

HOUSE BILL NO. 73

INTRODUCED BY G. HOLLENBAUGH

BY REQUEST OF THE DEPARTMENT OF LABOR AND INDUSTRY

A BILL FOR AN ACT ENTITLED: "AN ACT GRANTING A PROFESSIONAL OR OCCUPATIONAL LICENSING BOARD OR THE DEPARTMENT OF LABOR AND INDUSTRY WHEN ADMINISTERING A LICENSING PROGRAM AUTHORITY TO ISSUE CEASE AND DESIST ORDERS TO PERSONS PRACTICING A PROFESSION OR OCCUPATION WITHOUT A LICENSE; PROVIDING FOR JUDICIAL REVIEW AND ENFORCEMENT OF ORDERS; PROVIDING FOR THE AWARD OF COSTS, ATTORNEY FEES, AND PENALTIES; AMENDING SECTION 37-1-302, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 37-1-302, MCA, is amended to read:

"37-1-302. Definitions. As used in this part, the following definitions apply:

(1) "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.

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

(3) "Department" means the department of labor and industry.

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

~~(4)~~(5) "Inspection" means the periodic examination of premises, equipment, or procedures or of a practitioner by the department to determine whether the practitioner's profession or occupation is being conducted in a manner consistent with the public health, safety, and welfare.

~~(5)~~(6) "Investigation" means the inquiry, analysis, audit, or other pursuit of information by the department, with respect to a written complaint or other information before a board, that is carried out for the purpose of determining:

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

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

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

2 (d) whether a board should seek an injunction.

3 ~~(6)~~(7) "License" means permission granted under a chapter of this title to engage in or practice at a
4 specific level in a profession or occupation, regardless of the specific term used for the permission, including
5 permit, certificate, recognition, or registration.

6 ~~(7)~~(8) "Profession" or "occupation" means a profession or occupation regulated by a board."
7

8 **NEW SECTION. Section 2. Proceedings to stop unlicensed practice of trade or profession --**

9 **recovery of penalties, costs, and fees.** (1) If, after investigation as required by 37-1-317, a board or the
10 department finds reasonable cause to believe that a person has engaged in or is engaging in an act or practice
11 constituting unlicensed practice of a profession or occupation regulated by the board or as a department program,
12 the board or department may adjudicate a contested case, in accordance with the Montana Administrative
13 Procedure Act and this section, initiated by the department against the person in a manner consistent with actions
14 alleging unprofessional conduct against licensees under this chapter.

15 (2) If by a preponderance of the evidence from the proceeding the department shows that the person
16 has engaged in or is engaging in an act or practice constituting unlicensed practice of a profession or occupation
17 regulated by the board or as a department program, the board or department may issue an administrative order
18 to the person requiring the person to:

19 (a) cease and desist from the act or practice;

20 (b) pay up to \$5,000 for the costs of the administrative proceedings, including costs allowable under Title
21 25, chapter 10, the costs of investigation, and the department's attorney fees;

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

24 (d) any combination of subsections (1)(a) through (1)(c).

25 (3) The judicial review and appeal provisions of the Montana Administrative Procedure Act apply to a
26 contested case proceeding under subsections (1) and (2).

27 (4) On a judicial review or appeal, a court may reduce or deny penalties, costs, and fees that were
28 awarded pursuant to subsection (2). However, a court may increase or award costs and fees only to the
29 prevailing party, and the total of costs and fees may not exceed \$10,000. The prevailing party under this
30 subsection is the party that prevails on judicial review or appeal with respect to a finding of whether the person

1 has engaged in or is engaging in an act or practice constituting unlicensed practice of a profession or occupation
2 regulated by a board or department program. A party that prevails on judicial review or appeal with respect to
3 findings affecting the number of violations is not a prevailing party on that basis. If the board or department
4 program is the prevailing party on judicial review or appeal, penalties may also be increased or awarded up to
5 the limit provided in subsection (2).

6 (5) If, after an investigation as required by 37-1-317, a board or the department finds reasonable cause
7 to believe that a person has engaged in or is engaging in an act or practice constituting unlicensed practice in
8 violation of an administrative order to cease and desist, the board or department may bring an enforcement action
9 by petitioning the district court in a county where the act or practice is alleged to have occurred or to be occurring.
10 The department is not required to post a bond.

11 (6) If in an enforcement action brought in district court pursuant to subsection (5) a person is shown to
12 have violated an administrative order to cease and desist, the court shall assess a civil penalty in an amount not
13 to exceed \$5,000 for each violation that occurred after the board or department issued its cease and desist order.
14 Each day or part of a day of unlicensed practice constitutes a separate violation for the purposes of this
15 subsection. The total civil penalty assessed by the district court for violations of an administrative order may not
16 exceed \$20,000.

17 (7) Costs, fees, and penalties awarded by an administrative order under this section accrue interest at
18 the rate of 10% a year beginning on the 30th day after the date of the final order of the board or department
19 unless the order is stayed by the district court. Costs, fees, and penalties awarded by a court pursuant to this
20 section accrue interest at the rate of 10% a year beginning on the 60th day after the date of the final order of the
21 district court unless the order is stayed by the district court or supreme court.

22 (8) A copy of an administrative order that includes an award of costs, fees, or penalties may be certified
23 by the issuing board or by the department and filed with the clerk of the district court of any county. After
24 certification and filing, the award for costs, fees, or penalties may be enforced and executed upon pursuant to
25 Title 25 in the same manner as a decision from a district court in which a judgment was obtained.

26 (9) Amounts collected by a board or by the department pursuant to this section must be deposited in the
27 special revenue account for the board or department program. If the amount collected satisfies all costs and fees
28 ordered, then one-half of the amount collected must be deposited in the state general fund.

29 (10) The remedies and actions provided by this section are in addition to any other remedy and action
30 authorized by law or equity.

