

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of)	NOTICE OF PUBLIC HEARING ON
ARM 24.101.402 definitions and)	PROPOSED AMENDMENT AND
24.101.403 administrative fees, and)	REPEAL
the repeal of 24.101.401 purpose,)	
24.101.407 licensing, and 24.101.414)	
renewal notification)	

TO: All Concerned Persons

1. On September 17, 2015, at 10:00 a.m., a public hearing will be held in the Basement Conference Room, 301 South Park Avenue, Basement Floor, Helena, Montana, to consider the proposed amendment and repeal of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Business Standards Division, Department of Labor and Industry, no later than 5:00 p.m., on September 11, 2015, to advise us of the nature of the accommodation that you need. Please contact Darcee Moe, Business Standards Division, Department of Labor and Industry, 301 South Park Avenue, P.O. Box 200514, Helena, Montana 59620-0514; telephone (406) 841-2327; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2313; or damoe@mt.gov (department e-mail).

3. The rules proposed to be amended provide as follows, stricken matter interlined, new matter underlined:

24.101.402 DEFINITIONS As used in conjunction with Title 37, MCA, the following definitions apply:

(1) "Active status" means ~~the license holder is afforded a license status that affords a licensee~~ the rights and privileges to practice under the license while complying with the requirements as set by the licensing entity board or program.

(2) "Administrative fees fee" means a fee ~~charged for products or services provided by the division~~ established by the department to cover the cost of administrative services as provided for in 37-1-134, MCA.

(3) remains the same.

(4) "Disciplinary action" means the procedure by which unprofessional conduct is addressed by the ~~licensing entity~~ board or program pursuant to the contested case hearing provisions of the Montana Administrative Procedure Act (MAPA).

(5) remains the same.

(6) "Expired license" means a license for which the renewal requirements have not been met not renewed within 45 days to two years after the license renewal date. An expired license may be reactivated anytime within these two years.

(7) "Inactive status" means an option provided by some licensing entities in which a licensee may retain a license but the licensee does not intend status that does not authorize the licensee to practice, nor will the licensee engage in licensed activities requiring a license at any time during the duration period of the inactive status license. The licensee may wish to reactivate the inactive status license in the future. An inactive status license must be renewed as prescribed by the licensing entity board or program.

(8) "Lapsed license" means a license that has not been renewed by the license renewal date. A lapsed license may be reactivated at anytime within 45 days following the license renewal date.

(9) "Late penalty fee" means the fee that is required to be paid by a licensee must pay when renewing upon renewal of a license if the licensee failed to renew the license by after the renewal date.

(a) The department may assess late penalty fees for each renewal period in which a license is not renewed.

(b) Late penalty fees need not be commensurate with costs.

~~(10)~~ "License history" means the progression of the license record from original licensure to the current status of the license provided to any requestor.

~~(11)~~ (10) "License verification" means the documentation provided to another licensing entity that may include information supplied for original licensure or the license history information.

~~(12)~~ (11) "New original license" means a license issued to an individual whose previous original license terminated and was not reinstated. In order to To receive a new original license, all current requirements for obtaining an original license must be met including, but not limited to, submitting required application materials, successfully passing the required examinations as applicable, and paying the appropriate fees. The new original license number will remain the same as the original license number.

~~(13)~~ (12) "Nonroutine application" means an application submitted to the division in which the application is defined as nonroutine either by the specific licensing entity's rules or by these rules. In conflicts between the specific licensing entity's rules and these rules, the specific licensing entity's rules govern. that staff has determined requires board review, because it involves:

(a) A nonroutine application means that the applicant has one or more of the following: a pending complaint or pending or final disciplinary action, in any jurisdiction, against a current or previously held professional or occupational license of any type;

(b) evidence of unprofessional conduct as defined by law or rule;

(c) materials that require evaluation by the professional members of the board;

(d) missing documentation due to natural disaster, national emergency, or other good cause supported by reliable information;

(e) a matter specifically defined by board or program rule or law as nonroutine; or

(f) an issue staff deems necessary for the board to review.

