasi-judicial board.~~ Members are appointed, serve, and are subject to removal in accordance with 2-15-124.

(2) Notwithstanding the qualifications for appointment contained in subsection (1), a person may be appointed to the board without being licensed as a professional counselor if he is issued a license under Title 37, chapter 23, within 30 days after his appointment."

{ *Internal References to 2-15-1744:*
37-22-102 37-23-102 }

Section 7. Section 23-3-301, MCA, is amended to read:

"23-3-301. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

~~(1) "Board" means the board of athletics provided for in~~

~~2-15-1772.~~

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

~~(2) "Program" means the statutes under this chapter and the rules adopted by the department under this chapter."~~

{Internal References to 23-3-301: None.}

Section 8. Section 23-3-402, MCA, is amended to read:

"23-3-402. Enforcement of rules by board member -- board designees. (1) In absence of a quorum of the board, any board member in attendance at and supervising a contest or exhibition has the full power of the board in enforcing rules of the board.

~~(2) (1)~~ The board department may designate in writing ~~representatives~~ a representative to act specifically on behalf of the board department but only within the scope of the written authority.

~~(2) The representative shall attend and supervise a contest or exhibition and has the authority from the department to enforce rules adopted under this chapter."~~

{Internal References to 23-3-402: None.}

Section 9. Section 23-3-404, MCA, is amended to read:

"23-3-404. Board jurisdiction Jurisdiction -- license required -- contestant participation. (1) The board department has sole management, control, and jurisdiction over each professional or semiprofessional wrestling or boxing match or exhibition, including "so you think you are tough" boxing matches

and mud wrestling, involving recognition, a prize, or purse and at which an admission fee is charged, either directly or indirectly, in the form of dues or otherwise, to be held within the state, except a match or exhibition conducted:

- (a) by a university, college, or high school;
- (b) by the military; or
- (c) for contestants under 16 years of age, by a recognized amateur association.

(2) No organization or individual may conduct a match or exhibition within the ~~board's~~ department's jurisdiction unless it ~~or he~~ the organization or individual is the holder of an appropriate license granted by the ~~board~~ department.

(3) ~~No~~ A referee, manager, or judge may not participate in a match or exhibition within the ~~board's~~ department's jurisdiction unless: ~~he is~~

- (a) licensed by the ~~board and~~ department; and
- (b) the match or exhibition is conducted by an organization or individual licensed by the ~~board~~ department.

(4) ~~No~~ A professional or semiprofessional boxer or wrestler may not participate in a match or exhibition within the ~~board's~~ department's jurisdiction unless: ~~he is~~

- (a) licensed by the ~~board and~~ department;
- (b) the match or exhibition is conducted by an organization or individual licensed by the ~~board and his right~~ department; and
- (c) the right of the professional or semiprofessional boxer or wrestler to participate has not been suspended under

23-3-603."

{Internal References to 23-3-404: None.}

Section 10. Section 23-3-405, MCA, is amended to read:

"23-3-405. Rules. (1) The ~~board~~ department may adopt rules for the administration and enforcement of this chapter.

(2) (a) The rules must include the granting, suspension, and revocation of licenses and the qualification requirements for those to be licensed to conduct matches or exhibitions or to be licensed as referees, managers, or judges. License qualifications must include appropriate knowledge, experience, and integrity.

(b) The rules may include but are not limited to the following:

(i) the labeling of a match as a championship match;

(ii) the number and length of rounds and the weight of gloves;

(iii) the extent and timing of the physical examination of contestants;

(iv) the attendance of a referee and the referee's powers and duties; and

(v) review of decisions made by officials.

(3) The rules must:

(a) meet or exceed the safety codes required by recognized professional boxing and wrestling organizations;

(b) provide reasonable measures for the fair conduct of the matches or exhibitions and for the protection of the health and safety of the contestants;

(c) require a physical examination of each contestant prior

to each match or exhibition;

(d) provide for the qualifications of judges, referees, and seconds and for their payment by the promoter; and

(e) provide for the attendance at ringside of one or more of the following and require the promoter to pay for that person's attendance:

(i) a licensed physician as defined in 37-3-102;

(ii) a licensed physician assistant as defined in 37-20-401;

or

(iii) a licensed advanced practice registered nurse as defined in 37-8-102."

{*Internal References to 23-3-405: None.*}

Section 11. Section 23-3-501, MCA, is amended to read:

"23-3-501. Licenses -- fees. (1) The ~~board~~ department may issue a license to a professional or semiprofessional boxing or wrestling promoter, whether an individual or organization, for the sole purpose of conducting professional or semiprofessional matches or exhibitions.

(2) The ~~board~~ department may issue licenses to qualified referees, managers, boxers, wrestlers, seconds, trainers, and judges.

(3) A license issued in accordance with subsections (1) and (2) expires on the date set by department rule.

(4) Each application for a license under this section must be accompanied by a fee, as provided in 37-1-134, set by the ~~board~~ department."

