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As of: June 7, 2016 (2:59pm)

LC3901

**** Bill No. ****

Introduced By *****

By Request of the *****

A Bill for an Act entitled: "An Act limiting licensing board authority in cases determined to be anticompetitive; authorizing departmental active supervision prior to potentially anticompetitive licensing board actions; providing state action immunity to boards subject to active supervision; and amending sections 2-15-121, 37-1-101, and 37-1-131, MCA."

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

NEW SECTION. **Section 1. State action immunity -- active supervision.** The state action immunity doctrine applies to a licensing board action, if approved under the active supervision of the department as provided in 37-1-101(13). Federal or state antitrust laws that prohibit anticompetitive actions do not apply if the department determines that a board action implements legislative policy to protect public health or public safety.

Section 2. Section 2-15-121, MCA, is amended to read:

"2-15-121. Allocation for administrative purposes only. (1)
An agency allocated to a department for administrative purposes only in this chapter shall:

(a) (i) exercise its quasi-judicial, quasi-legislative, licensing, and policymaking functions independently of the

Unofficial Draft Copy

As of: June 7, 2016 (2:59pm)

LC3901

department and without approval or control of the department
except as provided in subsection (1)(a)(ii);

(ii) accede, if the agency is a licensing board governed
under Title 37, to the department's approval or control through
active supervision in any case that the department determines to
be anticompetitive;

(b) submit its budgetary requests through the department;
and

(c) submit reports required of it by law or by the governor
through the department.

(2) The department to which an agency is allocated for
administrative purposes only in this title shall:

(a) direct and supervise the budgeting, recordkeeping,
reporting, and related administrative and clerical functions of
the agency;

(b) include the agency's budgetary requests in the
departmental budget;

(c) collect all revenues for the agency and deposit them in
the proper fund or account. Except as provided in 37-1-101, the
department may not use or divert the revenues from the fund or
account for purposes other than provided by law.

(d) provide staff for the agency. Unless otherwise
indicated in this chapter, the agency may not hire its own
personnel.

(e) print and disseminate for the agency any required
notices, rules, or orders adopted, amended, or repealed by the
agency.

Unofficial Draft Copy

As of: June 7, 2016 (2:59pm)

LC3901

(3) The department head of a department to which any agency is allocated for administrative purposes only in this chapter shall:

(a) represent the agency in communications with the governor;

(b) allocate office space to the agency as necessary, subject to the approval of the department of administration."

