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## BOARD OF OUTFITTERS RULES

AS OF JUNE 30, 2023

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## Subchapter 1

## Organizational Rule

24.171.101 BOARD ORGANIZATION (1) The Board of Outfitters hereby adopts and incorporates the organizational rules of the Department of Labor and Industry listed at chapter 1 of this title. (History: 2-4-201, MCA; IMP, 2-4-201, MCA; NEW, 1988 MAR p. 46, Eff. 1/15/88; AMD, 1988 MAR p. 1666, Eff. 7/29/88; TRANS, from Commerce, 2006 MAR p. 324; AMD, 2023 MAR p. 300, Eff. 3/25/23.)

Rules 24.171.102 thru 24.171.103 reserved

24.171.104 BOARD PURPOSE (1) It is the policy, intent, and purpose of the Board of Outfitters to provide quality regulatory functions and services to the professions it regulates and the public to promote, maintain, and preserve an ever-improving high degree of competence in the professions, satisfaction in the public, and an everlasting environment in which the professions operate. (History: 37-47-201, MCA; IMP, 37-47-201, MCA; NEW, 2023 MAR p. 300, Eff. 3/25/23.)

## Subchapter 2

## Procedural Rules

24.171.201 PROCEDURAL RULES (1) The Board of Outfitters adopts and incorporates the procedural rules of the Department of Labor and Industry as listed in chapter 2 of this title. (History: 2-4-201, MCA; IMP, 2-4-201, MCA; NEW, 1988 MAR p. 46, Eff. 1/15/88; AMD, 1988 MAR p. 1666, Eff. 7/29/88; TRANS, from Commerce, 2006 MAR p. 324; AMD, 2023 MAR p. 300, Eff. 3/25/23.)

24.171.202 PUBLIC PARTICIPATION (1) The Board of Outfitters adopts and incorporates the public participation rules of the Department of Labor and Industry as listed in chapter 2 of this title. (History: 2-3-103, MCA; IMP, 2-3-103, MCA; NEW, 1988 MAR p. 46, Eff. 1/15/88; AMD, 1988 MAR p. 1666, Eff. 7/29/88; AMD, 1996 MAR p. 668, Eff. 3/8/96; TRANS, from Commerce, 2006 MAR p. 324; AMD, 2023 MAR p. 300, Eff. 3/25/23.)

Subchapter 3 reserved

## Subchapter 4

## General Provisions

24.171.401 FEES (1) Fees for outfitters, operations plan, guide, or use of outfitter assistants shall be as set forth below. The following fees are nonrefundable.

(a) New outfitter application and license.	\$1300
(b) Application for adding endorsement to outfitter license.	450
(c) Renewal of outfitter license	
(i) outfitter annual license	150
(ii) outfitter inactive status	75
(d) New operations plan	
(i) review and processing	125
(ii) equipment inspection	375
(e) Fee per outfitter assistant employed or contracted	25
(f) Renewal guide license	50
(g) Initial guide application	125
(h) Fee for each set of two replacement watercraft identification tags	5

(i) Additional standardized fees are specified in ARM 24.101.403. (History: 37-1-131, 37-1-134, 37-47-201, 37-47-306, MCA; IMP, 37-1-134, 37-1-141, 37-47-304, 37-47-306, 37-47-307, 37-47-308, 37-47-310, MCA; NEW, 1988 MAR p. 1666, Eff. 7/29/88; AMD, 1994 MAR p. 2823, Eff. 10/28/94; AMD, 1995 MAR p. 2388, Eff. 11/10/95; AMD, 1996 MAR p. 909, Eff. 3/8/96; AMD, 1997 MAR p. 1178, Eff. 7/8/97; AMD, 1998 MAR p. 2560, Eff. 9/25/98; AMD, 2000 MAR p. 730, Eff. 3/17/00; AMD, 2001 MAR p. 843, Eff. 5/25/01; TRANS, from Commerce, & AMD, 2006 MAR p. 324, Eff. 2/10/06; AMD, 2006 MAR p. 1583, Eff. 7/1/06; AMD, 2007 MAR p. 298, Eff. 3/9/07; AMD, 2008 MAR p. 2055, Eff. 9/26/08; AMD, 2009 MAR p. 1406, Eff. 8/14/09; AMD, 2010 MAR p. 1889, Eff. 8/27/10; AMD, 2010 MAR p. 2384, Eff. 10/15/10; AMD, 2011 MAR p. 2149, Eff. 10/14/11; AMD, 2013 MAR p. 671, Eff. 4/26/13; AMD, 2015 MAR p. 58, Eff. 1/30/15; AMD, 2016 MAR p. 1960, Eff. 10/29/16; AMD, 2019 MAR p. 850, Eff. 6/22/19; AMD, 2021 MAR p. 1407, Eff. 10/23/21; AMD 2023 MAR p. 354, Eff. 4/15/23.)



24.171.402 EFFECT OF FEE FOR EXPANSION OF NET CLIENT HUNTER USE (REPEALED) (History: 37-1-131, 37-47-201, MCA; IMP, 37-1-131, 37-47-201, 37-47-316, MCA; NEW, 2003 MAR p. 1193, Eff. 6/13/03; TRANS, from Commerce, 2006 MAR p. 324; REP, 2015 MAR p. 58, Eff. 1/30/15.)

24.171.403 NONROUTINE APPLICATIONS (1) For the purpose of processing nonroutine applications, the board incorporates the definitions of routine and nonroutine at ARM 24.101.402 by reference.

(2) Nonroutine applications must be reviewed and approved by the board before a license may be issued.

(3) Applications that are nonroutine for an outfitter license for the same reason that they were nonroutine as a guide license are also nonroutine for the outfitter license, which is a privilege to practice at a higher level of public trust. (History: 37-1-131, MCA; IMP, 37-1-101, 37-1-131, MCA; NEW, 2015 MAR p. 58, Eff. 1/30/15; AMD, 2021 MAR p. 556, Eff. 5/15/21.)

24.171.404 MILITARY TRAINING OR EXPERIENCE (1) Pursuant to 37-1-145, MCA, the board shall accept relevant military training, service, or education toward the requirements for licensure as an outfitter or guide.

(2) Relevant military training, service, or education must be completed by an applicant while a member of either:

- (a) United States Armed Forces;
- (b) United States Reserves;
- (c) state national guard; or
- (d) military reserves.

(3) An applicant must submit satisfactory evidence of receiving military training, service, or education that is equivalent to relevant licensure requirements as an outfitter or guide. Satisfactory evidence includes:

(a) a copy of the applicant's military discharge document (DD 214 or other discharge documentation);

(b) a document that clearly shows all relevant training, certification, service, or education the applicant received while in the military, including dates of training and completion or graduation; and

(c) any other documentation as required by the board.

(4) The board shall consider all documentation received to determine whether an applicant's military training, service, or education is equivalent to relevant licensure requirements. (History: 37-1-145, MCA; IMP, 37-1-145, MCA; NEW, 2014 MAR p. 2653, Eff. 10/24/14.)

24.171.405 BOOKING AGENTS AND ADVERTISING (1) Any person authorized by the outfitter may schedule trips, provide clients with information regarding refunds and services, receive client fees on behalf of the outfitter, secure a guide who is employed by or with whom the outfitter has an existing contractual relationship, and take other steps to establish contracts for services, as long as these activities are at the direction of the outfitter and as long as the terms and conditions of the contracts are directly between the outfitter and the client.

(2) Outfitters may enter into an arrangement with a person whereby the outfitter's services are advertised by or at the direction of that person or whereby clients are referred to the outfitter, but the outfitter is accountable to the board for the appearance and propriety of all such advertising and for all interactions between the other person and the clients and potential clients. All advertising regarding outfitting services must comply with the rules applicable to outfitters.

(3) Guides advertising to outfitters using media or methods that the general public may also view shall include a clear and conspicuous disclaimer that advises the general public that the advertisement is for outfitters only, not the general public. (History: 37-1-131, 37-47-201, MCA; IMP, 37-47-201, 37-47-301, MCA; NEW, 2015 MAR p. 269, Eff. 1/30/15.)

Rule 24.171.406 reserved

24.171.407 INSPECTION (1) Inspections of outfitter and guide operations may be made by a representative of the board at all reasonable times. The purpose of the inspection is to periodically examine the premises, equipment, and/or procedures of a licensed individual to determine whether the individual's practice is being conducted in a manner consistent with the laws and rules of the board, and the public health, safety and welfare. (History: 37-47-201, MCA; IMP, 37-47-301, 37-47-302, MCA; NEW, 1996 MAR p. 668, Eff. 3/8/96; TRANS, from Commerce, 2006 MAR p. 324; AMD, 2015 MAR p. 58, Eff. 1/30/15.)

24.171.408 OUTFITTER RECORDS (1) Outfitters shall maintain current and accurate records and make the records available:

(a) to enforcement or investigative personnel authorized or appointed by the board;

(b) upon subpoena or order of a court;

(c) upon written request of the board; or

(d) upon written request of a state or federal agency for law enforcement purposes.

(2) Outfitter records shall contain information as required by the board. The information required, in addition to information for operations plans under ARM 24.171.520 and employment records relative to outfitter assistants under ARM 24.171.410, shall include:

(a) the outfitter's name and license number;

(b) each client's name and/or unique identifier assigned to the client by the Department of Fish, Wildlife and Parks;

(c) dates of service to clients;

(d) category of NCHU applicable for each client; and

(e) the name of the outfitter assistant or the name and license number of the guide who accompanied the client.

(3) In general, outfitter records, including, but not limited to the operations plans, shall be maintained as confidential information and shall not be released to any person or organization without written permission of the outfitter, subpoena or order of a court, or written request of a state or federal agency for law enforcement purposes. A specific outfitter's number of NCHU is confidential information, but whether an outfitter has NCHU of a particular category is public information. All inquiries for outfitter records shall be reviewed and considered in relation to this rule and the competing interests between the public's right to know and the rights of privacy involved in the particular records requested. (History: 37-1-131, 37-47-201, MCA; IMP, 37-1-131, 37-47-201, 37-47-301, 37-47-304, MCA; NEW, 1988 MAR p. 1666, Eff. 7/29/88; AMD, 1989 MAR p. 1192, Eff. 8/18/89; AMD, 2000 MAR p. 730, Eff. 3/17/00; TRANS, from Commerce, & AMD, 2006 MAR p. 324, Eff. 2/10/06; AMD, 2011 MAR p. 2149, Eff. 10/14/11; AMD, 2013 MAR p. 671, Eff. 4/26/13; AMD, 2015 MAR p. 58, Eff. 1/30/15; AMD, 2016 MAR p. 1960, Eff. 10/29/16; AMD, 2019 MAR p. 850, Eff. 6/22/19; AMD, 2020 MAR p. 1157, Eff. 6/27/20; AMD, 2021 MAR p. 1407, Eff. 10/23/21.)

24.171.409 GUIDE TO HUNTER RATIO (REPEALED) (History: 37-1-131, 37-47-201, MCA; IMP, 37-1-131, 37-47-201, 37-47-402, MCA; NEW, 2010 MAR p. 651, Eff. 3/12/10; REP, 2013 MAR p. 671, Eff. 4/26/13.)

24.171.410 OUTFITTER'S ASSISTANTS (1) An outfitter may only employ or contract with an outfitter's assistant in an emergency. Emergency, as defined in 37-47-101, MCA, includes unforeseen staffing shortages, not caused by the outfitter's action or inaction, for which employing or contracting with an outfitter's assistant is necessary to protect the public health, safety, and welfare while serving a client.

(2) For each outfitter's assistant employed or contracted with by an outfitter, the following documentation procedures shall be followed:

(a) An outfitter shall document the employment or retention of each outfitter's assistant. The outfitter's assistant shall keep a copy of the employment documentation at all times during the service period. Within 15 days of the first date the outfitter's assistant serves a client, the outfitter shall submit to the department a copy of the employment documentation and fee required in ARM 24.171.401. The employment documentation shall include:

(i) the name, license number, address, phone number, and, if available, e-mail address of the outfitter;

(ii) the signature of the outfitter;

(iii) the name, date of birth, address, telephone number, and, if available, e-mail address of the outfitter's assistant; and

(iv) the beginning and ending dates of the service period.

(b) Within 15 days of the first date the outfitter's assistant serves any client, the outfitter shall submit the following information to the department:

(i) an explanation of the emergency causing the need to employ or contract with the outfitter's assistant;

(ii) an explanation for why the outfitter's assistant could not obtain a guide license before serving a client;

(iii) a statement indicating whether the outfitter's assistant has applied for a guide license; and

(iv) an affidavit by the outfitter that the outfitter has complied with all laws and rules relating to outfitter's assistants.

(c) Outfitters shall maintain a copy of this documentation and make the records available at all times in accordance with ARM 24.171.408 following the provision of services by the outfitter's assistant.

(3) Except where an outfitter's assistant's conduct is further limited by statute or rule, the standards of conduct set forth in ARM 24.171.2301 applicable to guides shall also be observed by the outfitter's assistant. (History: 37-1-131, 37-47-201, MCA; IMP, 37-1-131, 37-47-101, 37-47-201, 37-47-301, 37-47-325, 37-47-404, 37-47-405, MCA; NEW, 2015 MAR p. 58, Eff. 1/30/15; AMD, 2018 MAR p. 1731, Eff. 8/25/18; AMD, 2021 MAR p. 1407, Eff. 10/23/21.)

Rule 24.171.411 reserved

24.171.412 SAFETY AND FIRST AID PROVISIONS (1) Outfitters and guides are required to hold current basic first aid certification at all times actively licensed.

(2) Basic first aid certification must be obtained through a provider and course approved by the department based upon the following minimum criteria:

(a) The provider must require written or practical tests and participants are to receive completion certificates.

(b) The provider program must include, at a minimum, universal precautions for self-protection and training specific to the following types of injuries:

- (i) shock;
- (ii) bleeding;
- (iii) poisoning;
- (iv) burns;
- (v) temperature extremes;
- (vi) musculoskeletal injuries;
- (vii) bites and stings; and
- (viii) medical emergencies.

(c) Instruction in the principles and first aid intervention of injuries must refer to body extremities.

(3) A list of approved providers and courses shall be maintained on the board web site.

(4) An applicant may also meet basic first aid certification if the applicant provides proof of a certification, license, or other credential that is equivalent to or greater than basic first aid certification, approved on a case-by-case basis by the department. The board may also maintain on its web site a list of certifications, licenses, and other credentials that will be routinely accepted as equivalent to or greater than basic first aid.

(5) Whenever guests are present, each watercraft; vessel; vehicle; primary, secondary, and temporary base of operations must possess a serviceable basic first aid kit.

(6) Each watercraft or vessel shall contain a serviceable U.S. Coast Guard approved personal floatation device for each person onboard and a rescue throw line measuring at least 55 feet in length. Children under 12 are required to wear a personal floatation device. Watercraft 16 feet and longer are required to be equipped with a throwable Type IV floatation device. Personal floatation devices must be readily accessible at all times.

(7) All watercraft or vessels are required to carry onboard a supplementary means of power, such as an extra motor or extra oar that will adequately motivate the craft. (History: 37-47-201, MCA; IMP, 37-47-201, MCA; NEW, 1992 MAR p. 439, Eff. 3/13/92; AMD, 1996 MAR p. 668, Eff. 3/8/96; AMD, 1999 MAR p. 809, Eff. 4/23/99; AMD, 2000 MAR p. 730, Eff. 3/17/00; TRANS, from Commerce, & AMD, 2006 MAR p. 324, Eff. 2/10/06; AMD, 2010 MAR p. 1889, Eff. 8/27/10; AMD, 2011 MAR p. 2149, Eff. 10/14/11; AMD, 2015 MAR p. 58, Eff. 1/30/15; AMD, 2017 MAR p. 1900, Eff. 10/14/17; AMD, 2019 MAR p. 850, Eff. 6/22/19; AMD, 2020 MAR p. 1157, Eff. 6/27/20; AMD, 2021 MAR p. 1407, Eff. 10/23/21.)

24.171.413 WATERCRAFT IDENTIFICATION (1) A person holding a valid outfitter or guide license who utilizes any type of watercraft while providing services shall prove evidence of licensure by displaying, at all times services are being provided, board-issued watercraft identification tags.

(2) The tags shall display the outfitter or guide license number for identification purposes.

(3) An unlicensed outfitter assistant shall display board-issued watercraft identification tags on each watercraft to be occupied by the outfitter assistant.

(4) One tag shall be affixed to each side of the watercraft at the bow, oarlock, or stern of the watercraft and be of a size approved by the board so that they may be easily seen from another watercraft or from shore.

(5) Each tag shall be affixed to the watercraft or on a removable plaque or in such a way that if the craft is sold or is not being used by the licensee while the licensee is providing services, the tag may be removed or concealed to prevent misidentification of the occupant(s) as licensees.

(6) Licensees may be provided with one set of two watercraft identification tags at the time of application for licensure or renewal, at no charge, upon request. A fee will be assessed for any replacement in accordance with ARM 24.171.401. (History: 37-1-131, 37-47-201, MCA; IMP, 37-1-134, 37-47-201, 37-47-301, 37-47-302, 37-47-303, 37-47-325, 37-47-405, MCA; NEW, 1998 MAR p. 740, Eff. 3/27/98; TRANS, from Commerce, & AMD, 2006 MAR p. 324, Eff. 2/10/06; AMD, 2015 MAR p. 58, Eff. 1/30/15; AMD, 2016 MAR p. 1960, Eff. 10/29/16; AMD, 2017 MAR p. 1900, Eff. 10/14/17.)

24.171.414 APPLICANTS WITH CRIMINAL CONVICTIONS (1) The board incorporates ARM 24.101.406 by reference with the following modifications:

(a) Nonviolent misdemeanor and felony convictions in (5) involving violations of laws relative to fish, wildlife, and parks are nonroutine if those convictions:

(i) ever resulted in the loss of privileges to hunt or fish; or

(ii) totaled two or more for which the conviction date is more than five years before the board received the application.

(b) Violent misdemeanor or felony convictions in (6) are routine if the conviction date is more than ten years before the application date, unless the applicant is still in custody due to the conviction or staff otherwise determines the applicant engaged in egregious conduct implicating risk to public safety. (History: 37-1-131, MCA; IMP, 37-1-101, 37-1-131, MCA; NEW, 2021 MAR p. 556, Eff. 5/15/21.)

## Subchapter 5

## Outfitter Licensing

24.171.501 APPLICATION FOR OUTFITTER LICENSE (1) An application for an outfitter license shall be on forms prescribed by the department and shall be accompanied by the required fee.

(2) A complete application, which is required prior to being allowed to take the examination, shall consist of two parts:

(a) the department's license application form, including all supporting documentation as required by that form; and

(b) an operations plan application form, accompanied by a NCHU transfer request form, if applicable.

(3) The license issued shall designate, and thereby authorize the outfitter to conduct those functions of an outfitter that the applicant has qualified for. Functions of an outfitter to be indicated on the license application and license issued, if qualified for, shall be one or more of the following:

(a) hunting services;

(b) fishing services; and

(c) if applicable to the services provided in (3)(a) and (b), and qualified for, one or more of the following:

(i) saddle or pack animal; or

(ii) boat or other floating craft, or motorized watercraft.

(4) An outfitter license shall be issued to an applicant who has demonstrated to the board that he or she has:

(a) met the qualifications to provide those services of an outfitter indicated on the license application;

(b) filed an outfitter license application with the board office;

(c) filed an operations plan that has been approved by the board;

(d) successfully passed the required examinations pertaining to those categories described in ARM 24.171.507; and

(e) received an approved equipment inspection. (History: 37-1-131, 37-47-201, MCA; IMP, 37-1-131, 37-47-101, 37-47-201, 37-47-301, 37-47-302, 37-47-305, 37-47-307, 37-47-308, MCA; NEW, 1988 MAR p. 1666, Eff. 7/29/88; AMD, 2000 MAR p. 730, Eff. 3/17/00; TRANS, from Commerce, & AMD, 2006 MAR p. 324, Eff. 2/10/06; AMD, 2015 MAR p. 58, Eff. 1/30/15; AMD, 2021 MAR p. 1407, Eff. 10/23/21.)

24.171.502 OUTFITTER QUALIFICATIONS (1) An applicant for an outfitter license shall have the qualifications to provide all services and use all equipment necessary to provide the functions of an outfitter that the license will authorize the applicant to provide. In addition, the applicant shall have:

(a) for an outfitter applicant with a watercraft endorsement:

(i) a minimum of three years and 120 days of verified experience as a licensed guide working for a licensed outfitter in this state, guiding clients and using methods for pursuing fish or game; or

(ii) a minimum of three years and 120 days of verified experience as a licensed outfitter, a licensed guide, or equivalent experience in another state guiding clients and using methods for pursuing fish or game. All experience in this subsection (a)(ii) is subject to board approval; or

(b) for all other outfitter applicants:

(i) 100 days of verified experience as a licensed guide working for a licensed outfitter in this state, guiding clients in pursuing fish or game and using methods for which licensure is sought by the applicant; or

(ii) 100 days of verified experience as a licensed outfitter, a licensed guide, or equivalent experience in another state guiding clients in pursuing fish or game and using the methods for which licensure is sought by the applicant. All experience in this subsection (b)(ii) is subject to board approval.

