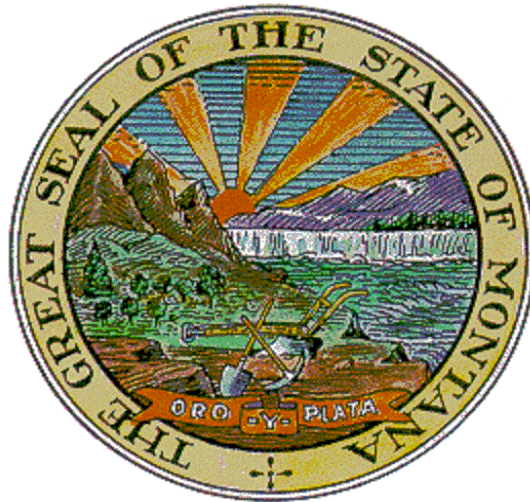


State of Montana  
Department of Labor and Industry  
Business Standards Division

STATUTES RELATING TO CONSTRUCTION BLASTERS



ISSUED BY:

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UPDATED 2007

**2-15-1701. Department of labor and industry -- head.** (1) There is a department of labor and industry. As prescribed in Article XII, section 2, of the Montana constitution, the department head is the commissioner of labor and industry.

(2) The commissioner must be appointed and serve as provided in [2-15-111](#).

(3) The commissioner must receive an annual salary in an amount equal to other department directors.

(4) Before entering on the duties of the office, the commissioner shall take and subscribe to the oath of office prescribed by the Montana constitution.

**History:** (1)En. 82A-1001 by Sec. 1, Ch. 272, L. 1971; Sec. 82A-1001, R.C.M. 1947; (2) thru (4)Ap. p. Sec. 2, Ch. 177, L. 1951; Sec. 41-1602, R.C.M. 1947; Ap. p. Sec. 3, Ch. 177, L. 1951; amd. Sec. 1, Ch. 27, L. 1957; amd. Sec. 2, Ch. 225, L. 1963; amd. Sec. 20, Ch. 177, L. 1965; amd. Sec. 2, Ch. 237, L. 1967; amd. Sec. 19, Ch. 100, L. 1973; amd. Sec. 6, Ch. 343, L. 1977; Sec. 41-1603, R.C.M. 1947; R.C.M. 1947, 41-1602, 41-1603, 82A-1001(part); amd. Sec. 20, Ch. 184, L. 1979; amd. Sec. 1, Ch. 116, L. 1981; amd. Sec. 85, Ch. 61, L. 2007.

**TITLE 37  
CHAPTER 1  
PART 4**

**Part 4**

**Uniform Regulations for Licensing Programs Without Boards**

**37-1-401. 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 35, 72, or 76; 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 35, 72, or 76; 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.**

**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.

(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.**

**37-1-403. Notice -- request for hearing.** (1) If the department determines that reasonable cause exists supporting the allegation made in a complaint, 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.**

**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) The department may report the issuance of a notice and final order to:

(a) the person or entity who brought to the department's attention information that resulted in the initiation of the proceeding;

(b) appropriate public and private organizations that serve the profession or occupation;  
and

(c) the public.

**History: En. Sec. 5, Ch. 481, L. 1997.**

**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.** A person who is disciplined or denied a license may appeal the decision to the district court as provided in Title 2, chapter 4.

**History: En. Sec. 7, Ch. 481, L. 1997.**

**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.** The following is unprofessional conduct for a licensee or license applicant governed by this chapter:

(1) 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;

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

(3) 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;

(4) 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;

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

(6) 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;

(7) the 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.

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

(9) 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;

(10) 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;

(11) interference 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;

(12) 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.

**History: En. Sec. 10, Ch. 481, L. 1997.**

**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.**

**TITLE 37  
CHAPTER 72  
PART 1 – 3**

**CHAPTER 72**

**CONSTRUCTION BLASTING**

**Part 1 -- General**

- 37-72-101. Construction blasting restrictions -- license required -- definitions -- exemptions.
- 37-72-102. Penalty -- injunction.