{*Internal References to 2-15-121:*

2-4-110 dpt revw 2-15-112 dpt heads 2-15-212 wtr cm 2-15-217 ind aff
2-15-243 sage grouse 2-15-411 cm pol prc 2-15-411 2-15-412 canvasrs
2-15-1007 brd exmns 2-15-1009 perb 2-15-1010 trb 2-15-1010 trb
2-15-1019 msfbrd 2-15-1025banking brd 2-15-1026 co prnt 2-15-1028 pb df
2-15-1205 vet af 2-15-1205 2-15-1515 cm higher ed 2-15-1524 post ed cnc
2-15-1704 UI 2-15-1705 BAPA 2-15-1706 c hm rhts 2-15-1707 wrk cmp judge
2-15-1730 alt health 2-15-1731 bome 2-15-1732 dent 2-15-1733 pharm
2-15-1734 nurs 2-15-1735 nhma 2-15-1736 optom 2-15-1737 chiros
2-15-1738 rad teks 2-15-1739 spch-aud 2-15-1740 hearing 2-15-1741 psych
2-15-1742 vets 2-15-1743 fnrl dir 2-15-1744 behav hlth 2-15-1745 paarp
2-15-1747 brbrs/cos 2-15-1748 PTs 2-15-1749 OTs 2-15-1750 resp
2-15-1751 san 2-15-1753 clin lab 2-15-1756 accts 2-15-1756
2-15-1757 realty reg 2-15-1758 re app 2-15-1761 arch/lar 2-15-1763 PELS
2-15-1764 elec 2-15-1765 plumb 2-15-1771 ath tr 2-15-1773 outfitters
2-15-1781 priv sec 2-15-1782 ms ther 2-15-1808 boi 2-15-1809 horseracing
2-15-1814 housing 2-15-1815 Fac fin 2-15-1820 eco dev cn 2-15-1821 coal
2-15-1869 cncl dd 2-15-2006 cr cntrl 2-15-2006 cr cntrl 2-15-2021 gaming
2-15-2029 post 2-15-2029 post 2-15-2203 pub ass'ce 2-15-2212 telecom acc
2-15-2214 ch trust fnd 2-15-2216 trauma cr 2-15-2217 tr br 2-15-2302 ppr
2-15-2302 pprl 2-15-2502 transp cmn 2-15-2506 aero 2-15-3002 wh-brly
2-15-3003 hail ins 2-15-3003 2-15-3004 alfalfa seed 2-15-3015 ag dev cn
2-15-3104 lv crimstp 2-15-3105 mlk cntrl 2-15-3110 liv lss 2-15-3110
2-15-3303 oil-gas 2-15-3303 2-15-3305 rnglnd resorc 2-15-3307 h2o well
2-15-3404 fwp crmstprs 2-15-3502 env review 15-2-102 stab 15-2-102
17-7-111 bdgt 20-25-901 fmly ed sav 22-3-804 brl presv 22-3-1002 herit
23-7-201 lot cmsn 27-6-104 med lgl p 27-12-104 chiro l p 30-16-302 rev
37-1-101 doli duties 37-1-101 37-1-121 cmsr duties 37-1-130 def
37-1-302 def 46-23-1115 adult offndr/cncl 50-60-115 bldg cn 52-2-303 kid
53-10-203 prvdr rates 53-21-1107 suic rev 53-25-105 dd ovrst 61-3-346 mvd
76-16-112 grs cnstrv 76-16-112 wh-brly fee 80-11-224 wht-brly 80-11-310 a
81-23-103 mlk cntr 82-11-111 oil-gas 82-11-111 82-11-123 oil-gas
82-11-123 82-11-124 oil-gas 90-1-131 sted 90-6-303 hrd-rck
90-6-305 hrd-rck. indirect reference for 2-5-1819-research/com brd}

Section 3. Section 37-1-101, MCA, is amended to read:

Unofficial Draft Copy

As of: June 7, 2016 (2:59pm)

LC3901

"37-1-101. Duties of department. In addition to the provisions of 2-15-121, the department 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 or a program within the department;

(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

Unofficial Draft Copy

As of: June 7, 2016 (2:59pm)

LC3901

board after a finding of reasonable cause by a screening panel of the board pursuant to 37-1-307(1)(d);

(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 related to the board except for services related to renewal of licenses;

(c) review the need for a board and make recommendations to the legislative interim committee with monitoring responsibility for the boards for legislation revising the board's operations to achieve fiscal solvency; and

(d) notwithstanding 2-15-121, recover the costs by one-time charges against all licensees of the board after providing notice and meeting the requirements under the Montana Administrative Procedure Act;

(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. [This subsection does not apply to the board of public accountants, except that the department may monitor the board's cash balances.]

(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.

(12) adopt uniform rules for all boards and department

Unofficial Draft Copy

As of: June 7, 2016 (2:59pm)

LC3901

programs to comply with the public notice requirements of 37-1-311 and 37-1-405. The rules may require the posting of only the licensee's name and the fact that a hearing is being held when the information is being posted on a publicly available website prior to a decision leading to a suspension or revocation of a license or other final decision of a board or the department. (Bracketed language terminates September 30, 2019--sec. 10, Ch. 427, L. 2015.)

(13) (a) notify a board if the department considers a prospective action to be taken by the board to be anticompetitive; and

(b) prior to the board taking any action, exercise through modification or veto the terms of the board's prospective action to avoid restraint of trade or competition. If legislative policy provides within law a clear indication that the board's prospective action protects public health and safety, the department may approve the prospective board action."