(2) For purposes of this rule, verified experience includes:

(a) written affirmation on forms prescribed by the department from a licensed outfitter(s) in this state by whom the applicant was employed or retained, attesting to guiding experience. The written affirmation must quantify the number of guiding days the applicant earned while employed or retained by that outfitter; or

(b) written affirmation on forms prescribed by the department from outfitter(s) or guides from other states or provinces by whom the applicant was employed, attesting to guiding experience. The written affirmation must quantify the number of guiding days the applicant earned while under employment by that outfitter or guide; or

(c) for applicants whose experience was gained in a state or province that does not license outfitters or guides, sources of information with board-acceptable guarantees of reliability which may include, but are not limited to, federal land agency records, client affidavits or letters or other client data, reports, recaps, or records with dates that confirm the number of guiding days claimed by the applicant.



(3) Three days of experience may be waived by the board for every day of training completed by the applicant at a department-approved outfitter or guide school. The maximum number of days of experience that may be waived is 30. The department shall approve guide schools based on the following minimum criteria:

(a) Training for purposes of the waiver must be obtained through a provider and course approved by the department based upon the following minimum criteria:

(i) the provider must require a written test, and successful participants must be issued completion certificates; and

(ii) the provider program must include instruction on topics relevant to being an outfitter, including but not limited to any of the following topics: advertising; marketing and public relations; maintaining rate and refund schedules; client and other records for board and other agency compliance; guiding techniques; setting up of camp sites; practical woodsmanship; knowledge of firearms; field preparation of trophies; knowledge of equipment, terrain (including water bodies), and hazards to competently provide a safe experience for those persons guided; general board and other agency laws and requirements; federal and Montana fish and game laws and regulations; knowledge of outfitting area; proper handling of fish and game; federal and Montana employment and wage requirements; preservation of ecosystem; and maintaining present quality of wildlife and environment; and health, safety and welfare of clients, other public members, and employees.

(4) The board may waive up to 50 days and one year of experience for an applicant seeking a fishing outfitter license with a watercraft endorsement, or 50 days for all other outfitter applicants.

(a) A waiver under this section (4) may be granted only to the following applicants:

(i) an applicant who is purchasing an existing outfitter operation;

(ii) an applicant being prepared for succession of an existing outfitter operation without purchasing; or

(iii) an applicant already licensed but seeking additional license endorsement.

(b) An applicant seeking a waiver under this section (4) must satisfy the following conditions:

(i) enter into a sales agreement or other arrangement with a licensed outfitter to receive all or part of an existing outfitting business that has an operations plan on file with the board;

(ii) obtain board preapproval of a 12-month plan of supervision for training and instruction documenting, on forms prescribed by the department, how and in what capacity the applicant will work with the licensed outfitter providing the training.

The plan shall be an agreement between the applicant and either the outfitter of record for the existing outfitting business or a licensed outfitter designated by that outfitter of record for training purposes; and

(iii) obtain board approval of an operations plan for the applicant.

(5) All experience waivers granted under this rule shall be contingent upon the applicant completing the board's one-day education program within a time specified by the board. (History: 37-1-131, 37-47-201, MCA; IMP, 37-1-131, 37-47-201, 37-47-302, 37-47-304, 37-47-307, 37-47-308, MCA; NEW, 1988 MAR p. 1666, Eff. 7/29/88; AMD, 1991 MAR p. 999, Eff. 6/28/91; AMD, 1992 MAR p. 2376, Eff. 10/30/92; AMD, 1996 MAR p. 668, Eff. 3/8/96; AMD, 2000 MAR p. 730, Eff. 3/17/00; TRANS, from Commerce, & AMD, 2006 MAR p. 324, Eff. 2/10/06; AMD, 2009 MAR p. 1406, Eff. 8/14/09; AMD, 2015 MAR p. 58, Eff. 1/30/15; AMD, 2015 MAR p. 1756, Eff. 10/16/15; AMD, 2016 MAR p. 1960, Eff. 10/29/16; AMD, 2017 MAR p. 1900, Eff. 10/14/17; AMD, 2021 MAR p. 1407, Eff. 10/23/21; AMD 2023 MAR p. 354, Eff. 4/15/23.)

24.171.503 OUTFITTER APPLICATION (REPEALED) (History: 37-1-131, 37-47-201, MCA; IMP, 37-47-201, 37-47-304, 37-47-307, MCA; NEW, 1988 MAR p. 1666, Eff. 7/29/88; AMD, 1996 MAR p. 668, Eff. 3/8/96; AMD, 1998 MAR p. 2560, Eff. 9/25/98; TRANS, from Commerce, & AMD, 2006 MAR p. 324, Eff. 2/10/06; REP, 2015 MAR p. 58, Eff. 1/30/15.)

24.171.504 SUCCESSORSHIP (1) A successorship is the permission granted to a person to renew the license of a deceased or incapacitated outfitter for a limited period of time for the purposes of operating or selling the business. Only a successor may renew the license of an outfitter who has deceased.

(2) A successor acceptable to the board must be designated by the family of a deceased outfitter within six months of the date that the outfitter becomes deceased. If a successor for a deceased outfitter is not designated within those six months, then no successor will be approved.

(3) The family of an outfitter designates a proposed successor by submitting an application completed by the proposed successor on a form provided by the department; a sworn statement by the proposed successor explaining how the proposed successor has been involved with the outfitting industry, in general, and how the successor has been involved with the outfitting business for which the successorship is sought, in particular; and a sworn statement by someone on behalf of the family of the deceased or incapacitated outfitter, affirming the person's authority and how the authority was obtained to designate a successor on behalf of the family, and that the person so acting is at least 18 years of age. A successorship application must specify whether the successor will operate the business or will only seek to sell it.

(4) When a successorship is approved for the purpose of selling the business, the outfitter license is placed on inactive status and may be renewed only on inactive status and only until the successorship terminates or until the business sells, whichever occurs earlier. No clients may be contracted with or served under authority of an inactive license. All requests for successorship for the sole purpose of selling the business shall be routinely approved by staff upon the board's receipt of all the required information.

(5) An application for the purpose of operating the business shall require the same information that is required of an outfitter applicant. The decision of whether to approve a successorship for the purpose of operating the business shall be processed by the department unless the application is nonroutine under ARM 24.171.403, in which case the matter will be brought to the board.

(6) Prior to approval, a successor must meet all qualifications for licensure aside from the experience and testing requirements. Approval may be granted upon the condition that documentation of licensure requirements will be received by the board no later than a specified date. If the documentation of licensure requirements is not received in a timely manner, board staff shall immediately place the license on inactive status and all outfitting under that license shall immediately cease until the board is able to reconsider the approval.

(7) A successor stands in the shoes of the outfitter for purposes of the board's power to administer and enforce the statutes and rules applicable to outfitters. Notwithstanding any agreement to the contrary, a successor and the original licensee, or the estate if the original licensee is deceased, are jointly and severally liable and responsible for all conduct affecting the outfitter license occurring during that successor's service as the successor. The successor may operate the license subject to the authority of the board to the same extent as if the successor were the outfitter. An action addressing unprofessional conduct may be taken against an outfitter license regardless of the status of the successorship, and regardless of whether the conduct was that of the deceased or incapacitated outfitter or of one or more successors. Each living outfitter and successor who is alleged to be responsible for misconduct may be made a party to the action.

(8) A successor shall report to the board each year at the next regularly scheduled meeting following the renewal period. To report, the successor shall either personally appear for the meeting or shall submit a written report to the board no less than 15 days before the meeting. The report shall inform the board of the progress made toward licensure of an outfitter for the business, or of the progress made toward sale of the business.

(9) If the board wishes to revoke a successorship for unprofessional conduct or for failing to appear or report, the public health, safety, or welfare is more likely to imperatively require emergency action because a successor is presumed to be less qualified than an outfitter and to be less invested in the protection of the public. If a successorship is revoked, then the outfitter license status becomes the status applicable to it as if the original licensee had deceased or become incapacitated on the date of the revocation. A successor shall not perform any outfitter functions if the successorship or the license is suspended or revoked.

(10) A successorship terminates the earlier of the date that is five years from the date that the successorship was approved under this rule, or the date that the successorship is revoked or voluntarily surrendered, or the date that the successor becomes a licensed outfitter.

(11) While operating the business as a successor, the successor may accumulate verified experience days in the same manner that a guide accumulates experience days to satisfy the requirements of ARM 24.171.502. In the discretion of the board, and in addition to all other waivers that a successor may qualify for, a successor may request a waiver of up to 50 days of experience for each license function (hunting and fishing) by sufficiently documenting the successor's past experience and involvement with the particular outfitting business that occurred prior to the date the successorship was approved. (History: 37-1-131, 37-47-201, MCA; IMP, 37-1-131, 37-47-310, MCA; NEW, 2011 MAR p. 2149, Eff. 10/14/11; AMD, 2015 MAR p. 58, Eff. 1/30/15; AMD, 2017 MAR p. 1900, Eff. 10/14/17.)

24.171.505 FISHING OUTFITTER OPERATIONS PLAN (REPEALED)

(History: 37-1-131, 37-47-201, MCA; IMP, 37-1-131, 37-47-201, 37-47-304, MCA; NEW, 2009 MAR p. 1406, Eff. 8/14/09; AMD, 2016 MAR p. 1960, Eff. 10/29/16; AMD, 2017 MAR p. 1900, Eff. 10/14/17; AMD, 2021 MAR p. 1407, Eff. 10/23/21; REP 2023 MAR p. 354, Eff. 4/15/23.)

Rule 24.171.506 reserved

24.171.507 OUTFITTER EXAMINATION (1) Applicants for the outfitter

examination shall submit a completed license application accompanied by the required fee.

(2) The following list is not intended to be exhaustive in detail. A wide range of issues and subtopics exist within each broad topic. The examination categories include:

- (a) general knowledge of outfitting and guiding;
- (b) hunting;
- (c) fishing; and
- (d) packing.

(3) All applicants must obtain a passing score of 75 percent or more on each examination category taken.

(4) An applicant who fails the written examination may, within 15 days of notification of failure, review his or her examination at the board office. During this review, the applicant may review only questions answered incorrectly. Correct answers to those questions will be furnished to the applicant. No representative of the board shall discuss the substance of the examination with the applicant. The applicant will not be allowed to record any information from examination during the review.

(5) Before taking the outfitter examination, an applicant must submit a complete application, as defined in ARM 24.171.501. An applicant may not repeat any failed portion of the outfitter examination sooner than 30 days from the date of failing. (History: 37-1-131, 37-47-201, MCA; IMP, 37-47-201, 37-47-305, MCA; NEW, 1988 MAR p. 1666, Eff. 7/29/88; AMD, 1991 MAR p. 999, Eff. 6/28/91; AMD, 1993 MAR p. 343, Eff. 3/12/93; AMD, 2000 MAR p. 730, Eff. 3/17/00; TRANS, from Commerce, & AMD, 2006 MAR p. 324, Eff. 2/10/06; AMD, 2015 MAR p. 58, Eff. 1/30/15; AMD, 2016 MAR p. 1960, Eff. 10/29/16.)

#### 24.171.508 INCOMPLETE OUTFITTER AND GUIDE LICENSE

APPLICATIONS (1) Applications received by the board will be reviewed for completeness. If an application is not complete when first received by the board, the applicant will be mailed a letter stating that the application is incomplete. The board may indicate which documents or information is missing in this letter. However, the applicant remains responsible for ensuring all required information and documents are timely submitted. If the application is not completed within one year from the date the incomplete application first arrived, the application expires, and the applicant shall be required to submit a new application and fees before being considered for licensure. (History: 37-1-131, 37-47-201, MCA; IMP, 37-1-131, 37-47-201, 37-47-304, MCA; NEW, 2013 MAR p. 671, Eff. 4/26/13.)

24.171.509 INSURANCE FOR OUTFITTERS (1) An outfitter, other than an outfitter licensed on inactive status, shall have liability insurance, as a named insured, in effect at all times during the license year. Liability insurance must cover bodily injury to clients at all times services are being provided, including while the outfitter or employed or retained guides are transporting clients. Minimum amounts of liability insurance shall meet or exceed minimum requirements of state or federal regulator agencies for outfitters operating on state or federal lands, but in no case may minimum amounts be less than \$10,000 for property damage, \$100,000 for personal injury to one person and a total of \$300,000 for personal injury to more than one person. (History: 37-47-201, MCA; IMP, 37-47-201, 37-47-301, 37-47-304, MCA; NEW, 1996 MAR p. 668, Eff. 3/8/96; TRANS, from Commerce, & AMD, 2006 MAR p. 324, Eff. 2/10/06; AMD, 2019 MAR p. 850, Eff. 6/22/19; AMD, 2021 MAR p. 1407, Eff. 10/23/21.)

Rules 24.171.510 and 24.171.511 reserved

24.171.512 INACTIVE LICENSE (1) An outfitter may submit a written request to have the outfitter's license placed on inactive status at the time of renewal. Such request must be submitted with a completed application for renewal and all required renewal fees.

(2) Outfitters whose licenses are inactive more than three years and who choose to become active must take the parts of the outfitter test related to outfitter laws and rules and fish and game laws and rules. An inactive outfitter who wishes to reactivate his or her license must update their operation plan.

(3) Outfitters on inactive status may not book or serve clients, and are subject to all requirements applicable to outfitters licensed on active status, other than those relating to insurance and current basic first aid card. (History: 37-1-319, MCA; IMP, 37-1-319, MCA; NEW, 1996 MAR p. 668, Eff. 3/8/96; AMD, 1997 MAR p. 1178, Eff. 7/8/97; AMD, 2000 MAR p. 730, Eff. 3/17/00; TRANS, from Commerce, 2006 MAR p. 324; AMD, 2007 MAR p. 298, Eff. 3/9/07; AMD, 2011 MAR p. 2149, Eff. 10/14/11.)

24.171.513 OUTFITTER ACTING AS GUIDE (1) A licensee holding a current and valid outfitter's license may act as a guide without a guide's license if such licensee:

(a) possesses the qualifications of a guide under these rules; and

(b) acts as a guide only within the services and area of operation of this particular outfitter. (History: 37-1-131, 37-47-201, MCA; IMP, 37-1-131, 37-47-301, 37-47-302, 37-47-303, MCA; NEW, 1996 MAR p. 668, Eff. 3/8/96; AMD, 2000 MAR p. 730, Eff. 3/17/00; TRANS, from Commerce, & AMD, 2006 MAR p. 324, Eff. 2/10/06; AMD, 2021 MAR p. 1407, Eff. 10/23/21.)

Rules 24.171.514 through 24.171.519 reserved

24.171.520 OPERATIONS PLANS AND AMENDMENTS (1) An operations plan is prepared by the outfitter and submitted to the board and includes the information required in 37-47-304(2)(c), MCA.

(a) Fishing operations plans must include a summarization of the boundaries of the outfitter's fishing operation. If a fishing operations plan includes surface waters accessible only by private land or access points requiring a permit issued by a state or federal agency(ies), those surface waters must be described in detail, including the following information:

(i) the name of each water body, including the section of each river or stream, that may be utilized by the applicant while providing services;

(ii) a description of private land, by name of ranch and county where located, over which access is allowed; and

(iii) an affidavit by the outfitter to the board that the outfitter is in possession of any public land permits or licenses properly executed for federal or state public property where the outfitter is authorized to operate;

(iv) All other fishing operations plans may be described in detail pursuant to (2)(a), or an outfitter may summarize the boundaries of the outfitter's operations plan by referencing "all surface waters governed by the Montana Stream Access Law, 23-2-302, MCA, and accessible by public access points not requiring a permit restricting commercial use issued by a state or federal agency(ies)."

(b) Hunting operations plans must include a summarization of the locations and boundaries of the outfitter's hunting operation, which is where the outfitter is authorized to operate, provided in the following terms:

(i) the name of each public land agency, and owners of private lands that allow unrestricted public access and are managed under cooperative agreements with adjacent public lands;

(ii) a description of private land, by name of ranch and county where located, over which access is allowed;

(iii) an affidavit by the outfitter to the board that the outfitter is in possession of any public land permits or licenses properly executed for federal or state public property where the outfitter is authorized to operate; and

(iv) the number of NCHU per category.

(2) An outfitter may amend the operations plan on record by adding or subtracting any additional or replacement information and submitting the updated plan to the board, except that when adding a service identified in (5), the outfitter must apply for an amendment to the outfitter's operations plan by stating in writing the proposed changes and submitting it to the board, along with the fee required in ARM 24.171.401.

(3) As part of renewal, each outfitter shall attest that all lands information required as part of the outfitter's operations plan on file with the board is current and accurate.

(4) Whenever the outfitter gains permission to use additional private or public property, the outfitter shall update the operations plan the earlier of:

(a) the end of the license year during which the outfitter first became authorized to use it, and

(b) before actually using it.



(5) All amendments will be considered by the board using the same criteria as new applicants, including being required to take those parts of the outfitter examination that apply to the proposed amendment, if an outfitter is applying to add the following to the operations plan:

- (a) hunting;
- (b) fishing;
- (c) watercraft used for fishing or hunting; or
- (d) saddle or pack animal use. (History: 37-1-131, 37-47-201, MCA; IMP, 37-1-131, 37-47-201, 37-47-304, MCA; NEW, 1988 MAR p. 1666, Eff. 7/29/88; AMD, 2000 MAR p. 730, Eff. 3/17/00; TRANS, from Commerce, & AMD, 2006 MAR p. 324, Eff. 2/10/06; AMD, 2015 MAR p. 58, Eff. 1/30/15; AMD, 2016 MAR p. 1960, Eff. 10/29/16; AMD, 2017 MAR p. 1900, Eff. 10/14/17; AMD, 2020 MAR p. 1157, Eff. 6/27/20; AMD, 2021 MAR p. 1407, Eff. 10/23/21; AMD 2023 MAR p. 354, Eff. 4/15/23.)

## Subchapter 6

## Guide Licensing

24.171.601 GUIDE QUALIFICATIONS (1) An applicant for a guide license shall have:

(a) not less than one season of experience of hunting or fishing for the type of game for which the applicant will guide or have worked for the outfitter that signs the license for a period of at least six weeks and in the area to be guided in, or have successfully completed a school licensed by a state, approved by the board, and that trains persons to be a guide;

(b) knowledge of hunting and fishing techniques to provide the particular services contracted to the client by the endorsing outfitter; and

(c) knowledge of equipment, terrain and hazards to competently provide a safe experience for those persons he or she guides.

(2) An outfitter whose license is currently suspended or revoked is not qualified for a guide license. (History: 37-1-131, 37-47-201, MCA; IMP, 37-47-101, 37-47-201, 37-47-303, 37-47-307, MCA; NEW, 1988 MAR p. 1666, Eff. 7/29/88; AMD, 1996 MAR p. 668, Eff. 3/8/96; AMD, 1998 MAR p. 2560, Eff. 9/25/98; TRANS, from Commerce, & AMD, 2006 MAR p. 324, Eff. 2/10/06; AMD, 2015 MAR p. 58, Eff. 1/30/15; AMD 2023 MAR p. 354, Eff. 4/15/23.)

24.171.602 GUIDE LICENSE (1) The application must include all license requirements and the endorsement of a licensed outfitter, when required, attesting that, the applicant meets all qualifications for licensure.

(2) An applicant must submit proof of current basic hands-on first aid certification with the application.

(3) Each outfitter who uses the services of the guide during the license year shall sign and date the guide's license before allowing the guide to accompany a client. (History: 37-1-131, 37-47-201, MCA; IMP, 37-47-101, 37-47-201, 37-47-301, 37-47-303, 37-47-307, 37-47-308, MCA; NEW, 2006 MAR p. 324, Eff. 2/10/06; AMD, 2010 MAR p. 651, Eff. 3/12/10; AMD, 2011 MAR p. 2149, Eff. 10/14/11; AMD, 2015 MAR p. 58, Eff. 1/30/15; AMD, 2019 MAR p. 850, Eff. 6/22/19; AMD 2023 MAR p. 354, Eff. 4/15/23.)

Rule 24.171.603 reserved

24.171.604 EMERGENCY GUIDE LICENSE (REPEALED) (History: 37-1-131, 37-47-201, MCA; IMP, 37-47-201, 37-47-301, 37-47-303, 37-47-307, MCA; NEW, 2006 MAR p. 324, Eff. 2/10/06; AMD, 2008 MAR p. 2055, Eff. 9/26/08; AMD, 2010 MAR p. 651, Eff. 3/12/10; REP, 2010 MAR p. 1889, Eff. 8/27/10.)

24.171.605 PROVISIONAL GUIDE LICENSE (REPEALED) (History: 37-1-131, 37-1-319, 37-47-201, MCA; IMP, 37-1-131, 37-1-319, 37-47-201, 37-47-301, 37-47-303, 37-47-307, MCA; NEW, 2010 MAR p. 1889, Eff. 8/27/10; REP, 2013 MAR p. 671, Eff. 4/26/13.)