{ Internal References to 23-3-501: None. }

Section 12. Section 23-3-601, MCA, is amended to read:

"23-3-601. Report of ticket sales -- tax on gross receipts -- disposition of money received. (1) An individual or organization licensed to conduct a boxing or wrestling match or exhibition must, within 24 hours after the completion of each match or exhibition, furnish to the department a written report, verified by one of its officers or owners, showing the number of tickets sold for the match or exhibition, the amount of gross proceeds, and other matters as the ~~board~~ department prescribes and must also within 24 hours pay to the department a tax of 5% of its total gross receipts, after deducting the federal admission tax, if any, from the sale of tickets.

(2) All taxes and fees collected by the department ~~or the board~~ under this chapter must be deposited in the state special revenue fund for the use of the ~~board~~ program, subject to 37-1-101(6)."

{ Internal References to 23-3-601:
23-3-602 }

Section 13. Section 23-3-602, MCA, is amended to read:

"23-3-602. Examination of books and records on failure to make report or on unsatisfactory report -- penalty for failure to pay tax. (1) If an individual or organization fails to make a report of a contest at the time prescribed by 23-3-601 or if the report is unsatisfactory to the ~~board~~ department, the ~~board~~

department may examine the books and records of the individual or organization and subpoena and examine witnesses under oath for the purpose of determining the total amount of its gross receipts for a contest and the amount of tax due under this chapter.

(2) If the individual or organization remains in default in the payment of tax ascertained to be due for a period of 20 days after notice to such delinquent of the amount due, the delinquent forfeits its license and is disqualified from receiving a new license."

{*Internal References to 23-3-602: None.*}

Section 14. Section 23-3-603, MCA, is amended to read:

"23-3-603. Discipline. (1) A license issued under the provisions of this chapter may, after notice and opportunity for hearing, be revoked or suspended by the ~~board~~ department for a violation of the provisions of this chapter or any rule of the ~~board~~ department.

(2) The ~~board~~ department may, after notice and opportunity for hearing, reprimand any professional or semiprofessional athlete or suspend, for a period not to exceed 1 year, ~~his~~ the athlete's right to participate in any match or exhibition conducted by any licensee for:

(a) unsportsmanlike conduct while engaged in or arising directly from any match or exhibition;

(b) failure to compete in good faith or engaging in any sham match or exhibition; or

(c) the use of threatening or abusive language toward

officials or spectators."

{ Internal References to 23-3-603:
23-3-404 }

Section 15. Section 37-1-101, MCA, is amended to read:

"37-1-101. Duties of department. In addition to the provisions of 2-15-121, the department of labor and industry shall:

(1) establish and provide all the administrative, legal, and clerical services needed by the boards within the department, including corresponding, receiving and processing routine applications for licenses as defined by a board, issuing and renewing routine licenses as defined by a board, disciplining licensees, setting administrative fees, preparing agendas and meeting notices, conducting mailings, taking minutes of board meetings and hearings, and filing;

(2) standardize policies and procedures and keep in Helena all official records of the boards;

(3) make arrangements and provide facilities in Helena for all meetings, hearings, and examinations of each board or elsewhere in the state if requested by the board;

(4) contract for or administer and grade examinations required by each board;

(5) investigate complaints received by the department of illegal or unethical conduct of a member of the profession or occupation under the jurisdiction of a board within the department;

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(6) assess the costs of the department to the boards and programs on an equitable basis as determined by the department;

(7) adopt rules setting administrative fees and expiration, renewal, and termination dates for licenses;

(8) issue a notice to and pursue an action against a licensed individual, as a party, before the licensed individual's board after a finding of reasonable cause by a screening panel of the board pursuant to 37-1-307(1)(e);

(9) (a) provide notice to the board and to the appropriate legislative interim committee when a board cannot operate in a cost-effective manner;

(b) suspend all duties under this title to the board except for services related to renewal of licenses;

(c) review the need for a board as provided in [section 1];

(d) (i) if the review in subsection (9)(c)(i) shows a continued need for a board that is the subject of a notice in subsection (9)(a), begin a process to combine the board with another board of a similar profession or occupation and propose legislation for a combined board; or

(ii) if the review in subsection (9)(c)(i) shows no need to continue the board, begin termination proceedings and propose legislation;

(e) determine costs for termination and reassignment of board or program duties, the costs of which must be recovered by one-time charges against all boards and programs; and

(f) submit a request for a temporary loan as provided in 17-2-107 pending receipt of funds recovered under subsection (9)(e);

(10) monitor a board's cash balances to ensure that the balances do not exceed two times the board's annual appropriation level and adjust fees through administrative rules when necessary; and

(11) establish policies and procedures to set fees for administrative services, as provided in 37-1-134, commensurate with the cost of the services provided. Late penalty fees may be set without being commensurate with the cost of services provided."