{*Internal References to 37-1-101:*

2-15-121 x	37-1-131 a	37-3-314 x	37-4-202 x
37-4-327 x	37-6-305 x	37-7-309 x	37-7-324 x
37-8-432 x	37-9-306 x	37-10-203 x	37-11-203 x
37-12-308 x	37-15-310 x	37-16-408 x	37-18-308 x
37-19-307 x	37-28-305 x	37-31-324 x	37-47-306 x
37-47-325 x	37-47-325 x	37-51-204 x	37-51-311 x
37-51-321 x	37-54-112 x	37-60-320 x	37-65-307 x
37-66-309 x	37-67-317 x	37-69-304 x	37-69-306 x
37-69-308 x			

Section 4. Section 37-1-131, MCA, is amended to read:

"37-1-131. Duties of boards -- quorum required. (1) A quorum of each board within the department shall:

Unofficial Draft Copy

As of: June 7, 2016 (2:59pm)

LC3901

(a) (i) set and enforce standards and adopt and enforce rules governing the licensing, certification, registration, and conduct of the members of the particular profession or occupation within the board's jurisdiction; and

(ii) apply the standards and rules referred to in subsection (1)(a)(i) in a manner that does not discriminate against any person licensed by the board with regard to how the standards and rules are applied to other persons licensed by the board and that does not restrain trade or competition unless necessary to protect public health and safety⁷. This subsection (1)(a)(ii) requires a board to recognize departmental approval, modification, or veto if the department has notified the board that the department considers a prospective board action to be anticompetitive.

(b) except as provided in 37-1-321, sit in judgment in hearings for the suspension, revocation, or denial of a license of an actual or potential member of the particular profession or occupation within the board's jurisdiction. The hearings must be conducted by a hearings examiner when required under 37-1-121.

(c) suspend, revoke, or deny a license of a person who the board determines, after a hearing as provided in subsection (1)(b), is guilty of knowingly defrauding, abusing, or aiding in the defrauding or abusing of the workers' compensation system in violation of the provisions of Title 39, chapter 71;

(d) take disciplinary action against the license of a person in a medical assistance program under chapter 3, 4, 7, or 8 if, in the period under contract, the licensee has on three

separate occasions returned to the use of a prohibited or proscribed substance. The requirements of this subsection (1)(d) may not be construed as affecting the rights of an employer to evaluate, discipline, or discharge an employee.

(e) pay to the department the board's pro rata share of the assessed costs of the department under 37-1-101(6);

(f) consult with the department before the board initiates a program expansion, under existing legislation, to determine if the board has adequate money and appropriation authority to fully pay all costs associated with the proposed program expansion and to allow the department to determine if a proposed action is anticompetitive. The board may not expand a program if the board does not have adequate money and appropriation authority available or if the department determines the program expansion to be anticompetitive.

(2) A board, board panel, or subcommittee convened to conduct board business must have a majority of its members, which constitutes a quorum, present to conduct business.

(3) A board that requires continuing education or continued state, regional, or national certification for licensees shall require licensees reactivating an expired license to submit proof of meeting the requirements of this subsection for the renewal cycle.

(4) The board or the department program may:

(a) establish the qualifications of applicants to take the licensure examination;

(b) determine the standards, content, type, and method of

Unofficial Draft Copy

As of: June 7, 2016 (2:59pm)

LC3901

examination required for licensure or reinstatement of a license, the acceptable level of performance for each examination, and the standards and limitations for reexamination if an applicant fails an examination; and

(c) examine applicants for licensure at reasonable places and times as determined by the board or enter into contracts with third-party testing agencies to administer examinations.

(5) A board may, at the board's discretion, request the applicant to make a personal appearance before the board for nonroutine license applications as defined by the board.

(6) A board shall adopt rules governing the provision of public notice as required by 37-1-311."

{*Internal References to 37-1-131:*
37-48-106 x}

NEW SECTION. Section 5. {standard} Codification

instruction. [Section 1] is intended to be codified as an integral part of Title 37, chapter 1, part 1, and the provisions of Title 37, chapter 1, part 1, apply to [section 1].

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{Name :
Title :
Agency :
Phone :
E-Mail: }