## Subchapter 7

## Net Client Hunter Use and River-Use Days

24.171.701 NCHU CATEGORIES, TRANSFERS, AND RECORDS

(1) NCHU categories are as follows:

(a) Category 2, consisting of all clients served in the pursuit of big game or big game and upland game birds under combination licenses; and

(b) Category 3, consisting of all clients served in the pursuit of upland game birds, waterfowl, and turkeys.

(2) In cases where a federal agency limits an outfitter's use of federal lands by some means other than NCHU, an outfitter is not required to have NCHU to perform services on those lands.

(3) NCHU owned by a licensee is part of the operations plan and may be transferred only with notice to the board. Transfers between or among licensees are routinely processed by the department. A license that has expired may not be part of a NCHU transfer, and any NCHU that is recorded as part of the operations plan of a license that terminates or is revoked ceases to exist upon termination or revocation.

(4) Each outfitter entering into a transfer of NCHU with one or more other outfitters must do so by completing a transfer request form prescribed by the department.

(5) The records of the board comprise the official records of NCHU and each purported transfer of NCHU is invalid and void that is not reflected in the board's records.

(6) NCHU allocated to a deceased outfitter may be transferred only by a successor if an approved successorship has not terminated under ARM 24.171.504. NCHU will expire and shall not be revived if it is not transferred before the license or successorship terminates. In cases where the outfitter dies and no successor is designated, someone authorized by the estate or the family of the outfitter must submit a NCHU transfer request form to the board within one year following the death of the outfitter. Authorization by the estate is shown by a certified copy of letters of appointment as a personal representative or by any other procedure allowed under Title 72, MCA, for the transfer of intangible personal property.

(7) Category 2 NCHU may be used to serve category 3 NCHU clients. (History: 37-1-131, 37-47-201, MCA; IMP, 37-1-131, 37-47-201, MCA; NEW, 1996 MAR p. 145, Eff. 3/15/96; AMD, 1998 MAR p. 2267, Eff. 8/28/98; AMD, 2000 MAR p. 730, Eff. 3/17/00; AMD, 2003 MAR p. 1193, Eff. 6/13/03; TRANS, from Commerce, 2006 MAR p. 324; AMD, 2011 MAR p. 2149, Eff. 10/14/11; AMD, 2013 MAR p. 671, Eff. 4/26/13; AMD, 2015 MAR p. 58, Eff. 1/30/15; AMD, 2021 MAR p. 1407, Eff. 10/23/21; AMD 2023 MAR p. 354, Eff. 4/15/23.)

24.171.702 TRANSFER OF RIVER-USE DAYS (REPEALED) (History: 37-1-131, 37-47-201, MCA; IMP, 37-47-201, 37-47-310, MCA; NEW, 2006 MAR p. 324, Eff. 2/10/06; AMD, 2007 MAR p. 298, Eff. 3/9/07; REP, 2016 MAR p. 1960, Eff. 10/29/16.)

Subchapters 8 through 20 reserved

## Subchapter 21

## Renewal

24.171.2101 RENEWALS (1) The provisions of ARM 24.101.408 apply.

(2) License renewal applications for outfitters shall be made on forms provided by the department and shall be accompanied by:

(a) the required renewal fee; and

(b) an attestation that all lands information required as part of the outfitter's operations plan on file with the board is current and accurate as required by ARM 24.171.520.

(3) An outfitter or guide must submit a completed renewal application with the required fee on or before the date set by ARM 24.101.413 of each license year.

(4) License renewal applications for guides shall be made on forms provided by the department and shall be accompanied by the required renewal fee. (History: 37-1-131, 37-47-201, MCA; IMP, 37-1-104, 37-1-141, 37-47-201, 37-47-302, 37-47-304, 37-47-306, 37-47-307, MCA; NEW, 1988 MAR p. 1666, Eff. 7/29/88; AMD, 1992 MAR p. 2376, Eff. 10/30/92; AMD, 1996 MAR p. 668, Eff. 3/8/96; AMD, 1999 MAR p. 809, Eff. 4/23/99; AMD, 2000 MAR p. 730, Eff. 3/17/00; TRANS, from Commerce, & AMD, 2006 MAR p. 324, Eff. 2/10/06; AMD, 2006 MAR p. 1583, Eff. 7/1/06; AMD, 2011 MAR p. 2149, Eff. 10/14/11; AMD, 2015 MAR p. 58, Eff. 1/30/15; AMD, 2016 MAR p. 1960, Eff. 10/29/16; AMD, 2017 MAR p. 1900, Eff. 10/14/17; AMD, 2021 MAR p. 1407, Eff. 10/23/21.)

Rules 24.171.2102 and 24.171.2103 reserved

24.171.2104 ACTIVE DUTY STATUS FOR LICENSEES IN THE MILITARY

(1) The board recognizes that the nation relies on members of the National Guard and the reserve branches of the armed forces for the nation's security, and that the members of the National Guard and reserve forces are subject to call to active duty on short notice. In consideration of that service to the nation, the board finds that it is appropriate to defer the licensing renewal obligations of such individuals called to active duty status, provided that the individual is not required by the armed forces to maintain current professional or occupational licensing as a condition of serving in the armed forces.

(2) An activated reservist, as defined in 37-1-138, MCA, upon submission of appropriate evidence, is entitled to the following privileges:

(a) The activated reservist is not required to timely pay a renewal fee for license renewal that comes due while the person is in active duty status. The renewal fee is payable within six months following the activated reservist's discharge from active duty status. Unless otherwise relieved from the renewal application requirements, the activated reservist must timely apply for license renewal.

(b) If the activated reservist provides proof to the board of the reservist's active duty status before the reservist's license expires, the reservist is relieved from having to timely submit a renewal application and any related documents or information during the period while the reservist is on active duty status. The reservist has six months following discharge from active duty status to submit to the board such renewal applications and any related documents or information that came due during the period of the reservist's active duty status.

(3) In order to gain the benefits of this rule, the activated reservist must provide the board with proof of active duty status, including the date upon which the reservist was called to active duty status. The board may require the activated reservist to periodically provide information to the board regarding the reservist's active duty status or the date of the reservist's discharge from active duty status.

(4) A license that has not lapsed continues in the same status as existed the day before the reservist was called to active duty status, and remains in that status until the reservist renews the license or six months have elapsed from the reservist's discharge from active duty status, whichever comes first. (History: 37-1-131, 37-1-138, 37-47-201, MCA; IMP, 37-1-138, 37-47-307, MCA; NEW, 2006 MAR p. 324, Eff. 2/10/06.)

Subchapter 22 reserved

## Subchapter 23

## Unprofessional Conduct

24.171.2301 UNPROFESSIONAL CONDUCT AND MISCONDUCT (1) A violation of (1) or (3) by an outfitter, or (2) or (3) by a guide or outfitter's assistant is misconduct, specified as a basis for disciplinary action under 37-47-341, MCA. Such violation is also determined by the board to be unprofessional conduct, as provided in 37-1-319, MCA, specified as a ground for disciplinary action under 37-1-312, MCA. A violation of this rule may result in any sanction provided by 37-1-312 or 37-47-341, MCA. Unprofessional conduct by an outfitter's assistant is grounds for disciplinary action against the outfitter who employed or contracted with the outfitter's assistant. An outfitter shall:

- (a) not violate any law, rule, or policy of the Department of Fish, Wildlife and Parks concerning the certification of nonresidents for procuring hunting licenses;
- (b) not conduct any services or allow services to be conducted by a supervised guide or outfitter's assistant on private or public land, except legal transportation across such lands, without first having obtained written permission from the landowner or written authorization from the agency administering public land, unless the landowner or agency does not require such permission;
- (c) not provide services or allow services to be conducted by a supervised guide or outfitter's assistant to clients outside the boundaries of the outfitter's approved operations plan;
- (d) not endorse a guide license until the outfitter has made reasonable inquiry and determined that the guide is qualified for licensure;
- (e) not interfere, by solicitation or otherwise, with a contract between another outfitter and client, including certifications for game license or permits, when it is known or reasonably should be known that a contract to provide services exists between that other outfitter and a client;
- (f) furnish each client with a current and complete rate schedule, which shall include all charges, a deposit policy, and deposit refund policy, all in writing, for services offered;
- (g) specify in writing, when offering services to a nonresident hunting client, the refund policy for failure by the prospective client to draw a license required to participate in the service offered;
- (h) not change the rates and/or policies from those published without the written consent of the client after the outfitter receives and accepts the deposit from the client;
- (i) set all contract terms and conditions with clients;
- (j) personally collect, or designate an agent to collect, all fees from clients. The outfitter is solely responsible for complying with the outfitter's deposit and deposit refund policy;
- (k) maintain current and accurate records;
- (l) make all client records available in accordance with ARM 24.171.408;



(m) obtain and maintain a reasonable degree of supervision over each guide and outfitter's assistant to ensure that the services offered are being provided in accordance with the laws and rules, with particular regard to those laws and rules pertaining to the health, safety, and welfare of the participants, the public, and landowners;

(n) not employ or retain a guide without first confirming that the guide has current basic first aid certification;

(o) not exceed the licensee's NCHU;

(p) not use a guide prior to ensuring that the guide license is fully signed and dated;

(q) not use a guide with an inactive license;

(r) comply with all laws and rules relating to outfitter's assistants; and

(s) when advertising services, clearly designate the outfitter's registered business name or personal name and the outfitter's license number.

(2) Guides shall:

(a) not advertise services to the general public, but may advertise their services directly to outfitters;

(b) only make agreements with clients concerning monetary consideration or services offered, or collect fees from clients, with the express consent of the supervising outfitter, and only as expressly provided in ARM 24.171.405;

(c) not provide services to clients who have not been specifically referred to the guide from the endorsing outfitter; and

(d) not act as a guide under a guide license, unless and until the guide and the outfitter have first signed and dated the guide license.

(3) All licensees shall:

(a) provide services with respect for the rights of others, private and public property, and provide for the health, safety, and well-being of their clients, employees, and the general public;

(b) provide services on public land in a manner such that they do not interfere with the general public access to public land or waterways or access to wildlife on public land;

(c) provide their services in such a manner as not to be detrimental to the wildlife or the environment where they operate;

(d) report to the board office, at their earliest opportunity, any violation of fish and game laws or outfitter, guide, and outfitter's assistant laws of which they have knowledge;

(e) not use alcohol or any other controlled substance as defined in Title 50, chapter 32, MCA, including marijuana and marijuana derivatives, to the extent that the use impairs the user physically or mentally, while engaged by a client;

(f) not charge any fee for certifying or aiding or assisting any nonresident in procuring or attempting to procure a hunting license;

(g) not harass, assault, or abuse clients, employees, outfitters, guides, or outfitter's assistants, or members of the general public, verbally or otherwise;

(h) not abuse livestock;

- (i) produce their current license, proof of first aid certification, or employment documentation required by ARM 24.171.410 at the request of law enforcement or a representative of the board (electronic proof of license or certification is permitted);
- (j) carry the licensee's current license and certifications at all times when providing services (electronic proof of license or certification is permitted);
- (k) not have hunting or fishing privileges or a wildlife conservation license suspended, revoked, placed on probation, or voluntarily surrendered in the state of Montana or any other jurisdiction;
- (l) have a valid wildlife conservation license before providing guiding services;
- (m) not act beyond the scope of activities for which the individual is licensed;
- (n) not offer for use by an unlicensed individual any watercraft identification identifying another licensee as the occupant of the watercraft;
- (o) not intentionally misrepresent board laws or rules;
- (p) not fail to respond to board inquiries and requests;
- (q) not remit a "nonsufficient fund check" or a check on a closed account for board fees or fines; and
- (r) comply with the statutes and rules applicable to licensees of the board.

(History: 37-1-131, 37-1-319, 37-47-201, MCA; IMP, 37-1-312, 37-1-316, 37-1-319, 37-47-201, 37-47-325, 37-47-341, MCA; NEW, 1996 MAR p. 668, Eff. 3/8/96; AMD, 1999 MAR p. 809, Eff. 4/23/99; AMD, 2000 MAR p. 730, Eff. 3/17/00; TRANS, from Commerce, & AMD, 2006 MAR p. 324, Eff. 2/10/06; AMD, 2007 MAR p. 347, Eff. 3/9/07; AMD, 2008 MAR p. 2055, Eff. 9/26/08; AMD, 2010 MAR p. 651, Eff. 3/12/10; AMD, 2010 MAR p. 1889, Eff. 8/27/10; AMD, 2015 MAR p. 58, Eff. 1/30/15; AMD, 2016 MAR p. 1960, Eff. 10/29/16; AMD, 2018 MAR p. 1731, Eff. 8/25/18; AMD, 2020 MAR p. 1157, Eff. 6/27/20; AMD, 2021 MAR p. 1407, Eff. 10/23/21.)

Rules 24.171.2302 through 24.171.2304 reserved

24.171.2305 WEB SITE POSTING OF LICENSE DISCIPLINE (1) For purposes of ARM 24.101.404, each first-time violation of the following acts constitutes a failure to file or complete in a timely manner a minor administrative requirement that is in rule or law:

- (a) lack of first aid card if no client is served during the lapse;
- (b) an outfitter's failure to ensure that a guide has a first aid card if no client is served during the lapse;
- (c) failure to display required information on a water vessel;
- (d) failure to maintain insurance if no client is served during the lapse;
- (e) use of a nonsufficient funds check;
- (f) failure to carry current guide or outfitter license while providing services;
- (g) failure to carry a current fishing license; and
- (h) failure to have a current conservation license.

(2) No conduct is a failure to file or complete in a timely manner a minor administrative requirement that is in rule or law if the board determines that the conduct constitutes fraud, dishonesty, or a careless or intentional disregard for the rules, statutes, or standards applicable to the licensee.

(3) If an applicant is denied a license only because of an incomplete application or because the applicant lacks the required days of verified experience, a first aid card, an ALS number, the proper amount of fees, or other similar item or requirement, then the denial is based solely on the applicant's failure to meet minimum licensure qualifications, and not based on competence to practice issues.

(4) No license denial is based solely on the applicant's failure to meet minimum licensure qualifications, and not based on competence to practice issues if the board determines the application involves the applicant's fraud, dishonesty, or a careless or intentional disregard for the rules, statutes, or standards applicable to the applicant. (History: 37-1-131, 37-47-201, MCA; IMP, 37-1-131, 37-1-311, 37-47-201, MCA; NEW, 2011 MAR p. 2149, Eff. 10/14/11; AMD, 2021 MAR p. 1407, Eff. 10/23/21.)

# OUTFITTER AND GUIDES BOARD LAWS

## TITLE 37, CHAPTER 47 OUTFITTERS AND GUIDES

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## CHAPTER 47 OUTFITTERS AND GUIDES

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### Part 1 General

**37-47-101. Definitions.** As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Accompany" means to go with or be together with a participant as an escort, companion, or other service provider, with an actual physical presence in the area where the activity is being conducted and within sight or sound of the participant at some time during the furnishing of service.

(2) "Board" means the board of outfitters provided for in 2-15-1773.

(3) "Business entity" means any version of a proprietorship, partnership, corporation, or limited liability company.

(4) "Consideration" means something of value given or done in exchange for something of value given or done by another.

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

(6) "Emergency" means an unforeseen combination of circumstances or the resulting state that calls for immediate action.

(7) "Guide" means a person who is employed by or who has contracted independently with a licensed outfitter and who accompanies a participant during outdoor recreational activities that are directly related to activities for which the outfitter is licensed.

(8) "License year" means the period indicated on the face of the license for which the license is valid.

(9) "Net client hunter use" or "NCHU" means the number of clients authorized to be served by an outfitter on private and state land and on any federal land where an outfitter's use of the federal land is not limited by some means other than NCHU.

(10) "Outfitter" means any person, except a person providing services on real property that the person owns for the primary pursuit of bona fide agricultural interests, who for consideration provides any saddle or pack animal, facilities, camping equipment, vehicle, watercraft, or other conveyance, or personal service for any person to hunt, trap, capture, take, kill, or pursue any game, including fish, and who accompanies that person, either part or all of the way, on an expedition for any of these purposes or supervises a licensed guide or outfitter's assistant in accompanying that person.

(11) "Outfitter's assistant" means a person who is employed or retained by and directed by a licensed outfitter to perform the tasks of a guide when a guide's license cannot be readily attained prior to or during the service of a participant due to an emergency. The person may not represent to the public that the person is an outfitter or guide.

(12) "Participant" means a person using the services offered by a licensed outfitter.

**History:** Ap. p. Sec. 1, Ch. 221, L. 1971; amd. Sec. 37, Ch. 511, L. 1973; amd. Sec. 17, Ch. 9, L. 1977; Sec. 26-908, R.C.M. 1947; Ap. p. Sec. 69, Ch. 173, L. 1917; re-en. Sec. 3748, R.C.M. 1921; re-en. Sec. 3748, R.C.M. 1935; amd. Sec. 4, Ch. 173, L. 1949; amd. Sec. 3, Ch. 184, L. 1951; amd. Sec. 2, Ch. 223, L. 1955; amd. Sec. 1, Ch. 541, L. 1975; amd. Sec. 16, Ch. 9, L. 1977; Sec. 26-904, R.C.M. 1947; R.C.M. 1947, 26-904(1), 26-908; amd. Sec. 1, Ch. 170, L. 1981; amd. Sec. 2, Ch. 545, L. 1981; amd. Sec. 1, Ch. 410, L. 1983; amd. Sec. 2, Ch. 528, L. 1987; Sec. 87-4-101, MCA 1985; redes. 37-47-101 by Sec. 11, Ch. 528, L. 1987; amd. Sec. 1, Ch. 565, L. 1989; amd. Sec. 38, Ch. 16, L. 1991; amd. Sec. 1, Ch. 328, L. 1995; amd. Sec. 2, Ch. 543, L. 1999; amd. Sec. 142, Ch. 483, L. 2001; amd. Sec. 97, Ch. 467, L. 2005; amd. Sec. 3, Ch. 241, L. 2013; amd. Sec. 1, Ch. 341, L. 2013; amd. Sec. 16, Ch. 55, L. 2015; amd. Sec. 1, Ch. 217, L. 2017.

**37-47-102. Repealed.** Sec. 22, Ch. 328, L. 1995.

**History:** En. Sec. 69, Ch. 173, L. 1917; re-en. Sec. 3748, R.C.M. 1921; re-en. Sec. 3748, R.C.M. 1935; amd. Sec. 4, Ch. 173, L. 1949; amd. Sec. 3, Ch. 184, L. 1951; amd. Sec. 2, Ch. 223, L. 1955; amd. Sec. 1, Ch. 541, L. 1975; amd. Sec. 16, Ch. 9, L. 1977; R.C.M. 1947, 26-904(2); amd. Sec. 3, Ch. 545, L. 1981; amd. Sec. 3, Ch. 528, L. 1987; Sec. 87-4-102, MCA 1985; redes. 37-47-102 by Sec. 11, Ch. 528, L. 1987.

**37-47-103. Repealed.** Sec. 19, Ch. 341, L. 2013.

**History: En. Sec. 23, Ch. 502, L. 2007.**

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## Part 2 Board of Outfitters

**37-47-201. Powers and duties of board relating to outfitters and guides.** The board shall:

- (1) cooperate with the federal government in matters of mutual concern regarding the business of outfitting and guiding in Montana;
- (2) enforce the provisions of this chapter and rules adopted pursuant to this chapter;
- (3) establish outfitter standards and guide standards;
- (4) adopt:
  - (a) rules to administer and enforce this chapter, including rules prescribing all requisite qualifications for licensure as an outfitter or guide. Qualifications for outfitters may include training, testing, experience, and knowledge of rules of governmental bodies pertaining to outfitting.
  - (b) any reasonable rules, not in conflict with this chapter, necessary for safeguarding the public health, safety, and welfare, including evidence of qualification and licensure under this chapter for any person practicing or offering to practice as an outfitter or guide;
  - (c) rules specifying components and standards for review and approval of operations plans. Operations plans must:
    - (i) be updated at least annually if there has been a substantive change; and
    - (ii) indicate all forms of use of private land acreage where licensed outfitters are authorized by the landowner to operate, except for the use of private lands that allow unrestricted public access and are managed under cooperative agreements with adjacent public lands.
  - (d) rules establishing outfitter reporting requirements; and
  - (e) rules specifying what constitutes an emergency for which an outfitter's assistant may be hired, standards for outfitter's assistants, and documentation standards for proof of employment or retention required of outfitter's assistants. The rules must also identify data that may be collected regarding use of outfitter's assistants.
- (5) hold hearings and proceedings to suspend or revoke licenses of outfitters and guides for due cause; and
- (6) maintain records of net client hunter use.
  - (1) .