{ Internal References to 37-1-101:

2-15-121	23-3-601	37-1-131	37-3-306
37-3-306	37-3-311	37-3-314	37-4-202
37-4-327	37-6-305	37-7-309	37-7-324
37-8-432	37-9-306	37-10-203	37-11-203
37-12-308	37-15-310	37-16-408	37-18-308
37-19-307	37-28-305	37-31-324	37-47-306
37-51-204	37-51-311	37-51-321	37-54-112
37-60-320	37-65-307	37-67-317	37-69-304
37-69-306	37-69-308	}	

Section 16. Section 37-1-130, MCA, is amended to read:

"37-1-130. Definitions. As used in this part, the following definitions apply:

(1) "Administrative fee" means a fee established by the department to cover the cost of administrative services as provided for in 37-1-134.

(2) "Board" means a licensing board created under Title 2, chapter 15, that regulates a profession or occupation and that is administratively attached to the department as provided in 2-15-121. A licensing board regulated under Title 37 is not quasi-judicial as defined in 2-15-124.

(3) "Board fee" means:

(a) a fee established by the board to cover program area costs as provided in 37-1-134; and

(b) any other legislatively prescribed fees specific to boards and department programs.

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

(5) "Department program" means a program administered by the department pursuant to this title and not affiliated with a board.

(6) "Expired license" means a license that is not reactivated within the period of 45 days to 2 years after the renewal date for the license.

(7) "Lapsed license" means a license that is not renewed by the renewal date and that may be reactivated within the first 45-day period after the renewal date for the license.

(8) "License" means permission granted under a chapter of this title to engage in or practice at a specific level in a profession or occupation.

(9) "Terminated license" means a license that is not renewed or reactivated within 2 years of the license lapsing."

{*Internal References to 37-1-130: None.*}

Section 17. Section 37-16-102, MCA, is amended to read:

"37-16-102. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Board" means the board of ~~hearing aid dispensers~~

medical examiners provided for in ~~2-15-1740~~ 2-15-1731.

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

(3) "Hearing aid" means an instrument or device designed for or represented as aiding or improving defective human hearing and parts, attachments, or accessories of the instrument or device.

(4) "License" means a regular or trainee license.

(5) "Practice of selling, dispensing, and fitting hearing aids" means the evaluation or measurement of the powers or range of human hearing by means of an audiometer and a visual examination of the ear and canal or by any other means devised and the consequent selection, adaption, sale, dispensing, or fitting of hearing aids intended to compensate for hearing loss, including eyeglass hearing aids and their fittings, and the making of an impression of the ear and the subsequent selection of a proper ear mold, but does not include batteries, cords, or accessories."

{*Internal References to 37-16-102: None.*}

Section 18. Section 37-16-103, MCA, is amended to read:

"37-16-103. Exemptions. (1) This chapter does not apply to a person who is a physician licensed to practice by the ~~state board of medical examiners~~.

(2) This chapter does not apply to a person ~~while he is~~ engaged in the practice of fitting hearing aids if ~~his~~ the practice is part of the academic curriculum of an accredited

institution of higher education or part of a program conducted by a public agency."

{*Internal References to 37-16-103: None.*}

Section 19. Section 37-66-103, MCA, is amended to read:

"37-66-103. Definitions. As used in this chapter, the following definitions apply:

(1) "Board" means the board of ~~landscape~~ architects provided for in ~~2-15-1762~~ 2-15-1761.

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

(3) "Landscape architect" means a person who holds a certificate to practice landscape architecture in the state of Montana under the provisions of this chapter.

(4) "Landscape architecture" means performing services in conjunction with all aspects of the planning and design of the exterior environment for human use and environmental protection. It includes regional planning of natural resources, urban and rural planning and design, institutional design, park and recreation planning and design, and the preparation of project master plans. It is the design discipline specifically oriented to addressing the problems involved in adapting man's uses of land to the characteristics of the exterior environment both functionally and aesthetically. It includes the preparation of contract documents, construction specifications, construction cost estimates, and project contracts. It includes contract negotiations, project management, and construction management.

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The term does not include the design of structures or facilities with separate and self-contained purposes that are ordinarily included in the practice of engineering or architecture and does not include the making of land surveys or final land plats for official approval or recording."

{*Internal References to 37-66-103: None.*}

NEW SECTION. **Section 20.** {**standard**} **Repealer.** Sections 2-15-1772, 2-15-1762, 2-15-1740, 37-16-201, 37-16-203, 37-66-201, 37-66-202, 37-76-101, 37-76-102, 37-76-103, 37-76-104, 37-76-105, 37-76-106, 37-76-107, 37-76-108, 37-76-109, 37-76-113, 37-76-114, 37-76-115, 37-76-116, 37-76-117, 37-76-118, 37-76-119, 37-76-101, 37-76-121, 37-76-122, 37-76-123, MCA, are repealed.

{*Internal References to 37-16-201: None.*

Internal References to 37-16-203: None.

Internal References to 37-66-201: None.

Internal References to 37-66-202: None.}

- END -

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