~~(i) has pending or completed disciplinary action in this state, or pending or completed disciplinary action in another state, territory, or jurisdiction;~~

~~(ii) is restricted by the terms and conditions of a final order in a disciplinary matter;~~

~~(iii) is required to submit materials that require professional evaluation by another licensee or licensing entity;~~

~~(iv) has loss of documentation due to natural disaster or national emergency;~~

~~or~~

~~(v) is foreign-educated, except for those foreign-educated applicants applying for licensure from the following:~~

~~(A) Board of Medical Examiners;~~

~~(B) Board of Professional Engineers and Professional Land Surveyors; or~~

~~(C) Board of Realty Regulation.~~

~~(14) remains the same but is renumbered (13).~~

~~(15) (14) "Probationary license" means a license, that due to discipline taken against the licensee, signifies the license holder is afforded affords a licensee the rights and privileges to practice under the license while complying with the terms and conditions of a final order in a disciplinary action as issued by the licensing entity.~~

~~(16) (15) "Reactivated license" means a lapsed or expired license that is renewed between the renewal date and two years following the renewal date. In order to reactivate a license, by meeting all renewal requirements must be met.~~

~~(17) (16) "Reactivation of license" means activating a lapsed or expired license.~~

~~(18) (17) "Renewal date" means the date by which an existing license must be renewed as listed in per ARM 24.101.413. Renewal information must be submitted on or before the renewal date in order for to renew a license to be renewed without the assessment of the a late penalty fee.~~

~~(19) (18) "Routine application" means an application submitted to the division in which the application is defined as routine either by the specific licensing entity's rules or by these rules. In conflicts between the specific licensing entity's rules and these rules, the specific licensing entity's rules govern that does not meet the definition of nonroutine as determined in the discretion of licensing staff and by board rule.~~

~~(a) A routine application means that the applicant does not have one or more of the following:~~

~~(i) pending or completed disciplinary action in this state, or pending or completed disciplinary action in another state, territory, or jurisdiction;~~

~~(ii) is not restricted by the terms and conditions of a final order in a disciplinary matter;~~

~~(iii) is not required to submit materials that require professional evaluation by another licensee or licensing entity;~~

~~(iv) loss of documentation due to natural disaster or national emergency; or~~

~~(v) is foreign-educated, except for those foreign-educated applicants applying for licensure from the following:~~

~~(A) Board of Medical Examiners;~~

~~(B) Board of Professional Engineers and Professional Land Surveyors; or~~

~~(C) Board of Realty Regulation.~~

~~(20) "Standardized fee" means an administrative fee for a common product or service that is charged to division customers.~~

~~(21) (19) "Suspended license" means a license, that due to discipline taken following a final disciplinary action against the licensee, signifies the license holder is that no longer afforded affords a licensee the rights and privileges to practice under the license for a period of time specified by the in a final order issued by the licensing entity. This term does not include an administratively suspended license per 37-1-321, MCA.~~

~~(22) (20) "Terminated license" means a license that has not been renewed or reactivated within two years of the renewal deadline date. A terminated license may not be reactivated.~~

AUTH: 37-1-101, MCA

IMP: 37-1-130, 37-1-131, 37-1-141, 37-1-321, MCA

REASON: The department determined it is reasonably necessary to amend this rule to improve organization, readability, and grammar choices, and to update the rule to include relevant definitions that relate to the division's current administrative procedures.

The department is striking (10) because license history information is included in license verifications and to align with the deletion of the license history fee from ARM 24.101.403 in this notice.

It is reasonably necessary to delete the definition of "standardized fee" at (20) as the term is adequately addressed in statute.

The department is amending the implementation citations to accurately reflect all statutes implemented through the rule.

24.101.403 FEES (1) ~~Standardized Administrative~~ fees, in addition to those fees charged by a ~~specific licensing entity~~ board or program, are as follows:

(a) through (d) remain the same.

~~(e) license history~~ 20

(e) reinstate administratively suspended license 120

~~(f) duplicate wall certificate~~ 20

(g) and (h) remain the same, but are renumbered (f) and (g).

(i) ~~the~~ The license verification fee is waived for any licensing entity with board or program having a signed reciprocal agreement with another licensing entity and the licensing entities have agreed containing a provision that no fees are to be charged;

~~(j)~~ (h) inactive to active status change fee ~~from inactive to active~~ during the licensure period is the difference between the cost of an inactive license and an active license renewal fee;

~~(j)~~ (i) renewal fee for a ~~suspended~~ suspended through a final disciplinary action is 50 percent of the regular renewal fee; and

(k) remains the same, but is renumbered (j).

~~(2) The late penalty fee for each renewal period a license has not been renewed shall be~~ is 100 percent of the license renewal fee. ~~The penalty fee,~~ is in

addition to the renewal fee, and must be paid for each renewal period that in which the license has ~~was~~ not been renewed. ~~If the license has not been renewed on or before the renewal date set by in ARM 24.101.413, the late penalty fee must be paid.~~

(a) ~~In the event When a renewal fee has been is abated, the late penalty fee still applies.~~ The late penalty fee that must be paid is 100 percent of the renewal fee that would have been charged had the renewal fee not been abated.

(3) remains the same.

(4) ~~When converting an~~ To convert a license from inactive status license to an active status license, the licensee must pay the difference between the inactive status fee and the active status fee ~~must be paid~~ for the remainder of the current renewal period.