**History:** En. Sec. 4, Ch. 221, L. 1971; amd. Sec. 38, Ch. 511, L. 1973; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-911; amd. Sec. 1, Ch. 490, L. 1981; amd. Sec. 5, Ch. 545, L. 1981; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 4, Ch. 528, L. 1987; Sec. 87-4-104, MCA 1985; redes. 37-47-201 by Sec. 11, Ch. 528, L. 1987; amd. Sec. 1, Ch. 220, L. 1993; amd. Sec. 3, Ch. 328, L. 1995; amd. Sec. 3, Ch. 543, L. 1999; amd. Sec. 98, Ch. 467, L. 2005; amd. Sec. 45, Ch. 44, L. 2007; amd. Sec. 2, Ch. 328, L. 2011; amd. Sec. 4, Ch. 241, L. 2013; amd. Sec. 2, Ch. 341, L. 2013; amd. Sec. 2, Ch. 217, L. 2017; amd. Sec. 1, Ch. 236, L. 2019; amd. Sec. 2, Ch. 281, L. 2021.

**37-47-202. Executive director.** The department may hire an executive director to assist the board in carrying out its duties under this chapter.

**History:** En. Sec. 1, Ch. 183, L. 1993; amd. Sec. 32, Ch. 492, L. 2001; amd. Sec. 11, Ch. 100, L. 2011.

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## Part 3 Licensing

**37-47-301. License required — services performed — standards.** (1) A person may not act as an outfitter or guide or advertise or otherwise represent to the public that the person is an outfitter or guide without first securing a license in accordance with the provisions of this part.

(2) Whenever an outfitter is engaged by a participant, the outfitter shall keep records as required by the board.

(3) Outfitters, guides, and other employees of an outfitter may not shoot, kill, or take big game animals for or in competition with those employing them while acting as outfitters, guides, or employees of an outfitter.

(4) Outfitters utilizing lands under the control of the United States government shall obtain the proper permits required by the government office responsible for the area in which the outfitter intends to operate and shall comply with all applicable rules and regulations established for these lands.

(5) Outfitters may not willfully and substantially misrepresent their facilities, prices, equipment, services, or hunting or fishing opportunities.

(6) Outfitters and their contractors, employees, agents, and representatives shall take every reasonable measure to provide the outfitter's advertised services.

(7) An outfitter may not hire or retain a guide who does not hold a current license as provided under this part.

**History:** En. Sec. 7, Ch. 221, L. 1971; amd. Sec. 20, Ch. 9, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-914; amd. Sec. 8, Ch. 545, L. 1981; Sec. 87-4-121, MCA 1985; redes. 37-47-301 by Sec. 11, Ch. 528, L. 1987; amd. Sec. 2, Ch. 565, L. 1989; amd. Sec. 2, Ch. 220, L. 1993; amd. Sec. 4, Ch. 328, L. 1995; amd. Sec. 3, Ch. 341, L. 2013; amd. Sec. 3, Ch. 281, L. 2021.

**37-47-302. Outfitter's qualifications.** An applicant for an outfitter's license or renewal of a license must meet the following qualifications:

(1) be 18 years of age or older, be physically capable and mentally competent to perform the duties of an outfitter, and meet experience, training, and testing requirements as prescribed by board rule; and

(2) own, hold under written lease, or contract for or represent a business entity who owns, holds under written lease, or contracts for the equipment and facilities that are necessary to provide the services advertised, contracted for, or agreed upon between the outfitter and the outfitter's clients. All equipment and facilities are subject to inspection at all reasonable times and places by the board.

**History:** En. Sec. 8, Ch. 221, L. 1971; amd. Sec. 13, Ch. 94, L. 1973; amd. Sec. 3, Ch. 541, L. 1975; amd. Sec. 21, Ch. 9, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-915(3)(a) thru (3)(k); amd. Sec. 9, Ch. 545, L. 1981; amd. Sec. 8, Ch. 239, L. 1983; amd. Sec. 10, Ch. 528, L. 1987; Sec. 87-4-122, MCA 1985; redes. 37-47-302 by Sec. 11, Ch. 528, L. 1987; amd. Sec. 3, Ch. 220, L. 1993; amd. Sec. 5, Ch. 328, L. 1995; amd. Sec. 39, Ch. 109, L. 2009; amd. Sec. 1, Ch. 179, L. 2011; amd. Sec. 4, Ch. 341, L. 2013; amd. Sec. 4, Ch. 281, L. 2021.

**37-47-303. Guide's qualifications.** An applicant for a guide's license must:

(1) be 18 years of age or older and be physically capable and mentally competent to perform the duties of a guide;

(2) be endorsed and recommended by an outfitter with a valid license, unless otherwise qualified under guide standards established by the board pursuant to 37-47-201(4); and

(3) have been issued a valid wildlife conservation license.

**History:** En. Sec. 8, Ch. 221, L. 1971; amd. Sec. 13, Ch. 94, L. 1973; amd. Sec. 3, Ch. 541, L. 1975; amd. Sec. 21, Ch. 9, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-915(4), (5); amd. Sec. 10, Ch. 545, L. 1981; Sec. 87-4-123, MCA 1985; redes. 37-47-303 by Sec. 11, Ch. 528, L. 1987; amd. Sec. 4, Ch. 220, L. 1993; amd. Sec. 6, Ch. 328, L. 1995; amd. Sec. 1, Ch. 172, L. 2005; amd. Sec. 5, Ch. 341, L. 2013; ; amd. Sec. 1, Ch. 507, L. 2023.

**37-47-304. Application.** (1) Each applicant for an outfitter's or guide's license shall apply for a license on a form furnished by the department.

(2) The application for an outfitter's license must include:

(a) the applicant's full name, address, conservation license number, and telephone number;

(b) the applicant's years of experience as an outfitter or guide; and

(c) components of the outfitter's operations plan as required by board rule, which may include:



(i) an affidavit by the outfitter to the board that the amount and kind of equipment that is owned, leased, or contracted for by the applicant is sufficient and satisfactory for the services advertised or contemplated to be performed by the applicant; and

(ii) a description of any land, water body, or portion of a water body that will be utilized by the applicant while providing services. A description is not required for the use of private lands that allow unrestricted public access and are managed under cooperative agreements with adjacent public lands.

(3) An application for an outfitter's license must be in the name of an individual person only. An application involving a business entity must be made by one individual person who qualifies under the provisions of this part. A license issued pursuant to this part must be in the name of that person. Any revocation or suspension of a license is binding upon the individual person and the business entity for the use and benefit of which the license was originally issued.

(4) Application must be made to and filed with the board.

(5) Only one application for an outfitter's license may be made in any license year. If an application is denied, subsequent applications by the same applicant for the license year involved are void, except as provided in **37-47-308**.

**History:** En. Sec. 8, Ch. 221, L. 1971; amd. Sec. 13, Ch. 94, L. 1973; amd. Sec. 3, Ch. 541, L. 1975; amd. Sec. 21, Ch. 9, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-915(1), (2), (13); amd. Sec. 11, Ch. 545, L. 1981; amd. Sec. 10, Ch. 528, L. 1987; Sec. 87-4-124, MCA 1985; redes. 37-47-304 by Sec. 11, Ch. 528, L. 1987; amd. Sec. 3, Ch. 565, L. 1989; amd. Sec. 5, Ch. 220, L. 1993; amd. Sec. 7, Ch. 328, L. 1995; amd. Sec. 2, Ch. 196, L. 2003; amd. Sec. 99, Ch. 467, L. 2005; amd. Sec. 2, Ch. 179, L. 2011; amd. Sec. 6, Ch. 341, L. 2013; amd. Sec. 1, Ch. 221, L. 2019; amd. Sec. 2, Ch. 236, L. 2019; amd. Sec. 2, Ch. 507, L. 2023.

**37-47-305. Outfitter's examination.** Each applicant for an outfitter's license, after meeting the experience and training specifications and other qualifications set by this chapter or rules adopted pursuant to this chapter, is entitled to take and must pass a standard examination administered by the board or its agent. The examination must require general and sufficient knowledge displaying and indicating ability to perform the services contemplated with efficiency and with safety to the health and welfare of participants. The examination must test the applicant's knowledge of subjects that apply to the type of license applied for and may include the following subjects:

- (1) federal and state fish and game laws and regulations;
- (2) federal and state regulations as applicable to outfitting;
- (3) boat safety; and
- (4) water safety.

**History:** En. Sec. 8, Ch. 221, L. 1971; amd. Sec. 13, Ch. 94, L. 1973; amd. Sec. 3, Ch. 541, L. 1975; amd. Sec. 21, Ch. 9, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-915(3)(l); amd. Sec. 12, Ch. 545, L. 1981; amd. Sec. 10, Ch. 528, L. 1987; Sec. 87-4-125, MCA 1985; redes. 37-47-305 by Sec. 11, Ch. 528, L. 1987; amd. Sec. 6, Ch. 220, L. 1993; amd. Sec. 8, Ch. 328, L. 1995; amd. Sec. 7, Ch. 341, L. 2013.

**37-47-306. Fees.** (1) The board shall establish fees commensurate with costs as provided in 37-1-134.

(2) Applications must be accompanied by a license fee as specified by board rule.

(3) The license fees must be deposited in the state special revenue fund and must be used by the board to investigate the applicant, to enforce this part, and for administrative costs, subject to 37-1-101(6).

**History:** Ap. p. Sec. 8, Ch. 221, L. 1971; amd. Sec. 13, Ch. 94, L. 1973; amd. Sec. 3, Ch. 541, L. 1975; amd. Sec. 21, Ch. 9, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; Sec. 26-915, R.C.M. 1947; Ap. p. Sec. 10, Ch. 221, L. 1971; amd. Sec. 23, Ch. 9, L. 1977; Sec. 26-917, R.C.M. 1947; R.C.M. 1947, 26-915(8) thru (11), 26-917; amd. Sec. 14, Ch. 545, L. 1981; amd. Sec. 4, Ch. 192, L. 1983; amd. Sec. 5, Ch. 528, L. 1987; Sec. 87-4-127, MCA 1985; redes. 37-47-306 by Sec. 11, Ch. 528, L. 1987; amd. Sec. 9, Ch. 328, L. 1995; amd. Sec. 4, Ch. 543, L. 1999; amd. Sec. 8, Ch. 341, L. 2013.

**37-47-307. Investigation of applicant — issuance or denial of license.** (1) The department shall investigate each applicant for an outfitter's or guide's license. The board shall determine the applicant's qualifications.

(2) The board may deny or refuse to issue any new license or to renew any previous license if the applicant does not meet the qualifications stated in this chapter or rules adopted pursuant to this chapter. In the event that any application for a license is denied or refused, the board shall immediately notify the applicant, setting forth in the notice the grounds upon which the denial or refusal is based.

(3) A licensee in good standing is entitled to a new license for the ensuing license year upon complying with the provisions of this chapter or rules adopted pursuant to this chapter and upon completing an application for license renewal on a form provided by the board.

(4) This section may not be interpreted to conflict with 37-1-138.

**History:** En. Sec. 8, Ch. 221, L. 1971; amd. Sec. 13, Ch. 94, L. 1973; amd. Sec. 3, Ch. 541, L. 1975; amd. Sec. 21, Ch. 9, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-915(12); amd. Sec. 15, Ch. 545, L. 1981; amd. Sec. 9, Ch. 239, L. 1983; amd. Sec. 6, Ch. 528, L. 1987; Sec. 87-4-128, MCA 1985; redes. 37-47-307 by Sec. 11, Ch. 528, L. 1987; amd. Sec. 7, Ch. 220,

L. 1993; amd. Sec. 10, Ch. 328, L. 1995; amd. Sec. 100, Ch. 429, L. 1995; amd. Sec. 46, Ch. 271, L. 2003; amd. Sec. 9, Ch. 341, L. 2013.

**37-47-308. Kinds of licenses.** (1) When all the conditions of licensure have been satisfied, the board shall issue a license stating the outfitter or guide functions that the applicant is qualified and approved to perform.

(2) The license must be in the form prescribed and is valid for the licensing year in which issued.

(3) If the application is denied, the board shall notify the applicant in writing of the reasons for the denial, and if the reasons are corrected, a license must be issued upon reapplication.

History: En. Sec. 9, Ch. 221, L. 1971; amd. Sec. 4, Ch. 541, L. 1975; amd. Sec. 22, Ch. 9, L. 1977; R.C.M. 1947, 26-916(1); amd. Sec. 10, Ch. 528, L. 1987; Sec. 87-4-129, MCA 1985; redes. 37-47-308 by Sec. 11, Ch. 528, L. 1987; amd. Sec. 8, Ch. 220, L. 1993.

**37-47-309. Repealed.** Sec. 22, Ch. 328, L. 1995.

History: En. Sec. 9, Ch. 221, L. 1971; amd. Sec. 4, Ch. 541, L. 1975; amd. Sec. 22, Ch. 9, L. 1977; R.C.M. 1947, 26-916(2), (3); amd. Sec. 16, Ch. 545, L. 1981; Sec. 87-4-130, MCA 1985; redes. 37-47-309 by Sec. 11, Ch. 528, L. 1987; amd. Sec. 4, Ch. 565, L. 1989; amd. Sec. 9, Ch. 220, L. 1993.

**37-47-310. Transfer or amendment of outfitter's license -- partial sale of outfitter business.** (1) An outfitter's license may not be transferred.

(2) An individual person may, upon proper showing, have that person's outfitter's operating plan amended to indicate that the license is being held for the use and benefit of a named business entity.

(3) Subject to approval by the board, a person designated by the family of an outfitter who is deceased or incapacitated due to physical or mental disease or injury or who is unable to carry out the responsibilities of an outfitter due to the outfitter's status as an active member of the military may continue to provide outfitting services for the outfitter's unexpired license year, or until the family sells the outfitting business, until the designee obtains an outfitter license.

(4) (a) Except as provided in subsection (4)(b), if changes are properly reflected in an operations plan, the partial sale or temporary transfer of a hunting or fishing outfitter's business may not be prohibited.

(b) Transfer of river-use days for the Beaverhead and Big Hole Rivers may only be sold or transferred as part of a business in its entirety. On the sale or transfer of a fishing outfitter business on the Beaverhead or Big Hole Rivers, the outfitter who sells or transfers the business shall notify the new owner that the use of any transferred river-use days is subject to change pursuant to rules adopted by the fish and wildlife commission and that a property right does not attach to the transferred river-use days.

History: En. Sec. 9, Ch. 221, L. 1971; amd. Sec. 4, Ch. 541, L. 1975; amd. Sec. 22, Ch. 9, L. 1977; R.C.M. 1947, 26-916(4); amd. Sec. 17, Ch. 545, L. 1981; amd. Sec. 10, Ch. 528, L. 1987; Sec. 87-4-131, MCA 1985; redes. 37-47-310 by Sec. 11, Ch. 528, L. 1987; amd. Sec. 10, Ch. 220, L. 1993; amd. Sec. 1, Ch. 91, L. 2003; amd. Sec. 1, Ch. 197, L. 2005; amd. Sec. 12, Ch. 100, L. 2011; amd. Sec. 20, Ch. 235, L. 2013; amd. Sec. 10, Ch. 341, L. 2013; amd. Sec. 5, Ch. 281, L. 2021.

**37-47-311. Limit one license.** (1) An individual may not hold more than one outfitter's license either for the individual's own benefit or for the use and benefit of a business entity. However, the name of a business entity may appear on more than one current outfitter's license.

(2) Subsection (1) does not prevent a licensee from:

(a) owning or operating more than one business entity under one license; or

(b) filing more than one operations plan with the board.

History: En. Sec. 9, Ch. 221, L. 1971; amd. Sec. 4, Ch. 541, L. 1975; amd. Sec. 22, Ch. 9, L. 1977; R.C.M. 1947, 26-916(5); Sec. 87-4-132, MCA 1985; redes. 37-47-311 by Sec. 11, Ch. 528, L. 1987; amd. Sec. 2, Ch. 197, L. 2005; amd. Sec. 11, Ch. 341, L. 2013.

**37-47-312. Repealed.** Sec. 127, Ch. 467, L. 2005.

History: En. Sec. 9, Ch. 221, L. 1971; amd. Sec. 4, Ch. 541, L. 1975; amd. Sec. 22, Ch. 9, L. 1977; R.C.M. 1947, 26-916(6); Sec. 87-4-133, MCA 1985; redes. 37-47-312 by Sec. 11, Ch. 528, L. 1987.

**37-47-313. Shuttle, rental services, drop camp, and accompaniment -- exemption.** (1) Nothing in this chapter prohibits the furnishing of shuttle, rental services, drop camp, or the accompaniment of a customer for nonhunting activities, nonfishing activities, or both, as long as those services do not include in-field assistance to a customer.

(2) For the purposes of this section, "in-field assistance" means the pursuit of fish or game, including in-

field instruction for the pursuit of fish or game.

**History:** En. Sec. 2, Ch. 328, L. 1995; amd. Sec. 6, Ch. 281, L. 2021.

**37-47-314. Terminated.** Sec. 26, Ch. 328, L. 1995.

**History:** En. Sec. 11, Ch. 328, L. 1995.

**37-47-315. Terminated.** Sec. 6, Ch. 544, L. 1999.

**History:** En. Sec. 11, Ch. 459, L. 1995; amd. Sec. 1, Ch. 544, L. 1999.

**37-47-316. Repealed.** Sec. 19, Ch. 341, L. 2013.

**History:** En. Sec. 5, Ch. 543, L. 1999; amd. Sec. 1, Ch. 393, L. 2001; amd. Sec. 3, Ch. 328, L. 2011.

**37-47-317. Repealed.** Sec. 5, Ch. 328, L. 2011.

**History:** En. Sec. 6, Ch. 543, L. 1999.

**37-47-318. Repealed.** Sec. 19, Ch. 341, L. 2013.

**History:** En. Sec. 7, Ch. 543, L. 1999; amd. Sec. 21, Ch. 502, L. 2007; amd. Sec. 4, Ch. 328, L. 2011.

**37-47-319 through 37-47-324 reserved.**

**37-47-325. Outfitter's assistants — exemption from licensing.** (1) An outfitter may hire or retain an outfitter's assistant.

(2) An outfitter's assistant is not required to obtain a license under this chapter.

(3) The outfitter's assistant must carry proof of employment as required by the board by rule.

(4) (a) An outfitter who employs or retains an outfitter's assistant is responsible for ensuring that the outfitter's assistant:

(i) safeguards the public health, safety, and welfare while providing services; and

(ii) is qualified and competent to perform the tasks of a guide.

(b) The board shall hold an outfitter who employs or retains an outfitter's assistant responsible under the provisions of 37-1-316, 37-47-341, and 37-47-402 for any acts or omissions by the outfitter's assistant in the ordinary course and scope of duties assigned by the outfitter.

(5) The outfitter's assistant may not be employed or retained by an outfitter for more than 15 days in a calendar year unless the outfitter's assistant is actively obtaining a guide's license pursuant to this part and the board determines that the license application is routine for purposes of 37-1-101.

(6) An outfitter may use more than one outfitter's assistant in a calendar year.

(7) An outfitter's assistant may be employed or retained by an outfitter on more than one occasion in a calendar year if:

(a) the outfitter's assistant is not employed or retained for more than 15 days as an outfitter's assistant in that calendar year; or

(b) the outfitter's assistant is actively obtaining a guide's license and the board determines that the license application is routine for purposes of 37-1-101.

**History:** En. Sec. 1, Ch. 241, L. 2013; amd. Sec. 3, Ch. 217, L. 2017.

**37-47-326 through 37-47-340 reserved.**

**37-47-341. Grounds for denial, suspension, or revocation of license.** A license or right to apply for and hold a license issued under this part may be denied, suspended, or revoked or other disciplinary conditions may be applied upon any of the following grounds:

(1) having ceased to meet all of the qualifications for holding a license, as required under this chapter and rules adopted pursuant to this chapter;

(2) fraud or deception in procuring a license;

(3) fraudulent, untruthful, or misleading advertising;

(4) having pleaded guilty to or been adjudged by a court guilty of a felony, including a case in which the sentence is suspended or imposition of the sentence is deferred, unless civil rights have been

restored pursuant to law;

(5) one conviction or bond forfeiture for a violation of the fish and game or outfitting laws or regulations of any state, the United States, or other jurisdictions;

(6) a substantial breach of a contract with a participant provided that the breach is established as a matter of final judgment in a court of law;

(7) the willful employment of or contracting with an unlicensed guide by an outfitter;

(8) subject to **27-1-753**, negligence or misconduct while acting as an outfitter or guide that causes an accident or injury to the person or property of a participant;

(9) misconduct as defined by board rule; or

(10) any violation of this chapter or a rule adopted pursuant to this chapter.

**History:** En. Sec. 11, Ch. 221, L. 1971; amd. Sec. 5, Ch. 541, L. 1975; amd. Sec. 8, Ch. 417, L. 1977; R.C.M. 1947, 26-918; amd. Sec. 18, Ch. 545, L. 1981; Sec. 87-4-141, MCA 1985; redes. 37-47-341 by Sec. 11, Ch. 528, L. 1987; amd. Sec. 5, Ch. 565, L. 1989; amd. Sec. 11, Ch. 220, L. 1993; amd. Sec. 12, Ch. 328, L. 1995; amd. Sec. 22, Ch. 502, L. 2007; amd. Sec. 12, Ch. 341, L. 2013; amd. Sec. 7, Ch. 281, L. 2021.

**37-47-342. Repealed.** Sec. 128, Ch. 429, L. 1995.

**History:** En. Sec. 12, Ch. 221, L. 1971; amd. Sec. 6, Ch. 541, L. 1975; amd. Sec. 9, Ch. 417, L. 1977; R.C.M. 1947, 26-919; amd. Sec. 19, Ch. 545, L. 1981; amd. Sec. 7, Ch. 528, L. 1987; Sec. 87-4-142, MCA 1985; redes. 37-47-342 by Sec. 11, Ch. 528, L. 1987.

**37-47-343. Appeal procedure.** A person who feels aggrieved by a final order of the board denying issuance of a license or suspending or revoking a license as an outfitter or guide may petition for judicial review as provided in Title 2, chapter 4, part 7.

**History:** En. Sec. 13, Ch. 221, L. 1971; amd. Sec. 7, Ch. 541, L. 1975; amd. Sec. 10, Ch. 417, L. 1977; R.C.M. 1947, 26-920; amd. Sec. 20, Ch. 545, L. 1981; amd. Sec. 10, Ch. 528, L. 1987; Sec. 87-4-143, MCA 1985; redes. 37-47-343 by Sec. 11, Ch. 528, L. 1987; amd. Sec. 12, Ch. 220, L. 1993; amd. Sec. 13, Ch. 328, L. 1995; amd. Sec. 13, Ch. 341, L. 2013.

**37-47-344. Repealed. Sec. 10, Ch. 366, L. 2023.**

**History:** En. Sec. 8, Ch. 528, L. 1987; amd. Sec. 13, Ch. 220, L. 1993; amd. Sec. 2, Ch. 445, L. 2007; amd. Sec. 8, Ch. 281, L. 2021.

**37-47-345. Enforcement.** Investigations and issuance of board complaints for violations of this chapter or rules adopted pursuant to this chapter may be made through department investigation or at the board's request by any peace officer; warden of the department of fish, wildlife, and parks; or federal agency enforcement personnel.

**History:** En. Sec. 9, Ch. 528, L. 1987; amd. Sec. 14, Ch. 328, L. 1995; amd. Sec. 9, Ch. 281, L. 2021.

**37-47-346. Repealed.** Sec. 128, Ch. 429, L. 1995.

**History:** En. Sec. 14, Ch. 220, L. 1993.

**37-47-347 through 37-47-350 reserved.**

**37-47-351. Investigators.** The department may hire investigators to assist the board in investigations and inspections authorized by this chapter.

**History:** En. Sec. 20, Ch. 328, L. 1995; amd. Sec. 13, Ch. 100, L. 2011.

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## Part 4

### Relative Duties of Outfitters, Guides, and Participants

**37-47-401. Purpose.** It is recognized that some activities conducted by outfitters, guides, and outfitter's assistants within the scope of their authorized services are inherently hazardous to participants regardless of all feasible safety measures that may be taken. It is the purpose of this part, subject to **27-1-753**, to define those areas of responsibility and affirmative acts or omissions for which outfitters, guides, and outfitter's assistants are liable for loss, damage, or injury and those risks for which the participant expressly assumes or is considered to have voluntarily assumed the risk of loss or damage.

**History:** En. Sec. 2, Ch. 170, L. 1981; Sec. 87-4-161, MCA 1985; redes. 37-47-401 by Sec. 11, Ch. 528, L. 1987; amd. Sec. 15, Ch. 328, L. 1995; amd. Sec. 5, Ch. 241, L. 2013; amd. Sec. 14, Ch. 341, L. 2013; amd. Sec. 10, Ch. 281, L. 2021.

**37-47-402. Duties of outfitters and guides.** An outfitter or guide offering professional services in this state shall:

(1) act as would a reasonably prudent member of the profession while engaging in providing the services authorized to be performed by a licensed member of the profession;

(2) comply with all standards adopted by board rule.

**History:** En. Sec. 3, Ch. 170, L. 1981; Sec. 87-4-162, MCA 1985; redes. 37-47-402 by Sec. 11, Ch. 528, L. 1987; amd. Sec. 15, Ch. 220, L. 1993; amd. Sec. 16, Ch. 328, L. 1995; amd. Sec. 15, Ch. 341, L. 2013.

**37-47-403. Duties of participants.** (1) A participant shall:

(a) act as would a reasonably prudent person when engaging in the activities offered by a licensed outfitter or guide or by an unlicensed outfitter's assistant in this state;

(b) receive permission from the outfitter or guide prior to embarking on any self-initiated activity and inform the outfitter or guide of the participant's plans and intentions upon receiving permission to engage in the self-initiated activity.

(2) A participant may not:

(a) interfere with the running or operation of an outfitter's, guide's, or outfitter's assistant's activities when those activities conform to the standards of care set forth in 37-47-402 or 37-47-405;

(b) use the outfitter's, guide's, or outfitter's assistant's equipment, facilities, or services unless the participant has requested and received permission from the outfitter, guide, or outfitter's assistant;

(c) knowingly, purposely, or negligently engage in any type of conduct that contributes to or causes injury to the participant or any other person.

**History:** En. Sec. 4, Ch. 170, L. 1981; Sec. 87-4-163, MCA 1985; redes. 37-47-403 by Sec. 11, Ch. 528, L. 1987; amd. Sec. 17, Ch. 328, L. 1995; amd. Sec. 6, Ch. 241, L. 2013; amd. Sec. 16, Ch. 341, L. 2013.

**37-47-404. Responsibility for violations of law.** (1) A person accompanying a hunting or fishing party as an outfitter, guide, or outfitter's assistant is equally responsible with any person or party engaging the person as an outfitter for any violation of fish and game laws unless the violation is reported to a peace officer by the outfitter, guide, or outfitter's assistant and the outfitter, guide, or outfitter's assistant was not an active participant. An outfitter, guide, or outfitter's assistant who willfully fails or refuses to report any violation of fish and game laws is liable for the penalties provided in this chapter. If a guide or outfitter's assistant violates the laws or applicable regulations relating to fish and game, outfitting, or guiding with actual knowledge of an outfitter engaging the guide or outfitter's assistant, the outfitter is legally responsible for the violation for all purposes under the laws or regulations if the outfitter fails to report the violation to the proper authority.

(2) An outfitter, guide, or outfitter's assistant shall report any violation or suspected violation of fish and game laws that the outfitter, guide, or outfitter's assistant knows has been committed by the employees, contractors, agents, representatives, clients, or participants in the outfitting or guiding activity. The violation or suspected violation must be reported to a peace officer at the earliest possible opportunity.

(3) A person may not hire or retain an outfitter unless the outfitter is currently licensed in accordance with the laws of the state of Montana. A person may not use the services of a guide, and a guide may not offer services unless the services are obtained through an endorsing outfitter.

(4) An outfitter may not place a hired or retained outfitter's assistant in a position of providing services to participants until the outfitter has documentation as specified by board rule under 37-47-201(4)(e).

History: En. Sec. 71, Ch. 173, L. 1917; re-en. Sec. 3750, R.C.M. 1921; re-en. Sec. 3750, R.C.M. 1935; amd. Sec. 6, Ch. 173, L. 1949; amd. Sec. 5, Ch. 184, L. 1951; amd. Sec. 3, Ch. 223, L. 1955; amd. Sec. 2, Ch. 541, L. 1975; R.C.M. 1947, 26-906; amd. Sec. 4, Ch. 545, L. 1981; Sec. 87-4-103, MCA 1985; redes. 37-47-404 by Sec. 11, Ch. 528, L. 1987; amd. Sec. 16, Ch. 220, L. 1993; amd. Sec. 18, Ch. 328, L. 1995; amd. Sec. 40, Ch. 109, L. 2009; amd. Sec. 7, Ch. 241, L. 2013; amd. Sec. 17, Ch. 341, L. 2013; amd. Sec. 4, Ch. 217, L. 2017.

**37-47-405. Duties of outfitter's assistants.** An outfitter's assistant shall:

(1) act as would a reasonably prudent member of the profession while engaging in providing the services authorized to be performed while employed or retained by a licensed outfitter; and

(2) comply with all standards adopted by board rule.

History: En. Sec. 2, Ch. 241, L. 2013.

# ALL BOARDS/PROGRAMS LAWS

## TITLE 37, CHAPTER 1 GENERAL PROVISIONS

This version of the Montana Code Annotated is provided as a tool for board members and department staff. In case of inconsistencies, the text in the West Publishing hardbound copy or the MCA online version from Legislative Services is the official rule text and will prevail.

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# CHAPTER 1

## GENERAL PROVISIONS

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### Part 1

### Duties and Authority of Department, Director, and Boards

**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. In issuing routine licenses for a board, the department shall issue a license within 45 days from the time of receiving a completed application or, within 10 calendar days, provide notice and response timelines to the applicant of deficiencies in the application or provide information as to any exigent circumstances that may delay issuing a license. For nonroutine licenses, the department shall confer with the board to which the licensure application is made and provide an expected timeline to an applicant for issuing a license, including notifying the applicant from that time forward of any deviations from the expected timeline.

(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 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 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, 2023—sec. 5, Ch. 50, L. 2019.*)

**History:** En. 82A-1603 by Sec. 1, Ch. 272, L. 1971; R.C.M. 1947, 82A-1603; amd. Sec. 1, Ch. 293, L. 1981; amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 1, Ch. 390, L. 1983; amd. Sec. 1, Ch. 307, L. 1985; amd. Sec. 42, Ch. 83, L. 1989; amd. Sec. 6, Ch. 413, L. 1989; amd. Sec. 21, Ch. 429, L. 1995; amd. Sec. 106, Ch. 483, L. 2001; amd. Sec. 6, Ch. 467, L. 2005; amd. Sec. 17, Ch. 11, L. 2007; amd. Sec. 39, Ch. 44, L. 2007; amd. Sec. 1, Ch. 225, L. 2007; amd. Sec. 4, Ch. 427, L. 2015; amd. Sec. 1, Ch. 195, L. 2019.

**37-1-102. Renumbered 37-1-121.** Code Commissioner, 1981.

**37-1-103. Renumbered 37-1-131.** Code Commissioner, 1981.

**37-1-104. Standardized forms.** The department shall adopt standardized forms and processes to be used by the boards and department programs. The standardization is to streamline processes, expedite services, reduce costs and waste, and facilitate computerization.

**History:** En. Sec. 2, Ch. 293, L. 1981; amd. Sec. 7, Ch. 467, L. 2005.

**37-1-105. Reporting disciplinary actions against licensees.** The department has the authority and shall require that all boards and department programs require each applicant for licensure or renewal to report any legal or disciplinary action against the applicant that relates to the propriety of the applicant's practice of or fitness to practice the profession or occupation for which the applicant seeks licensure. Failure to furnish the required information, except pursuant to 37-1-138, or the filing of false information is grounds for denial or revocation of a license.

**History:** En. Sec. 3, Ch. 293, L. 1981; amd. Sec. 5, Ch. 271, L. 2003; amd. Sec. 8, Ch. 467, L. 2005.

**37-1-106. Biennial report.** The department, in cooperation with each licensing board, shall prepare a biennial report. The biennial report of the department shall contain for each board a summary of the board's activities, the board's goals and objectives, a detailed breakdown of board revenues and expenditures, statistics illustrating board activities concerning licensing, summary of complaints received and their disposition, number of licenses revoked or suspended, legislative or court action affecting the board, and any other information the department or board considers relevant. The department shall submit the report to the office of budget and program planning as a part of the information required by 17-7-111.

**History:** En. Sec. 4, Ch. 293, L. 1981; amd. Sec. 10, Ch. 125, L. 1983; amd. Sec. 32, Ch. 112, L. 1991; amd. Sec. 30, Ch. 349, L. 1993.

**37-1-107. Joint meetings -- department duties.** (1) The department shall convene a joint meeting once every 2 years of two or more boards that:

(a) have licensees with dual licensure in related professions or occupations;

(b) have licensees licensed by another board in a related profession or with similar scopes of practice, including but not limited to:

(i) health care boards;

(ii) mental health care boards;

(iii) design boards;

(iv) therapeutic boards; or

(v) technical boards; or

(c) have issues of joint concern or related jurisdiction with each other.

(2) A quorum is not required for the joint meeting. However, one member from each board shall attend.

(3) The department shall report to the economic affairs interim committee in accordance with **5-11-210** with regard to attendance and issues of concern addressed by the boards.

**History:** En. Sec. 1, Ch. 11, L. 2007; amd. Sec. 66, Ch. 261, L. 2021.

**37-1-108. Rules governing active supervision.** The department may adopt rules necessary to carry out active supervision of board actions as provided for in 37-1-121 and 37-1-122.

**History:** En. Sec. 5, Ch. 322, L. 2017.

**37-1-109. Cease and desist -- injunction -- criminal penalties.** (1) The department may issue a cease and desist order if the department determines through the receipt of credible evidence that a person is acting, has acted, or is about to act related to a profession or occupation in Title 37:

- (a) without the license required to practice the profession or occupation;
- (b) with a restricted title or designation of the profession or occupation without meeting the requirements for that use; or
- (c) in violation of a statute or rule of the profession or occupation.

(2) A cease and desist order issued under this section must be served pursuant to Rule 4, M.R.Civ.P. The order is effective upon service. Proof of service constitutes notice to the person of the existence and contents of the order.

(3) The screening panel of a board or the department on behalf of a program may assess a penalty of not more than \$1,000 a day for each day a cease and desist order issued under this section is violated. Fifty percent of the penalty must be deposited in the state special revenue fund of the board or program, and the remainder must be deposited in the state general fund.

(4) (a) A board, following a vote of its screening panel, or the department, on behalf of a program, may institute and maintain in the name of the state an action for injunction or another civil remedy in district court to enforce a cease and desist order issued under this section. Proof of inadequacy of a legal remedy or proof of substantial or irreparable damage from continued violation is not required.

(b) The board or department is entitled to its costs, including the costs of investigation and attorney fees, incurred in seeking a district court order under this section.

(c) A person who knowingly or purposely violates a district court injunction under this section is guilty of a felony and subject to the penalties set forth in **46-18-213**.

(5) An officer, agent, partner, or member of a business entity who knowingly and personally participates in a violation of this section is subject to the penalties prescribed by this section.

(6) The remedies provided by this section are in addition to and do not limit the remedies and actions otherwise permitted or required by law.

**History:** En. Sec. 1, Ch. 366, L. 2023.

**37-1-110 through 37-1-120 reserved.**

**37-1-121. Duties of commissioner -- definitions.** (1) In addition to the powers and duties under **2-15-112** and **2-15-121**, the commissioner of labor and industry shall:

(a) at the request of a party, appoint an impartial hearings examiner to conduct hearings whenever any board or department program holds a contested case hearing. The hearings examiner shall conduct hearings in a proper and legal manner.

(b) establish the qualifications of and hire all personnel to perform the administrative, legal, and clerical functions of the department for the boards. Boards within the department do not have authority to establish the qualifications of, hire, or terminate personnel. The department shall consult with the boards regarding recommendations for qualifications for executive or executive director positions.

(c) approve all contracts and expenditures by boards within the department. A board within the department may not enter into a contract or expend funds without the approval of the commissioner.

(d) provide oversight and supervision of the duties and authority exercised by boards regulated under Title 37, other than chapters 42, 43, and 61, by exercising active supervision authority to approve or disapprove any board action identified by the department as restraining or potentially restraining competition in trade or commerce. Subject to the provisions of **37-1-122(6)**, the commissioner shall determine if the board action is made or taken pursuant to a clearly articulated state policy and if the restraint or potential restraint of trade or commerce is reasonable and necessary to protect the public health, safety, or welfare. Any approval or disapproval under this subsection (1)(d) must be in writing, comply with the provisions in **37-1-122**, and set forth the particular reasons supporting the determination. A disapproval determination may include the commissioner's recommended modifications, if any, for the board's consideration. The commissioner may assign duties, as necessary, but may not assign final approval or disapproval.

(2) If the department disapproves or modifies any board action under subsection (1)(d), the department and not the board may be liable for claims resulting from the disapproval or modification.

(3) As used in this chapter, the following definitions apply:

(a) "Board action" means a policy, rule, or other action taken by a board subject to subsection (1)(d).

(b) "Commissioner" means the commissioner of labor and industry unless otherwise specified.

**History:** En. 82A-1604 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 14, Ch. 533, L. 1977; R.C.M. 1947, 82A-1604; amd. Sec. 3, Ch. 274, L. 1981; Sec. 37-1-102, MCA 1979; redes. 37-1-121 by Code Commissioner, 1981; amd. Sec. 1, Ch. 165, L. 1985; amd. Sec. 22, Ch. 429, L. 1995; amd. Sec. 107, Ch. 483, L. 2001; amd. Sec. 9, Ch. 467, L. 2005; amd. Sec. 2, Ch. 322, L. 2017.

**37-1-122. Active supervision -- rebuttable presumption -- reconsideration.** (1) (a) Before making a determination approving or disapproving a board action subject to active supervision as provided in **37-1-121(1)(d)**, the commissioner of labor and industry shall:

(i) notify the affected board and the economic affairs interim committee in writing of the particular action identified for commissioner review;

(ii) give the board a timeframe of at least 30 days in which to provide the commissioner with written comments and materials justifying the proposed action; and

(iii) meet with the board or its representatives regarding the board action.

(b) The commissioner may require that the board provide the commissioner with other relevant information, including but not limited to comments, documents, or other material submitted to the board regarding the board action.

(c) The commissioner may approve a board action subject to active supervision under **37-1-121(1)(d)** without the notice and opportunity for board comment required under subsection (1)(a) if the commissioner has sufficient information to act.

(2) (a) There is a rebuttable presumption that if a board has not received a written notice as provided in **37-1-121(1)(d)** regarding a board action within 30 days, that the board action is presumed to be approved by the commissioner because the department has determined the board action will not unreasonably restrain or potentially unreasonably restrain competition in trade or commerce.

(b) At any time a board may request that the department or commissioner confirm in writing that a board action is not subject to active supervision under **37-1-121(1)(d)** because the commissioner has determined that the board action will not unreasonably restrain or potentially unreasonably restrain competition in trade or commerce.

(3) If the commissioner determines that a board action is subject to active supervision procedures under **37-1-121(1)(d)** and this section, the commissioner shall issue a written determination within 30 days after meeting with the board or its representatives as provided in subsection (1).

(4) (a) The board may request that the commissioner reconsider the determination. A request under this subsection (4) must be in writing, provide any additional supporting materials or arguments, and be received by the commissioner within 10 days after issuance of the commissioner's written determination.

(b) The commissioner may meet with the board or representatives of the board as part of the reconsideration process.

(c) The commissioner shall issue a written reconsideration decision within 10 days of receiving the written request for a reconsideration or within 10 days after meeting with the board or its representatives regarding the redetermination.

(5) This section may not be construed to mean that the commissioner's determination under **37-1-121(1)(d)** or the process described in this section is a contested case proceeding as defined in **2-4-102**.

(6) (a) After the economic affairs interim committee is notified of the commissioner's decision to issue a written determination or redetermination, the committee shall notify the commissioner if the committee plans to provide an opportunity for public comment on the commissioner's action at the next committee meeting.

(b) The commissioner shall notify the economic affairs interim committee of a final determination under this section. The committee shall follow the procedures in Title 2, chapter 4, if the committee decides to conduct a review. A final determination of the commissioner may be suspended as provided in **2-4-305(9)** whether the determination is for a rule or for another board action.

**History:** En. Sec. 4, Ch. 322, L. 2017.

**37-1-123. Appointment -- qualifications -- terms.** (1) The governor shall appoint the members of a board designated under **2-15-1730** through **2-15-1782** in accordance with this section and with the consent of the senate.

(2) (a) The governor has the authority to remove members of the board with reasonable cause, including but not limited to documented misconduct, incompetence, or neglect of duty.

(b) A person removed from a board by the governor may request reconsideration of the removal. The request for reconsideration must be submitted to the governor within 14 days of the removal. The governor has 14 days to rescind or reaffirm the removal from the board.

(3) Each board must be composed of professional and public members.

(4) (a) Each professional member of a board, while serving as a board member:

(i) must be a resident of this state and at least 18 years of age; and

(ii) must be currently practicing in the profession or occupation and have an active license in this state for at least 1 year and in good standing for the profession or occupation in which the member is appointed to serve.

(b) For the purposes of subsection (4)(a), "good standing" means an active license unencumbered by a final order of disciplinary action or administrative suspension.

(5) (a) Each public member of the board must be a resident of this state and at least 18 years of age.

(b) A public member may not be:

(i) the spouse, parent, or child of a current or former licensee of the board; or  
(ii) a person who currently or within the 3 years prior to appointment had any material financial interest in the provision of professional services or engaged in any activity related to the practice of the profession regulated by the board on which the public member is appointed to serve, except as a consumer.

(6) Each board member shall maintain eligibility to serve on the board by avoiding or disclosing conflicts of interest or relationships that would interfere with the board mission of public protection.

(7) A board member may not have a financial interest in the provision of continuing education to any licensee if that continuing education is required by statute or rule.

(8) Each member of the board shall annually attest to having completed coursework or training of a duration and covering content provided by the department to address relevant regulatory issues, including role of the board, role of the board member, conflict of interest, competition, administrative procedures, enforcement, and immunity.