(5) When a military reservist renews a professional or occupational license after being discharged from active duty, the renewal fee will be the current renewal fee. ~~No past fees accrued while the reservist was on active duty will be charged pursuant~~ Pursuant to 37-1-138, MCA, the department will not assess or charge any past fees accrued when the reservist was on active duty.

(6) remains the same.

AUTH: 37-1-101, MCA

IMP: 27-1-717, 37-1-101, 37-1-130, 37-1-134, 37-1-138, 37-1-141, MCA

REASON: The department is eliminating the fee for license histories since the histories are included in license verifications, already addressed in (1)(g). The department estimates the elimination of this rarely used fee will affect three licensees and decrease annual revenue by \$60.

The department is also eliminating the fee for duplicate wall certificates. Due to a change in department procedure, the department will no longer print either original or duplicate wall certificates for licensees. After suspending the provision of certificates to save expenses, the department will begin e-mailing certificates in the summer of 2015 for licensees to print their own. The department estimates the elimination of this fee will affect approximately 19 licensees and reduce annual revenue by \$380.

The 2015 Montana Legislature enacted Chapter 80, Laws of 2015 (Senate Bill 76), an act authorizing the licensing boards or the department to administratively suspend a professional or occupational license in routine matters as an alternative to disciplinary proceedings. The bill was signed by the Governor on February 27, 2015, and became effective on July 1, 2015. Therefore, the department determined it is reasonably necessary to amend this rule to set the fee necessary to reinstate an administratively suspended license, and further implement the legislation. The department estimates this new fee will affect approximately 230 licensees and increase annual revenue by \$27,600.

Further amendments are necessary to improve overall rule organization, grammar choice, and readability. The department determined it is reasonably necessary to amend the implementation citations to accurately reflect all statutes implemented through the rule.

4. The rules proposed to be repealed are as follows:

24.101.401 PURPOSE found at ARM page 24-7035.

AUTH: 37-1-101, MCA

IMP: 37-1-101, 37-1-104, MCA

REASON: The department determined it is reasonably necessary to repeal this rule as it is unnecessary. The division and licensing boards have interrelated purposes that evolve continuously, thus requiring purpose rules to be constantly updated.

24.101.407 LICENSING found at ARM page 24-7049.

AUTH: 37-1-101, MCA

IMP: 37-1-101, 37-1-130, MCA

REASON: The department is repealing this rule as it unnecessarily repeats statutory language and reiterates standardized department processes.

24.101.414 RENEWAL NOTIFICATION found at ARM page 24-7069.

AUTH: 37-1-101, 37-1-141, MCA

IMP: 37-1-101, 37-1-130, 37-1-141, MCA

REASON: The department is repealing this rule as it unnecessarily repeats statutory language.

5. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Business Standards Division, Department of Labor and Industry, 301 South Park Avenue, P.O. Box 200514, Helena, Montana 59620-0514, by facsimile to (406) 841-2313, or e-mail to damoe@mt.gov, and must be received no later than 5:00 p.m., September 25, 2015.

6. An electronic copy of this notice of public hearing is available at <http://bsd.dli.mt.gov> (Business Standard Division's web site). The department strives to make the electronic copy of this notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems, and that technical difficulties in accessing or posting to the e-mail address do not excuse late submission of comments.

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the division. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all division administrative rulemaking proceedings or other administrative proceedings. The request must indicate whether e-mail or standard mail is preferred. Such written request may be sent or delivered to the department, 301 South Park Avenue, P.O. Box 200514, Helena, Montana 59620-0514; faxed to the office at (406) 841-2313; e-mailed to damoe@mt.gov; or made by completing a request form at any rules hearing held by the agency.

8. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor of Senate Bill 76, Senator Gene Vuckovich, was contacted on March 13, 2015, by telephone.

9. With regard to the requirements of 2-4-111, MCA, the board has determined that the amendment of ARM 24.101.402 and 24.101.403 will not significantly and directly impact small businesses.

With regard to the requirements of 2-4-111, MCA, the board has determined that the repeal of ARM 24.101.401, 24.101.407, and 24.101.414 will not significantly and directly impact small businesses.

Documentation of the board's above-stated determination(s) is available upon request to the Business Standards Division, Department of Labor and Industry, 301 South Park Avenue, P.O. Box 200514, Helena, Montana 59620-0514, by telephone (406) 841-2327; facsimile (406) 841-2313; or e-mail to damoe@mt.gov.

10. Darcee Moe, attorney, has been designated to preside over and conduct this hearing.

/s/ DARCEE L. MOE
Darcee L. Moe
Rule Reviewer

/s/ PAM BUCY
Pam Bucy, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State August 17, 2015