(9) Except as provided in subsection (10), board members must be appointed by the governor with the consent of the senate for a term of 4 years unless appointed to fill a vacancy that occurs prior to the expiration of a former member's full term. A member appointed to fill a vacancy under this section shall serve the remaining portion of the unexpired term. Appointments made when the legislature is not in session must be confirmed at the next regular legislative session.

(10) The terms of the board members begin on July 1 and are staggered. Subject to **2-16-213**, each member shall serve until the expiration of their term unless the member cannot serve because of removal or resignation from board membership.

(11) A member may serve two consecutive full terms and may not be reappointed within 4 years of the completion of the member's second consecutive full term except in cases when no qualified applications are received for membership on the board. For the purposes of this section, an appointment to fill an unexpired term does not constitute a full term.

**History:** En. Sec. 1, Ch. 620, L. 2023.

**37-1-124. Board organization -- meetings -- compensation -- department allocation.** (1) The board shall annually elect a presiding officer and a vice presiding officer to serve in the absence of the presiding officer. The presiding officer shall preside at all meetings of the board and perform duties customarily associated with the position. The presiding officer may establish board committees to further board business and designate board members as committee members.

(2) A presiding officer elected by the board shall serve a 1-year term commencing at the conclusion of the meeting at which the presiding officer is elected and ending on the election of their successor. A presiding officer may serve no more than four consecutive 1-year terms.

(3) The board shall meet at least annually to conduct business. A majority of the membership of the board constitutes a quorum to conduct business.

(4) Members of the board are entitled to compensation and travel expenses as provided in **37-1-133**.

(5) A board designated under **2-15-1730** through **2-15-1782** is allocated to the department for administrative purposes only, as prescribed in **2-15-121**.

**History:** En. Sec. 2, Ch. 620, L. 2023.

**37-1-125 through 37-1-129 reserved.**

**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.

(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 46 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, regardless of the specific term used for the permission,

including permit, certificate, recognition, or registration.

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

**History:** En. Sec. 5, Ch. 274, L. 1981; amd. Sec. 108, Ch. 483, L. 2001; amd. Sec. 10, Ch. 467, L. 2005; amd. Sec. 7, Ch. 502, L. 2007.

**37-1-131. Duties of boards -- quorum required.** (1) Under the active supervision of the state as described in **37-1-121(1)(d)**, a quorum of each board within the department shall:

(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 safety;

(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. The board may not expand a program if the board does not have adequate money and appropriation authority available.

(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 under the active supervision of the state as described in **37-1-121(1)(d)** 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 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;

(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; and

(d) request that the applicant make a personal appearance before the board for nonroutine license applications as defined by the board.

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

**History:** En. 82A-1605 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 11, Ch. 250, L. 1973; R.C.M. 1947, 82A-1605(1) thru (3); amd. Sec. 3, Ch. 274, L. 1981; Sec. 37-1-103, MCA 1979; redes. 37-1-131 by Code Commissioner, 1981; amd. Sec. 2, Ch. 165, L. 1985; amd. Sec. 1, Ch. 90, L. 1991; amd. Sec. 10, Ch. 619, L. 1993; amd. Sec. 23, Ch. 429, L. 1995; amd. Sec. 6, Ch. 492, L. 2001; amd. Sec. 8, Ch. 416, L. 2005; amd. Sec. 11, Ch. 467, L. 2005; amd. Sec. 2, Ch. 225, L. 2007; amd. Sec. 8, Ch. 502, L. 2007; amd. Sec. 1, Ch. 51, L. 2011; amd. Sec. 3, Ch. 122, L. 2011; amd. Sec. 2, Ch. 80, L. 2015; amd. Sec. 3, Ch. 322, L. 2017.

**37-1-132. Nominees for appointment to licensing and regulatory boards.** Private associations and members of the public may submit to the governor lists of nominees for appointment to professional and occupational licensing and regulatory boards. The governor may consider nominees from the lists when making appointments to such boards.

**History:** En. Sec. 9, Ch. 244, L. 1981.

**37-1-133. Board members' compensation and expenses.** Unless otherwise provided by law, each member of a board allocated to the department is entitled to receive \$100 per day compensation and

travel expenses, as provided for in 2-18-501 through 2-18-503, for each day spent on official board business.

Board members who conduct official board business in their city of residence are entitled to receive a midday meal allowance, as provided for in 2-18-502. Ex officio board members may not receive compensation but shall receive travel expenses.

**History:** En. Sec. 1, Ch. 474, L. 1981; amd. Sec. 2, Ch. 123, L. 1983; amd. Sec. 4, Ch. 672, L. 1983; Sec. 37, Ch. 620, L. 2023.

**37-1-134. Boards — costs.** (1) Each board allocated to the department shall set board fees related to its program area that provide the amount of money usually needed for the operation of the board for services, including but not limited to licensing, reciprocity, renewals, applications, inspections, investigations, compliance, discipline, and audits. The amount needed for the operation of the board is based on the license renewal years as set by the board. In setting the fees, the board shall consider the revenues and expenses incurred in the prior 5 licensing renewal years, but a board's cash balances may not exceed two times the board's annual appropriation level. Unless otherwise provided by law, the department may establish standardized administrative fees. These fees may include but are not limited to fees for administrative services such as license verification, duplicate licenses, late penalty renewals, licensee lists, and other administrative service fees determined by the department as applicable to all boards and department programs. The department shall collect fees on behalf of each board or department program and deposit the fees in the state special revenue fund in the appropriate account for each board or department program. Administrative service costs not related to a specific board or program area may be equitably distributed to board or program areas as determined by the department. Each board and department program shall maintain records sufficient to support the fees charged for each program area.

(2) The department and the boards shall adopt rules regarding all fees.

**History:** En. Sec. 1, Ch. 345, L. 1981; amd. Sec. 12, Ch. 467, L. 2005; amd. Sec. 1, Ch. 187, L. 2015.

**37-1-135. Licensing investigation and review — record access.** Any person, firm, corporation, or association that performs background reviews, complaint investigations, or peer reviews pursuant to an agreement or contract with a state professional or occupational licensing board shall make available to the board and the legislative auditor, upon request, any and all records or other information gathered or compiled during the course of the background review, complaint investigation, or peer review.

**History:** En. Sec. 1, Ch. 242, L. 1981.

**37-1-136. Disciplinary authority of boards -- injunctions.** (1) Subject to **37-1-138**, each licensing board allocated to the department has the authority, in addition to any other penalty or disciplinary action provided by law, to adopt rules specifying grounds for disciplinary action and rules providing for:

- (a) revocation of a license;
- (b) suspension of its judgment of revocation on terms and conditions determined by the board;
- (c) suspension of the right to practice for a period not exceeding 1 year;
- (d) placing a licensee on probation;
- (e) reprimand or censure of a licensee; or
- (f) taking any other action in relation to disciplining a licensee as the board in its discretion considers proper.

(2) Any disciplinary action by a board shall be conducted as a contested case hearing under the provisions of the Montana Administrative Procedure Act.

(3) Notwithstanding any other provision of law, a board may maintain an action to enjoin a person from engaging in the practice of the occupation or profession regulated by the board until a license to practice is procured. A person who has been enjoined and who violates the injunction is punishable for contempt of court.

(4) An action may not be taken against a person who is in compliance with Title 16, chapter 12, part 5.

(5) Rules adopted under subsection (1) must provide for the provision of public notice as required by **37-1-311**.

**History:** En. Sec. 1, Ch. 246, L. 1981; amd. Sec. 6, Ch. 271, L. 2003; amd. Sec. 10, I.M. No. 148, approved Nov. 2, 2004; amd. Sec. 3, Ch. 225, L. 2007; amd. Sec. 62, Ch. 576, L. 2021.

**37-1-137. Grounds for disciplinary action as grounds for license denial — conditions to new licenses.** (1) Unless otherwise provided by law, grounds for disciplinary action by a board allocated to the department of labor and industry against a holder of an occupational or professional license may be, under appropriate circumstances, grounds for either issuance of a probationary license for a period not to exceed 1 year or denial of a license to an applicant.

(2) The denial of a license or the issuance of a probationary license under subsection (1) must be

conducted as a contested case hearing under the provisions of the Montana Administrative Procedure Act.

**History:** En. Sec. 1, Ch. 273, L. 1985; amd. Sec. 109, Ch. 483, L. 2001.

**37-1-138. Protection of professional licenses for activated military reservists — rulemaking authority — definitions.** (1) For purposes of this section, the following definitions apply:

(a) "Activated reservist" means a member of a reserve component who has received federal military orders to report for federal active duty for at least 90 consecutive days.

(b) "License" has the meaning provided in 37-1-302.

(c) "Reserve component" means the Montana national guard or the military reserves of the United States armed forces.

(2) An activated reservist who holds an occupational or professional license may report the reservist's activation to the appropriate professional licensing board or to the department of labor and industry if the licensing requirements are administered by the department. The report must, at a minimum, include a copy of the reservist's orders to federal active duty. The report may request that the reservist's professional license revert to an inactive status.

(3) If an activated reservist has requested that the reservist's license revert to inactive status pursuant to subsection (2), then for the duration of the reservist's active duty service under the orders submitted, the department or licensing board may not:

(a) require the collection of professional licensing fees or continuing education fees from the activated reservist;

(b) require that the activated reservist take continuing education classes or file a report of continuing education classes completed; or

(c) revoke or suspend the activated reservist's professional license, require the license to be forfeited, or allow the license to lapse for failure to pay licensing fees or continuing education fees or for failure to take or report continuing education classes.

(4) (a) Upon release from federal active duty service, the reservist shall send a copy of the reservist's discharge documents to the appropriate professional licensing board or to the department.

(b) The board or department shall evaluate the discharge documents, consider the military position held by the reservist and the duties performed by the reservist during the active duty, and compare the position and duties to the licensing requirements for the profession. The board or department shall also consider the reservist's length of time on federal active duty.

(c) Based on the considerations pursuant to subsection (4)(b) and subject to subsection (5):

(i) the license must be fully restored;

(ii) conditions must be attached to the reservist's continued retention of the license; or

(iii) the license must be suspended or revoked.

(5) (a) A licensing board or the department may adopt rules concerning what conditions may be attached to a reservist's professional license pursuant to subsection (4)(c)(ii).

(b) If conditions are attached pursuant to subsection (4)(c)(ii) or the license is suspended or revoked pursuant to subsection (4)(c)(iii), the affected reservist may, within 90 days of the decision to take the action, request a hearing by writing a letter to the board or department. The board or department shall conduct a requested hearing within 30 days of receiving the written request.

**History:** En. Sec. 2, Ch. 271, L. 2003.

**37-1-139. Definition -- joint duties of boards -- sexual offender evaluator license endorsement -- rulemaking.** (1) As used in this section, "boards" means the following boards jointly:

(a) board of behavioral health as established in **2-15-1744**;

(b) board of medical examiners as established in **2-15-1731**;

(c) board of nursing as established in **2-15-1734**; and

(d) board of psychologists as established in **2-15-1741**.

(2) The boards shall:

(a) jointly establish, develop rules, and maintain standards, consistent with appropriate national standards for evaluation and treatment of sexual offenders, and guidelines for evidence-based assessment, evaluation, treatment, and behavioral monitoring of sexual offenders, including the transition into community-based treatment from a prison setting;

(b) create a subcommittee to draft requirements for sexual offender evaluators. The subcommittee must include one member of each board and two licensees of the boards listed in subsection (1) who have been engaged in the practice of evaluating sexual offenders during the last 4 years.

(c) require sexual offender evaluators to use the following levels of risk designations for a sexual offender:

(i) level 1, the risk of a repeat sexual offense is low;

(ii) level 2, the risk of a repeat sexual offense is moderate; or  
(iii) level 3, the risk of a repeat sexual offense is high, there is a threat to public safety, and the sexual offender evaluator believes that the offender is a sexually violent predator; and

(d) using recommendations from the subcommittee, set and enforce educational and experiential requirements for licensees of each of the boards to obtain a license endorsement as a sexual offender evaluator. A person may not perform sexual offender evaluations for purposes of this section without first obtaining a license endorsement.

(3) The requirements set pursuant to subsection (2)(d) must include that an evaluator:

(a) is a professional licensed in Montana or in another state as:

(i) a physician;

(ii) an advanced practice registered nurse;

(iii) a clinical psychologist;

(iv) a clinical social worker;

(v) a clinical professional counselor; or

(vi) a marriage and family therapist;

(b) has 2,000 documented hours of supervised experience in the evaluation and treatment of sexual offenders, at least 400 hours of which are face-to-face evaluations of sexual offenders or therapy sessions with sexual offenders. The provisions of this subsection (3)(b) do not apply when an evaluator is renewing the endorsement.

(c) has completed at least two sexual offender evaluations under supervision;

(d) is a full or clinical member of at least one relevant national professional organization that has ethics of practice for sexual offender assessment and treatment; and

(e) must renew the license endorsement concurrent with the evaluator's professional license.

**History:** En. Sec. 1, Ch. 481, L. 2021.

### **37-1-140 reserved.**

**37-1-141. License renewal -- lapse -- expiration -- termination.** (1) The renewal date for a license must be set by department rule. The department shall provide notice prior to the renewal date.

(2) To renew a license, a licensee shall submit a completed renewal form, comply with all certification and continuing education requirements as provided by **37-1-306** or **37-1-420**, and remit renewal fees before the end of the renewal period.

(3) A licensee may reactivate a lapsed license within 45 days after the renewal date by following the process in subsection (5) and complying with all certification and educational requirements.

(4) A licensee may reactivate an expired license within 2 years after the renewal date by following the process in subsection (5) and complying with all certification and education requirements that have accrued since the license was last granted or renewed as prescribed by board or department rule.

(5) To reactivate a lapsed license or an expired license, in addition to the respective requirements in subsections (3) and (4), a licensee shall:

(a) submit the completed renewal form;

(b) pay the late penalty fee provided for in subsection (7); and

(c) pay the current renewal fee as prescribed by the department or the board.

(6) (a) A licensee who practices with a lapsed license is not considered to be practicing without a license.

(b) A licensee who practices after a license has expired is considered to be practicing without a license.

(7) The department may assess a late penalty fee for each renewal period in which a license is not renewed. The late penalty fee need not be commensurate with the costs of assessing the fee.

(8) Unless otherwise provided by statute or rule, an occupational or professional license that is not renewed within 2 years of the most recent renewal date automatically terminates. The terminated license may not be reactivated, and a new original license must be obtained.

(9) The department or board responsible for licensing a licensee retains jurisdiction for disciplinary purposes over the licensee for a period of 2 years after the date on which the license lapsed.

(10) This section may not be interpreted to conflict with **37-1-138**.

**History:** En. Sec. 1, Ch. 272, L. 1985; amd. Sec. 13, Ch. 467, L. 2005; amd. Sec. 3, Ch. 80, L. 2015.

### **37-1-142. Terminated.** Sec. 1, Ch. 36, L. 2013.

**History:** En. Sec. 1, Ch. 330, L. 2011.

### **37-1-143 and 37-1-144 reserved.**



**37-1-145. (Temporary) Military training or experience to satisfy licensing or certification requirements -- rulemaking.** (1) Each licensing board or the department on behalf of a program shall adopt rules that provide that certification or licensure requirements established by that board or program may be met by relevant military training, service, or education completed by an individual as a member of the armed forces or reserves of the United States, the national guard of a state, or the military reserves.

(2) (a) An applicant for certification or licensure shall provide to the board or, if applying for licensure by a program, to the department satisfactory evidence, as specified in rule, of receiving military training, service, or education that is equivalent to relevant certification or licensure requirements.

(b) The department and each licensing board shall, upon presentation of satisfactory evidence by an applicant for certification or licensure, accept education, training, or service completed by an individual as a member of the armed forces or reserves of the United States, the national guard of a state, or the military reserves toward the qualifications to receive the license or certification.

**37-1-145. (Effective July 1, 2024) Military training or experience to satisfy licensing or certification requirements -- rulemaking.** Each board and program shall, upon presentation of satisfactory evidence by an applicant for certification or licensure, accept relevant education, training, or service completed in the armed forces or reserves of the United States or the national guard, military reserves, or naval militia of a state toward the qualifications to receive the license or certification.

**History:** En. Sec. 1, Ch. 310, L. 2013, and Sec. 1, Ch. 320, L. 2013; amd. Sec. 67, Ch. 261, L. 2021; amd. Sec. 4, Ch. 390, L. 2023.

**37-1-146. (Effective July 1, 2024) Activated military personnel exemptions.** (1) Upon notice and proof of deployment as described in this subsection, the department shall exempt licensees who deployed to federally funded active duty as military personnel for more than 90 consecutive days from:

(a) the payment of any license renewal or late renewal fees; and

(b) any continuing education or certification requirements or audits for a renewal cycle that falls within the period of active duty and within the 6 months following active duty.

(2) If a license in subsection (1) terminates as provided in **37-1-141**, the board or program may impose reasonable conditions to demonstrate competency as a condition to reactivate the license upon notice and opportunity for a hearing pursuant to **37-1-309**.

**History:** En. Sec. 1, Ch. 390, L. 2023.

**37-1-147. (Effective July 1, 2024) Licensing and certification reciprocity for military members, military spouses, and veterans -- requirements.** (1) A board or program regulated by the department shall issue a license or certificate as provided by Title 37 to a person:

(a) who is licensed or certified in good standing in another state or a United States territory to practice a profession or occupation regulated by the department;

(b) who is a member of the armed forces of the United States or whose spouse is a member of the armed forces of the United States;

(c) who is subject to military orders for a change of station to a duty station in this state, who is in the process of a change of station to a duty station in this state, who has been honorably discharged and is relocated to this state, or whose spouse is the subject of a military transfer to this state; or

(d) who is the spouse of a military member.

(2) In issuing a license or certificate under subsection (1), the board or program may:

(a) issue the person a license or certificate if the board or program determines the requirements for licensure or certification in the other state are substantially equivalent to the requirements in this state; or

(b) if the requirements for licensure or certification are not substantially equivalent, issue the person a temporary license or certificate to authorize the person to practice a profession or occupation while completing any specific requirements by the board or program.

(3) The provisions of subsection (1) do not apply to a person whose license or certificate is not in good standing with another state or who is subject to pending charges or final disciplinary action for unprofessional conduct or impairment.

**History:** En. Sec. 3, Ch. 390, L. 2023.

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## Part 2

### Licensure of Criminal Offenders

**37-1-201. Purpose.** It is the public policy of the legislature of the state of Montana to encourage and contribute to the rehabilitation of criminal offenders and to assist them in the assumption of the responsibilities of citizenship. The legislature finds that the public is best protected when offenders are given the opportunity to secure employment or to engage in a meaningful occupation, while licensure must be conferred with prudence to protect the interests of the public. The legislature finds that the process of licensure will be strengthened by instituting an effective mechanism for obtaining accurate public information regarding a license applicant's criminal background.

**History:** En. 66-4001 by Sec. 1, Ch. 490, L. 1975; R.C.M. 1947, 66-4001; amd. Sec. 1, Ch. 389, L. 2007.

**37-1-202. Intent and policy.** It is the intent of the legislature and the declared policy of the state that occupational licensure be granted or revoked as a police power of the state in its protection of the public health, safety, and welfare.

**History:** En. 66-4002 by Sec. 2, Ch. 490, L. 1975; R.C.M. 1947, 66-4002.

**37-1-203. Conviction not a sole basis for denial.** Criminal convictions shall not operate as an automatic bar to being licensed to enter any occupation in the state of Montana. No licensing authority shall refuse to license a person solely on the basis of a previous criminal conviction; provided, however, where a license applicant has been convicted of a criminal offense and such criminal offense relates to the public health, welfare, and safety as it applies to the occupation for which the license is sought, the licensing agency may, after investigation, find that the applicant so convicted has not been sufficiently rehabilitated as to warrant the public trust and deny the issuance of a license.

**History:** En. 66-4003 by Sec. 3, Ch. 490, L. 1975; R.C.M. 1947, 66-4003.

**37-1-204. Statement of reasons for denial.** When a licensing agency prohibits an applicant from being licensed wholly or partially on the basis of a criminal conviction, the agency shall state explicitly in writing the reasons for the decision.

**History:** En. 66-4004 by Sec. 4, Ch. 490, L. 1975; R.C.M. 1947, 66-4004.

**37-1-205. Licensure on completion of supervision.** Completion of probation or parole supervision without any subsequent criminal conviction is evidence of rehabilitation. However, the facts surrounding the situation that led to the probation or parole supervision may be considered as they relate to the occupation for which a license is sought, and this chapter may not be construed to prohibit licensure of a person while the person is under state supervision if the licensing agency finds insufficient evidence to preclude licensure.

**History:** En. 66-4005 by Sec. 5, Ch. 490, L. 1975; R.C.M. 1947, 66-4005; amd. Sec. 1349, Ch. 56, L. 2009.

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## Part 3

# Uniform Professional Licensing and Regulation Procedures

**37-1-301. Purpose.** The purpose of this part is to establish uniform guidelines for the licensing and regulation of professions and occupations under the jurisdiction of professional and occupational licensing boards governed by this part.

**History:** En. Sec. 1, Ch. 429, L. 1995.

**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) "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) "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;

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

(d) whether a board should seek an injunction.

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

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

**History:** En. Sec. 2, Ch. 429, L. 1995; amd. Sec. 110, Ch. 483, L. 2001; amd. Sec. 14, Ch. 467, L. 2005; amd. Sec. 9, Ch. 502, L. 2007.

**37-1-303. Scope.** This part governs the licensure, the practice and unauthorized practice, and the discipline of professions and occupations governed by this title unless otherwise provided by statutes relating to a specific board and the profession or occupation it regulates. The provisions of this chapter must be construed to supplement the statutes relating to a specific board and the profession it regulates. The method for initiating and judging a disciplinary proceeding, specified in 37-1-307(1)(d), must be used by a board in all disciplinary proceedings involving licensed professionals.

**History:** En. Sec. 3, Ch. 429, L. 1995; amd. Sec. 40, Ch. 44, L. 2007.

**37-1-304. Licensure of out-of-state applicants -- reciprocity.** (1) Except as provided in Title 37, chapter 39, the board shall issue a license to practice without examination to a person licensed in another state if the board determines that:

(a) the other state's license standards at the time of application to this state are substantially equivalent to or greater than the standards in this state; and

(b) there is no reason to deny the license under the laws of this state governing the profession or occupation.

(2) The license may be issued if the applicant affirms or states in the application that the applicant has requested verification from the state or states in which the person is licensed that the person is currently licensed and is not subject to pending charges or final disciplinary action for unprofessional conduct or impairment. If the board or its screening panel finds reasonable cause to believe that the applicant falsely affirmed or stated that the applicant has requested verification from another state, the board may summarily suspend the license pending further action to discipline or revoke the license.

(3) This section does not prevent a board from entering into a reciprocity agreement with the licensing authority of another state or jurisdiction. Except as provided in Title 37, chapter 39, the agreement may not permit out-of-state licensees to obtain a license by reciprocity within this state if the license applicant has not met standards that are substantially equivalent to or greater than the standards required in this state as determined by the board on a case-by-case basis.

History: En. Sec. 4, Ch. 429, L. 1995; amd. Sec. 1, Ch. 210, L. 1997; amd. Sec. 1, Ch. 100, L. 2011; amd. Sec. 1, Ch. 83, L. 2019; amd. Sec. 6, Ch. 590, L. 2023; amd. Sec. 35, Ch. 713, L. 2023.

**37-1-305. Temporary practice permits.** (1) (a) A board may issue a temporary practice permit to a person licensed in another state that has licensing standards substantially equivalent to those of this state if the board determines that there is no reason to deny the license under the laws of this state governing the profession or occupation.

(b) The board shall issue a temporary practice permit as provided in this section within 45 calendar days of receiving a completed application. The board shall notify an applicant within 10 days of receiving an application under this section of deficiencies in the application or provide information as to any exigent circumstances that may delay issuing a temporary practice permit.

(c) The person may practice under the permit until a license is granted or until a notice of proposal to deny a license is issued.

(d) The permit may be issued in the board's discretion if the applicant verifies or states in the application that the applicant has requested verification from the state or states in which the person is licensed that the person is currently licensed and is not subject to pending charges or final disciplinary action for unprofessional conduct or impairment. If the board or its screening panel finds reasonable cause to believe that the applicant falsely affirmed or stated that the applicant has requested verification from the other state or states, the board may summarily suspend the permit pending further action to discipline or revoke the permit.

(2) A board may issue a temporary practice permit to a person seeking licensure in this state who has met all licensure requirements other than passage of the licensing examination. Except as provided in 37-68-311 and 37-69-306, a permit is valid until the person either fails the first license examination for which the person is eligible following issuance of the permit or passes the examination and is granted a license. Determination regarding whether the applicant has met all licensure requirements except passage of the licensing examination must occur within 45 calendar days on a routine, complete application.

History: En. Sec. 5, Ch. 429, L. 1995; amd. Sec. 1, Ch. 203, L. 1999; amd. Sec. 2, Ch. 100, L. 2011; amd. Sec. 2, Ch. 195, L. 2019.

**37-1-306. Continuing education — certification — other qualifications for continued licensure — audit.** (1) A board may require licensees to participate in flexible, cost-efficient, effective, and geographically accessible continuing education or continued state, regional, or national certification for licensure.

(2) A board that requires continuing education or state, regional, or national certification may not audit or require proof of continuing education or certification as a precondition for license renewal. However, a licensee who reactivates a license after the license has expired, as provided in 37-1-141, is subject to a mandatory continuing education audit.

(3) Except as provided in 37-50-305, after the lapsed date provided for in 37-1-141, the board or department may conduct a random audit of up to 50% of all licensees who have renewed their licenses to determine compliance with board or program continuing education requirements.

(4) The board or department may audit licensees for compliance with state, regional, or national certification or other board or department requirements.

(5) The board or department shall provide a licensee not in compliance with continuing education or certification requirements with an opportunity to cure the noncompliance as provided in 37-1-321.

History: En. Sec. 6, Ch. 429, L. 1995; amd. Sec. 15, Ch. 467, L. 2005; amd. Sec. 4, Ch. 80, L. 2015; amd. Sec. 1, Ch. 50, L. 2019.

**37-1-307. Board authority.** (1) A board may:

(a) hold hearings as provided in this part;

(b) issue subpoenas requiring the attendance of witnesses or the production of documents and administer oaths in connection with investigations and disciplinary proceedings under this part. Subpoenas must be relevant to the complaint and must be signed by a member of the board. Subpoenas may be enforced as provided in 2-4-104.

(c) authorize depositions and other discovery procedures under the Montana Rules of Civil Procedure in connection with an investigation, hearing, or proceeding held under this part;

(d) establish a screening panel to determine whether there is reasonable cause to believe that a licensee has violated a particular statute, rule, or standard justifying disciplinary proceedings. A screening panel is an agency for purposes of summary suspensions under 2-4-631. A screening panel shall specify in writing the particular statute, rule, or standard that the panel believes may have been violated. The screening panel shall also state in writing the reasonable grounds that support the panel's finding that a violation may have occurred. The assigned board members may not subsequently participate in a hearing of the case. The final decision on the case must be made by a majority of the board members who did not serve on the screening panel for the case.

(e) grant or deny a license within 45 calendar days of receiving a complete application, including the confidential criminal justice information report, and notify an applicant within 10 days of receiving an application of any deficiencies for an incomplete application or provide information as to any exigent circumstances that may delay issuing a license in the 45 days; and

(f) upon a finding of unprofessional conduct by an applicant or license holder, impose a sanction provided by this chapter.

(2) Each board is designated as a criminal justice agency within the meaning of 44-5-103 for the purpose of obtaining confidential criminal justice information, as defined in 44-5-103, regarding the board's licensees and license applicants and regarding possible unlicensed practice, but the board may not record or retain any confidential criminal justice information without complying with the provisions of the Montana Criminal Justice Information Act of 1979, Title 44, chapter 5.

(3) A board may contact and request information from the department of justice, which is designated as a criminal justice agency within the meaning of 44-5-103, for the purpose of obtaining criminal history record information regarding the board's licensees and license applicants and regarding possible unlicensed practice.

(4) (a) A board that is statutorily authorized to obtain a criminal record background report as a prerequisite to the issuance of a license shall require the applicant to submit a full set of fingerprints for the purpose of fingerprint checks by the Montana department of justice and the federal bureau of investigation.

(b) The applicant shall sign a release of information to the board and is responsible to the department of justice for the payment of all fees associated with the criminal record background report.

(c) Upon completion of the criminal record background check, the department of justice shall forward all criminal history record information, as defined in 44-5-103, in any jurisdiction to the board as authorized in 44-5-303.

(d) At the conclusion of any background check required by this section, the board must receive the criminal record background report but may not receive the fingerprint card of the applicant. Upon receipt of the criminal record background report, the department of justice shall promptly destroy the fingerprint card of the applicant.

(5) Each board shall require a license applicant to provide the applicant's social security number as a part of the application. Each board shall keep the social security number from this source confidential, except that a board may provide the number to the department of public health and human services for use in administering Title IV-D of the Social Security Act. *(Bracketed language terminates on occurrence of contingency—sec. 1, Ch. 27, L. 1999.)*

**History:** En. Sec. 7, Ch. 429, L. 1995; amd. Sec. 22, Ch. 552, L. 1997; amd. Sec. 2, Ch. 230, L. 1999; amd. Sec. 8, Ch. 492, L. 2001; amd. Sec. 16, Ch. 467, L. 2005; amd. Sec. 2, Ch. 389, L. 2007; amd. Sec. 3, Ch. 100, L. 2011; amd. Sec. 3, Ch. 195, L. 2019; amd. Sec. 1, Ch. 287, L. 2019.

**37-1-308. Unprofessional conduct -- complaint -- investigation -- immunity -- exceptions.** (1) Except as provided in subsections (4) and (5), a person, government, or private entity may submit a written complaint to the department charging a licensee or license applicant with a violation of this part and specifying the grounds for the complaint.

(2) (a) If the department receives a written complaint or otherwise obtains information that a licensee or license applicant may have committed a violation of this part, the department may, with the concurrence of a member of the screening panel established in **37-1-307**, investigate to determine whether there is reasonable cause to believe that the licensee or license applicant has committed the violation.

(b) Except as provided in subsection (2)(c), if the written complaint or information that a licensee or license applicant may have violated a requirement of this part is based on the licensee or license applicant's exercise of rights protected under the free exercise clause or the free speech clause of the Montana constitution or the United States constitution, then the investigation of the licensee or license applicant must cease immediately, and the complaint must be dismissed.

(c) If the complaint alleges an activity by a licensee whose free speech rights are protected under **50-4-1106**, the department or licensing board receiving the complaint must comply with the notification requirements of **50-4-1106**.

(3) A person or private entity, but not a government entity, filing a complaint under this section in good faith is immune from suit in a civil action related to the filing or contents of the complaint.

(4) A person under legal custody of a county detention center or incarcerated under legal custody of the department of corrections may not file a complaint under subsection (1) against a licensed or certified provider of health care or rehabilitative services for services that were provided to the person while detained or confined in a county detention center or incarcerated under legal custody of the department of corrections unless the complaint is first reviewed by a correctional health care review team provided for in **37-1-331**.

(5) A board member may file a complaint with the board on which the member serves or otherwise act in concert with a complainant in developing, authoring, or initiating a complaint to be filed with the board if the board member determines that there are reasonable grounds to believe that a particular statute, rule, or standard has been violated.

**History:** En. Sec. 8, Ch. 429, L. 1995; amd. Sec. 4, Ch. 475, L. 1997; amd. Sec. 1, Ch. 375, L. 1999; amd. Sec. 9, Ch. 492, L. 2001; amd. Sec. 7, Ch. 381, L. 2023.

**37-1-309. Notice — request for hearing.** (1) If a reasonable cause determination is made pursuant to 37-1-307 that a violation of this part has occurred and the provisions of 37-1-321 do not apply, a notice must be prepared by department legal staff and served on the alleged violator. The notice may be served by certified mail to the current address on file with the board or by other means authorized by the Montana Rules of Civil Procedure. The notice may not allege a violation of a particular statute, rule, or standard unless the board or the board's screening panel, if one has been established, has made a written determination that there are reasonable grounds to believe that the particular statute, rule, or standard has been violated.

(2) A licensee or license applicant shall give the board the licensee's or applicant's current address and any change of address within 30 days of the change.

(3) The notice must state that the licensee or license applicant may request a hearing to contest the charge or charges. A request for a hearing must be in writing and received in the offices of the department within 20 days after the licensee's receipt of the notice. Failure to request a hearing constitutes a default on the charge or charges, and the board may enter a decision on the basis of the facts available to it.

**History:** En. Sec. 9, Ch. 429, L. 1995; amd. Sec. 10, Ch. 492, L. 2001; amd. Sec. 6, Ch. 80, L. 2015.

**37-1-310. Hearing — adjudicative procedures.** The procedures in Title 2, chapter 4, governing adjudicative proceedings before agencies; the Montana Rules of Civil Procedure; and the Montana Rules of Evidence govern a hearing under this part. A board has all the powers and duties granted by Title 2, chapter 4.

**History:** En. Sec. 10, Ch. 429, L. 1995.

**37-1-311. Findings of fact — order — report.** (1) If the board decides by a preponderance of the evidence, following a hearing or on default, that a violation of this part occurred, the department shall prepare and serve the board's findings of fact and an order as provided in Title 2, chapter 4. If the licensee or license applicant is found not to have violated this part, the department shall prepare and serve the board's findings of fact and an order of dismissal of the charges.

(2) (a) The department shall within a reasonable amount of time report to the public the issuance of a summary suspension, a notice under 37-1-309, an accepted stipulation, a hearing examiner's proposed decision, and a final order.

(b) In addition to any other means of notice, the department shall post the required information on a publicly available website.

(c) This subsection (2) may not be construed to require a meeting to be open or records to be disseminated when the demands of individual privacy clearly exceed the merits of public disclosure.

**History:** En. Sec. 11, Ch. 429, L. 1995; amd. Sec. 4, Ch. 225, L. 2007.

**37-1-312. Sanctions — stay — costs — stipulations.** (1) Upon a decision that a licensee or license applicant has violated this part or is unable to practice with reasonable skill and safety due to a physical or mental condition or upon stipulation of the parties as provided in subsection (3), the board may issue an order providing for one or any combination of the following sanctions:

(a) revocation of the license;

(b) suspension of the license for a fixed or indefinite term;

(c) restriction or limitation of the practice;

(d) satisfactory completion of a specific program of remedial education or treatment;

(e) monitoring of the practice by a supervisor approved by the disciplining authority;

(f) censure or reprimand, either public or private;  
(g) compliance with conditions of probation for a designated period of time;  
(h) payment of a fine not to exceed \$1,000 for each violation. Fines must be deposited in the state general fund.

(i) denial of a license application;

(j) refund of costs and fees billed to and collected from a consumer.

(2) A sanction may be totally or partly stayed by the board. To determine which sanctions are appropriate, the board shall first consider the sanctions that are necessary to protect or compensate the public. Only after the determination has been made may the board consider and include in the order any requirements designed to rehabilitate the licensee or license applicant.

(3) The licensee or license applicant may enter into a stipulated agreement resolving potential or pending charges that includes one or more of the sanctions in this section. The stipulation is an informal disposition for the purposes of 2-4-603.

(4) A licensee shall surrender a suspended or revoked license to the board within 24 hours after receiving notification of the suspension or revocation by mailing it or delivering it personally to the board.

**History: En. Sec. 12, Ch. 429, L. 1995.**

**37-1-313. Appeal.** (1) A person who is disciplined by a board under 37-1-308 through 37-1-312 or denied a license may appeal the decision to the district court as provided in Title 2, chapter 4.

(2) A person who disputes the department's deficiency determination made pursuant to 37-1-321 may appeal the decision to the board. Consideration of the dispute is not an adversarial or a contested case hearing. The board's decision may be appealed as provided in subsection (1).

**History: En. Sec. 13, Ch. 429, L. 1995; amd. Sec. 7, Ch. 80, L. 2015.**

**37-1-314. Reinstatement.** A licensee whose license has been suspended or revoked under this part may petition the board for reinstatement after an interval set by the board in the order. The board may hold a hearing on the petition and may deny the petition or order reinstatement and impose terms and conditions as provided in 37-1-312. The board may require the successful completion of an examination as a condition of reinstatement and may treat a licensee whose license has been revoked or suspended as a new applicant for purposes of establishing the requisite qualifications of licensure.

**History: En. Sec. 14, Ch. 429, L. 1995.**

**37-1-315. Enforcement of fine.** (1) If payment of a fine is included in an order and timely payment is not made as directed in the order, the board may enforce the order for payment in the district court of the first judicial district.

(2) In a proceeding for enforcement of an order of payment of a fine, the order is conclusive proof of the validity of the order of payment and the terms of payment.

**History: En. Sec. 15, Ch. 429, L. 1995.**

**37-1-316. Unprofessional conduct.** (1) The following is unprofessional conduct for a licensee or license applicant governed by this part:

(a) conviction, including conviction following a plea of nolo contendere, of a crime relating to or committed during the course of the person's practice or involving violence, use or sale of drugs, fraud, deceit, or theft, whether or not an appeal is pending;

(b) permitting, aiding, abetting, or conspiring with a person to violate or circumvent a law relating to licensure or certification;

(c) fraud, misrepresentation, deception, or concealment of a material fact in applying for or assisting in securing a license or license renewal or in taking an examination required for licensure;

(d) signing or issuing, in the licensee's professional capacity, a document or statement that the licensee knows or reasonably ought to know contains a false or misleading statement;

(e) a misleading, deceptive, false, or fraudulent advertisement or other representation in the conduct of the profession or occupation;

(f) offering, giving, or promising anything of value or benefit to a federal, state, or local government employee or official for the purpose of influencing the employee or official to circumvent a federal, state, or local law, rule, or ordinance governing the licensee's profession or occupation;

(g) denial, suspension, revocation, probation, fine, or other license restriction or discipline against a licensee by a state, province, territory, or Indian tribal government or the federal government if the action is not on appeal, under judicial review, or has been satisfied;

(h) failure to comply with a term, condition, or limitation of a license by final order of a board;

(i) revealing confidential information obtained as the result of a professional relationship without the prior consent of the recipient of services, except as authorized or required by law;

(j) use of alcohol, a habit-forming drug, or a controlled substance as defined in Title 50, chapter 32, to the extent that the use impairs the user physically or mentally in the performance of licensed professional duties;

(k) having a physical or mental disability that renders the licensee or license applicant unable to practice the profession or occupation with reasonable skill and safety;

(l) engaging in conduct in the course of one's practice while suffering from a contagious or infectious disease involving serious risk to public health or without taking adequate precautions, including but not limited to informed consent, protective gear, or cessation of practice;

(m) misappropriating property or funds from a client or workplace or failing to comply with a board rule regarding the accounting and distribution of a client's property or funds;

(n) interference with an investigation or disciplinary proceeding by willful misrepresentation of facts, by the use of threats or harassment against or inducement to a client or witness to prevent them from providing evidence in a disciplinary proceeding or other legal action, or by use of threats or harassment against or inducement to a person to prevent or attempt to prevent a disciplinary proceeding or other legal action from being filed, prosecuted, or completed;

(o) assisting in the unlicensed practice of a profession or occupation or allowing another person or organization to practice or offer to practice by use of the licensee's license;

(p) failing to report the institution of or final action on a malpractice action, including a final decision on appeal, against the licensee or of an action against the licensee by a:

(i) peer review committee;

(ii) professional association; or

(iii) local, state, federal, territorial, provincial, or Indian tribal government;

(q) failure of a health care provider, as defined in **27-6-103**, to comply with a policy or practice implementing **28-10-103(3)(a)**;

(r) conduct that does not meet the generally accepted standards of practice. A certified copy of a malpractice judgment against the licensee or license applicant or of a tort judgment in an action involving an act or omission occurring during the scope and course of the practice is conclusive evidence of but is not needed to prove conduct that does not meet generally accepted standards.

(s) the sole use of any electronic means, including teleconferencing, to obtain the information required for the written certification and accompanying statements used to apply for a registry identification card pursuant to Title 16, chapter 12, part 5.

(2) Notwithstanding the provisions of this section or any other provision of this title governing unprofessional conduct of a licensee or a license applicant under this title, it is not unprofessional conduct for a licensee or a license applicant under this title to engage in the exercise of rights protected under the free exercise clause or the free speech clause of the Montana constitution or the United States constitution.

**History:** En. Sec. 16, Ch. 429, L. 1995; amd. Sec. 12, Ch. 109, L. 2009; amd. Sec. 2, Ch. 158, L. 2009; amd. Sec. 24, Ch. 419, L. 2011; amd. Sec. 63, Ch. 576, L. 2021; amd. Sec. 3, Ch. 381, L. 2023.

**37-1-317. Repealed.** Sec. 10, Ch. 366, L. 2023.\

**History:** En. Sec. 17, Ch. 429, L. 1995; amd. Sec. 3, Ch. 230, L. 1999; amd. Sec. 1, Ch. 402, L. 1999.

**37-1-318. Repealed.** Sec. 10, Ch. 366, L. 2023.

**History:** En. Sec. 18, Ch. 429, L. 1995.

**37-1-319. Rules.** A board may adopt rules:

(1) under the guidelines of 37-1-306, regarding continuing education and establishing the number of hours required each year, the methods of obtaining education, education topics, and carrying over hours to subsequent years;

(2) regarding practice limitations for temporary practice permits issued under 37-1-305 and designed to ensure adequate supervision of the practice until all qualifications for licensure are met and a license is granted;

(3) regarding qualifications for inactive license status that may require compliance with stated continuing education requirements and may limit the number of years a person may remain on inactive status without having to reestablish qualifications for licensure;

(4) regarding maintenance and safeguarding of client funds or property possessed by a licensee and requiring the funds or property to be maintained separately from the licensee's funds and property; and

(5) defining acts of unprofessional conduct, in addition to those contained in 37-1-316, that constitute a threat to public health, safety, or welfare and that are inappropriate to the practice of the



profession or occupation.

History: En. Sec. 19, Ch. 429, L. 1995.

**37-1-320. Mental intent — unprofessional conduct.** A licensee may be found to have violated a provision of 37-1-316 or a rule of professional conduct enacted by a governing board without proof that the licensee acted purposefully, knowingly, or negligently.

History: En. Sec. 7, Ch. 492, L. 2001.

**37-1-321. Authority to administratively suspend license.** (1) A board, the department if authorized by the board, or the department for programs without a board may administratively suspend a license when:

- (a) an audit of continuing education, certification, or other qualifications necessary for continued licensure demonstrates that the licensee is noncompliant with requirements established by the board or by the department for a program;
- (b) the licensee fails to respond to a board or department audit as provided in subsection (1)(a);
- (c) the department receives notice of insufficient funds in the account used by the licensee to pay for an administrative fee or a board fee or fine;
- (d) the department has reasonable grounds to believe the licensee did not possess the qualifications for initial issuance of the license; or
- (e) a licensee fails to comply with the terms of a final order imposed pursuant to 37-1-312 or 37-1-405.

(2) Upon identifying one or more of the deficiencies listed in subsection (1), the department shall inform the licensee in writing and provide the licensee 60 days from the date of the correspondence to cure the deficiency.

(3) If the licensee fails to cure the deficiency as provided in subsection (2), a board, the department if authorized by the board, or the department for programs without a board may administratively suspend the license without additional notice or opportunity for hearing.

(4) (a) The administrative suspension remains in effect until:

- (i) a board, the department if authorized by the board, or the department for programs without a board determines the licensee has cured the deficiency; or
- (ii) the license terminates as provided in 37-1-141.

(b) An administratively suspended license that is not renewed lapses, expires, or terminates as provided in 37-1-141.

(5) A licensee may not use a protected title or practice the licensed profession or occupation while the license is administratively suspended.

(6) To reinstate the administratively suspended license, a licensee must pay an administrative fee established by the department by rule and submit information necessary to cure the deficiencies as determined in the discretion of the department.

(7) Instead of an administrative suspension, the department may refer the deficiencies demonstrated in subsection (1) for disciplinary proceedings as provided in 37-1-309 or 37-1-403, as applicable. A board or the department may not proceed against a licensee for the same act or failure to act under both an administrative suspension as provided in this section and a disciplinary proceeding as provided in 37-1-309 or 37-1-403.

History: En. Sec. 1, Ch. 80, L. 2015.

**37-1-322 through 37-1-330 reserved.**

**37-1-331. Correctional health care review team.** (1) There is a correctional health care review team process in the department. The purpose of a review team is to review complaints filed by an inmate against a licensed or certified provider of health care or rehabilitative services for services that were provided to the person while the person was detained or confined in a county detention center or incarcerated under legal custody of the department of corrections. The inmate may file a complaint directly with the correctional health care review team for review or, if a board receives a complaint that has not been reviewed, the board shall forward the complaint to the review team. If the review team has reason to believe that there has been a violation of this part arising out of health care or rehabilitative services provided to a person detained or confined in a county detention center, the review team shall report the possible violation to the department for appropriate action under 37-1-308.

(2) Each health care licensing board shall solicit and submit to the department a list of licensed or

certified health care or rehabilitative service professionals who have correctional health care experience and who are interested in participating on a team. A current board member may not participate on a review team. The department shall solicit from the administrators of the county detention centers and from the department of corrections names of licensed or certified health care or rehabilitative service providers who have correctional health care or rehabilitative services experience and are interested in participating on a review team. Each member of a review team must have at least 2 years of experience in providing health care or rehabilitative services in a correctional facility or program.

(3) Each correctional health care review team is composed of three members who shall represent health care and rehabilitative service providers who have provided health care or rehabilitative services to incarcerated persons. Two members of the review team must be providers of the same discipline and scope of practice as the provider against whom a complaint was filed, and the third member may be a provider of any other health care or rehabilitative services discipline. The members must be willing to serve without compensation. If available, a correctional health care professional employed by the department of corrections and appointed by the director of the department of corrections may participate on the review team, except when the provider against whom the complaint was filed was employed by the department of corrections.

(4) The members of a review team are appointed by the department from the listing of health care and rehabilitative service providers with correctional experience who have been submitted by each respective board, a county detention center administrator, or the department of corrections as provided in subsection (2). A review team shall meet at least twice a year. Any travel, lodging, meal, or miscellaneous costs incurred by a review team may be recovered through a memorandum of understanding with the agencies who provide medical services to inmates or may be assessed to the licensing or certifying boards of health care and rehabilitative service providers.

(5) The review team shall review each complaint with regard to the health care or rehabilitative services provider's scope of practice. A decision on whether or not to forward the complaint must be made by the majority of the review team. The review team shall submit a written response regarding the decision to the inmate, the county detention center administrator or the department of corrections, and the health care or rehabilitative services provider. If the decision is to not forward the complaint for action under 37-1-308, a record of the complaint may not be forwarded to any licensing or certifying board, but must be retained by the department.

**History: En. Sec. 2, Ch. 375, L. 1999.**

**37-1-332. Repealed.** Sec. 10, Ch. 366, L. 2023.

**History:** En. Sec. 1, Ch. 212, L. 2015; amd. Sec. 16, Ch. 535, L. 2021.

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## Part 4

### Uniform Regulations for Licensing Programs Without Boards

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

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

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

(3) "Investigation" means the inquiry, analysis, audit, or other pursuit of information by the department, with respect to a complaint or other information before the department, 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 department;

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

(d) whether the department should seek an injunction.

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

(a) Title 37, chapter 2, part 6;

(b) Title 37, chapter 16, 40, 56, 60, 72, or 73; or

(c) Title 50, chapter 39, 74, or 76.

(5) "Profession" or "occupation" means a profession or occupation regulated by the department under the provisions of:

(a) Title 37, chapter 2, part 6;

(b) Title 37, chapter 16, 40, 49, 56, 60, 72, or 73; or

(c) Title 50, chapter 39, 74, or 76. (*Terminates June 30, 2031--sec. 10, Ch. 628, L. 2023.*)

**37-1-401. (Effective July 1, 2031) Uniform regulation for licensing programs without boards -- definitions.** As used in this part, the following definitions apply:

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

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

(3) "Investigation" means the inquiry, analysis, audit, or other pursuit of information by the department, with respect to a complaint or other information before the department, 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 department;

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

(d) whether the department should seek an injunction.

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

(a) Title 37, chapter 16, 40, 56, 60, 72, or 73; or

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

(5) "Profession" or "occupation" means a profession or occupation regulated by the department under the provisions of:

(a) Title 37, chapter 16, 40, 49, 56, 60, 72, or 73; or

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

**History:** En. Sec. 1, Ch. 481, L. 1997; amd. Sec. 111, Ch. 483, L. 2001; amd. Sec. 21, Ch. 410, L. 2003; amd. Sec. 18, Ch. 11, L. 2007; amd. Sec. 10, Ch. 502, L. 2007; amd. Sec. 7, Ch. 206, L. 2021; amd. Sec. 2, Ch. 481, L. 2023; amd. Sec. 10, Ch. 482, L. 2023; amd. Sec. 1, Ch. 483, L. 2023; amd. Sec. 1, Ch. 484, L. 2023; amd. Sec. 3, Ch. 628, L. 2023; amd. Sec. 20, Ch. 713, L. 2023.

**37-1-402. Unprofessional conduct -- complaint -- investigation -- immunity.** (1) A person, government, or private entity may submit a written complaint to the department charging a licensee or license applicant with a violation of this part and specifying the grounds for the complaint.

(2) If the department receives a written complaint or otherwise obtains information that a licensee or license applicant may have violated a requirement of this part, the department may investigate to determine whether there is reasonable cause to believe that the licensee or license applicant has committed the violation. However, if the written complaint or information that a licensee or license applicant may have violated a requirement of this part is based on the licensee or license applicant's exercise of rights protected under the free exercise clause or the free speech clause of the Montana constitution or the United States constitution, then the investigation of the licensee or license applicant must cease immediately and the complaint must be dismissed.

(3) A person or private entity, but not a government entity, filing a complaint under this section in good faith is immune from suit in a civil action related to the filing or contents of the complaint.

**History:** En. Sec. 2, Ch. 481, L. 1997; amd. Sec. 4, Ch. 381, L. 2023.

**37-1-403. Notice — request for hearing.** (1) If the department determines that reasonable cause exists supporting the allegation made in a complaint and the provisions of 37-1-321 do not apply, the department legal staff shall prepare a notice and serve the alleged violator. The notice may be served by certified mail to the current address on file with the department or by other means authorized by the Montana Rules of Civil Procedure.

(2) A licensee or license applicant shall give the department the licensee's or applicant's current address and any change of address within 30 days of the change.

(3) The notice must state that the licensee or license applicant may request a hearing to contest the charge or charges. A request for a hearing must be in writing and must be received in the offices of the department within 20 days after the licensee's receipt of the notice. Failure to request a hearing constitutes a default on the charge or charges, and the department may enter a decision on the basis of the facts available to it.

**History:** En. Sec. 3, Ch. 481, L. 1997; amd. Sec. 8, Ch. 80, L. 2015.

**37-1-404. Hearing — adjudicative procedures.** The procedures in Title 2, chapter 4, governing adjudicative proceedings before agencies, the Montana Rules of Civil Procedure, and the Montana Rules of Evidence govern a hearing under this part. The department has all the powers and duties granted by Title 2, chapter 4.

**History:** En. Sec. 4, Ch. 481, L. 1997.

**37-1-405. Findings of fact — order — report.** (1) If the department finds by a preponderance of the evidence, following a hearing or on default, that a violation of this part has occurred, the department shall prepare and serve findings of fact, conclusions of law, and an order as provided in Title 2, chapter 4. If the licensee or license applicant is found not to have violated this part, the department shall prepare and serve an order of dismissal of the charges.

(2) (a) The department shall within a reasonable amount of time report to the public the issuance of a summary suspension, a notice under 37-1-403, an accepted stipulation, a hearing examiner's proposed decision, and a final order.

(b) In addition to any other means of notice, the department shall post the required information on a publicly available website.

(c) This subsection (2) may not be construed to require a meeting to be open or records to be disseminated when the demands of individual privacy clearly exceed the merits of public disclosure.

**History:** En. Sec. 5, Ch. 481, L. 1997; amd. Sec. 5, Ch. 225, L. 2007.

**37-1-406. Sanctions — stay — costs — stipulations.** (1) Upon a decision that a licensee or license applicant has violated this part or is unable to practice with reasonable skill and safety due to a physical or mental condition or upon stipulation of the parties as provided in subsection (4), the department may issue an order providing for one or any combination of the following sanctions:

- (a) revocation of the license;
  - (b) suspension of the license for a fixed or indefinite term;
  - (c) restriction or limitation of the practice;
  - (d) satisfactory completion of a specific program of remedial education or treatment;
  - (e) monitoring of the practice by a supervisor approved by the disciplining authority;
  - (f) censure or reprimand, either public or private;
  - (g) compliance with conditions of probation for a designated period of time;
  - (h) payment of a fine not to exceed \$1,000 for each violation;
  - (i) denial of a license application;
  - (j) refund of costs and fees billed to and collected from a consumer.
- (2) Any fine collected by the department as a result of disciplinary actions must be deposited in

the state general fund.

(3) A sanction may be totally or partly stayed by the department. To determine which sanctions are appropriate, the department shall first consider the sanctions that are necessary to protect or compensate the public. Only after the determination has been made may the department consider and include in the order any requirements designed to rehabilitate the licensee or license applicant.

(4) The licensee or license applicant may enter into a stipulated agreement resolving potential or pending charges that includes one or more of the sanctions in this section. The stipulation is an informal disposition for the purposes of 2-4-603.

(5) A licensee shall surrender a suspended or revoked license to the department within 24 hours after receiving notification of the suspension or revocation by mailing the license or delivering it personally to the department.

**History: En. Sec. 6, Ch. 481, L. 1997.**

**37-1-407. Appeal.** (1) A person who is disciplined by the department under 37-1-402 through 37-1-406 or denied a license may appeal the decision to the district court as provided in Title 2, chapter 4.

(2) A person who disputes the department's deficiency determination made pursuant to 37-1-321 may appeal the decision to the commissioner of labor and industry. Consideration of the dispute is not an adversarial or a contested case hearing. The commissioner's decision may be appealed as provided in subsection (1).

**History: En. Sec. 7, Ch. 481, L. 1997; amd. Sec. 9, Ch. 80, L. 2015.**

**37-1-408. Reinstatement.** A licensee whose license has been suspended or revoked under this part may petition the department for reinstatement after an interval set by the department in the order. The department may hold a hearing on the petition and may deny the petition or order reinstatement and impose terms and conditions as provided in 37-1-312. The department may require the successful completion of an examination as a condition of reinstatement and may treat a licensee whose license has been revoked or suspended as a new applicant for purposes of establishing the requisite qualifications of licensure.

**History: En. Sec. 8, Ch. 481, L. 1997.**

**37-1-409. Enforcement of fine.** (1) If payment of a fine is included in an order and timely payment is not made as directed in the order, the department may enforce the order for payment in the district court of the first judicial district.

(2) In a proceeding for enforcement of an order of payment of a fine, the order is conclusive proof of the validity of the order of payment and the terms of payment.

**History: En. Sec. 9, Ch. 481, L. 1997.**

**37-1-410. Unprofessional conduct.** (1) The following is unprofessional conduct for a licensee or license applicant in a profession or occupation governed by this part:

(a) being convicted, including a conviction following a plea of nolo contendere and regardless of a pending appeal, of a crime relating to or committed during the course of practicing the person's profession or occupation or involving violence, the use or sale of drugs, fraud, deceit, or theft;

(b) permitting, aiding, abetting, or conspiring with a person to violate or circumvent a law relating to licensure or certification;

(c) committing fraud, misrepresentation, deception, or concealment of a material fact in applying for or assisting in securing a license or license renewal or in taking an examination required for licensure;

(d) signing or issuing, in the licensee's professional capacity, a document or statement that the licensee knows or reasonably ought to know contains a false or misleading statement;

(e) making a misleading, deceptive, false, or fraudulent advertisement or other representation in the conduct of the profession or occupation;

(f) offering, giving, or promising anything of value or benefit to a federal, state, or local government employee or official for the purpose of influencing the employee or official to circumvent a federal, state, or local law, rule, or ordinance governing the licensee's profession or occupation;

(g) receiving a denial, suspension, revocation, probation, fine, or other license restriction or discipline against a licensee by a state, province, territory, or Indian tribal government or the federal government if the action is not on appeal or under judicial review or has been satisfied;

(h) failing to comply with a term, condition, or limitation of a license by final order of the department;

(i) having a physical or mental disability that renders the licensee or license applicant unable to practice the profession or occupation with reasonable skill and safety;

(j) misappropriating property or funds from a client or workplace or failing to comply with the department's rule regarding the accounting and distribution of a client's property or funds;

(k) interfering with an investigation or disciplinary proceeding by willful misrepresentation of facts, failure to respond to department inquiries regarding a complaint against the licensee or license applicant, or the use of threats or harassment against or inducement to a client or witness to prevent them from providing evidence in a disciplinary proceeding or other legal action or use of threats or harassment against or inducement to a person to prevent or attempt to prevent a disciplinary proceeding or other legal action from being filed, prosecuted, or completed;

(l) assisting in the unlicensed practice of a profession or occupation or allowing another person or organization to practice or offer to practice the profession or occupation by use of the licensee's license;

(m) using alcohol, an illegal drug, or a dangerous drug, as defined in Title 50, chapter 32, to the extent that the use impairs the user physically or mentally in the performance of licensed professional duties; or

(n) exhibiting conduct that does not meet generally accepted standards of practice. A certified copy of a judgment against the licensee or license applicant or of a tort judgment in an action involving an act or omission occurring within the scope of practice and the course of the practice is considered conclusive evidence of but is not needed to prove conduct that does not meet generally accepted standards.

(2) Notwithstanding the provisions of this section or any other provision of this title governing unprofessional conduct of a licensee or a license applicant under this title, it is not unprofessional conduct for a licensee or a license applicant under this title to engage in the exercise of rights protected under the free exercise clause or the free speech clause of the Montana constitution or the United States constitution.

**History:** En. Sec. 10, Ch. 481, L. 1997; amd. Sec. 11, Ch. 502, L. 2007; amd. Sec. 13, Ch. 109, L. 2009; amd. Sec. 5, Ch. 381, L. 2023.

**37-1-411. Practice without license — investigation of complaint — injunction — penalties. (1)**

The department may investigate a complaint or other information received concerning practice by an unlicensed person of a profession or occupation governed by this part.

(2) The department may file an action to enjoin a person from practicing, without a license, a profession or occupation governed by this part.

**History:** En. Sec. 11, Ch. 481, L. 1997; amd. Sec. 5, Ch. 230, L. 1999.

**37-1-412. Violation of injunction — penalty. (1)** A person who has been enjoined and who violates an injunction issued pursuant to a proceeding under this part may be held in contempt of court and shall pay a civil penalty, as determined by the court, of not more than \$5,000. Fifty percent of the penalty must be deposited in the general fund of the county in which the injunction is issued, and 50% must be deposited in the state general fund.

(2) A person subject to an injunction for practicing without a license may also be subject to criminal prosecution. In a complaint for an injunction or in an affidavit, information, or indictment alleging that a person has engaged in unlicensed practice, it is sufficient to charge that the person engaged in the unlicensed practice of a licensed profession or occupation on a certain day in a certain county without averring further or more particular facts concerning the violation.

(3) Unless otherwise provided by statute, a person practicing a licensed profession or occupation in this state without complying with the licensing provisions of this title is guilty of a misdemeanor punishable by a fine of not less than \$250 or more than \$1,000, imprisonment in the county jail for not less than 90 days or more than 1 year, or both. Each violation of the provisions of this chapter constitutes a separate offense.

**History:** En. Sec. 12, Ch. 481, L. 1997; amd. Sec. 6, Ch. 230, L. 1999.

**37-1-413. Department authority.** For each licensing program regulated by the department under this part, the department is designated as a criminal justice agency within the meaning of 44-5-103 for the purpose of obtaining confidential criminal justice information regarding licensees and license applicants and regarding possible unlicensed practice.

**History:** En. Sec. 4, Ch. 230, L. 1999.

**37-1-414 through 37-1-419 reserved.**

**37-1-420. Continuing education — certification — other qualifications for continued licensure — audit. (1)** The department on behalf of a program without a board may require licensees to participate in flexible, cost-efficient, effective, and geographically accessible continuing education.

(2) As a precondition of license renewal the department may not audit or require proof of

continuing education or certification of a program that requires continuing education or state, regional, or national certification. However, a licensee who reactivates a license after the license has expired, as provided in 37-1-141, is subject to a mandatory continuing education audit.

(3) After the lapsed date provided for in 37-1-141, the department may conduct a random audit of up to 50% of all licensees who have renewed their licenses to determine compliance with a program's continuing education requirements.

(4) The department may audit licensees for compliance with state, regional, or national certification or other department requirements.

(5) The department shall provide a licensee not in compliance with continuing education or certification requirements with an opportunity to cure the noncompliance as provided in 37-1-321.

**History: En. Sec. 5, Ch. 80, L. 2015.**

# The links below are to statutes related to the Board of Outfitters and Boards and Programs under the Department of Labor

## Montana Code Annotated 2023

### TITLE 37. PROFESSIONS AND OCCUPATIONS

## [CHAPTER 47. OUTFITTERS AND GUIDES](#)

- [Part 1. General](#)
- [Part 2. Board of Outfitters](#)
- [Part 3. Licensing](#)
- [Part 4. Relative Duties of Outfitters, Guides, and Participants](#)

## Montana Code Annotated 2023

### *TITLE 2. GOVERNMENT STRUCTURE AND ADMINISTRATION*

### CHAPTER 15. EXECUTIVE BRANCH OFFICERS AND AGENCIES

### Part 17. Department of Labor and Industry

## Board Of Outfitters

**2-15-1773. Board of outfitters.** (1) In accordance with **37-1-123**, there is a board of outfitters.

(2) The board consists of five members:

(a) one outfitter licensed for both hunting and fishing, representing a public land hunting and fishing outfitter knowledgeable in government permitting and preferably with a packing endorsement;

(b) one fishing outfitter;

(c) one outfitter representing a private land hunting outfit;

(d) one hunting and fishing outfitter, with their business being predominately fishing; and

(e) one public member who is a Montana-based business owner who engages in nonoutfitted business that is reliant on the local outdoor recreation industry.

(3) The board is allocated to the department as prescribed in **2-15-121**



# Montana Code Annotated 2023

TITLE 37. PROFESSIONS AND OCCUPATIONS (pertain to all boards and/or programs under the Department of Labor)

## CHAPTER 1. GENERAL PROVISIONS

- [Part 1. Duties and Authority of Department, Director, and Boards](#)
- [Part 2. Licensure of Criminal Offenders](#)
- [Part 3. Uniform Professional Licensing and Regulation Procedures](#)
- [Part 4. Uniform Regulations for Licensing Programs Without Boards](#)

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