**Part 2 -- Regulation by Department  
of Labor and Industry**

- 37-72-201. Rules for use of explosives -- variances.
- 37-72-202. General rulemaking power.
- 37-72-203. Revocation, suspension, or refusal to renew license -- grounds -- procedure.

**Part 3 -- Licensing**

- 37-72-301. General qualifications.
- 37-72-302. Training and experience requirements.
- 37-72-303. Repealed.
- 37-72-304. Issuance of license.
- 37-72-305. Licensure of persons licensed by other jurisdictions.
- 37-72-306. Repealed.
- 37-72-307. License -- form -- pocket card.

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**Part 1**

**General**

**37-72-101. Construction blasting restrictions -- license required -- definitions -- exemptions.** (1) A person may not engage in the practice of construction blasting unless licensed or under the supervision of a person licensed as a construction blaster by the department.

- (2) For the purposes of this chapter:
  - (a) "construction blaster" means a person who engages in construction blasting;
  - (b) "construction blasting" means the use of explosives to:



(i) reduce, destroy, or weaken any residential, commercial, or other building; or  
(ii) excavate any ditch, trench, cut, or hole or reduce, destroy, weaken, or cause a change in grade of any land formation in the construction of any building, highway, road, pipeline, sewerline, or electric or other utility line;

(c) "department" means the department of labor and industry;

(d) "explosive" has the meaning provided in 61-9-102.

(3) This chapter does not apply to the private or commercial use of explosives by persons engaged in farming, ranching, logging, geophysical work, drilling or development of water, oil, or gas wells, or mining of any kind or to the private use of explosives in the removal of stumps and rocks from land owned by the person using the explosives, except that the persons exempted from this chapter by this subsection shall comply with rules adopted under 37-72-201(1)(c) and the provisions of 37-72-102 apply to a violation of those rules by an exempted person.

(4) This chapter does not apply to persons conducting blasting operations when the persons and operations are subject to rules adopted under 82-4-231(10)(e).

History: En. Sec. 1, Ch. 402, L. 1985; amd. Sec. 94, Ch. 370, L. 1987; amd. Sec. 54, Ch. 83, L. 1989; amd. Sec. 47, Ch. 613, L. 1989; amd. Sec. 1, Ch. 514, L. 1995; amd. Sec. 154, Ch. 483, L. 2001; amd. Sec. 39, Ch. 542, L. 2005.

**37-72-102. Penalty -- injunction.** (1) A person convicted of violating any provision of this chapter or the rules of the department is guilty of a misdemeanor and shall be imprisoned in the county jail for a term not to exceed 6 months or fined an amount not to exceed \$500, or both.

(2) The district court may enjoin any violation or threatened violation of the requirements of 37-72-101, 37-72-201, 37-72-202, 37-72-301, 37-72-302, 37-72-304, 37-72-305, or 37-72-307 or the rules of the department as a nuisance per se; and the department, the attorney general, or any county attorney may institute proceedings for an injunction.

History: En. Sec. 12, Ch. 402, L. 1985; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 120, Ch. 467, L. 2005.

## Part 2

### Regulation by Department of Labor and Industry

**37-72-201. Rules for use of explosives -- variances.** (1) The department shall adopt rules governing the use of explosives in construction blasting. The rules must include provisions to:

(a) regulate the method of withdrawal of explosives from the construction magazine in which they are kept;

(b) prevent the accidental detonation of explosives;

(c) prevent injury from blasting to persons and property near blast sites;

(d) provide for notification of blasting to the owners or operators of gas and electric utilities; and

(e) regulate the drilling of holes for explosives and the loading and firing of explosives.

(2) The department shall adopt rules providing for variances from the rules required by subsection (1). Variances may be granted by the department on a case-by-case basis for the purpose of individual construction blasting operations only if it is shown by the affidavit of a construction blaster licensed under this chapter that:

- (a) compliance with the rule for which a variance is sought would be impracticable; and
- (b) the proposed variance from department rules will not constitute a danger to property or public safety.

History: En. Sec. 9, Ch. 402, L. 1985; amd. Sec. 64, Ch. 613, L. 1989.

**37-72-202. General rulemaking power.** The department shall adopt rules to:

- (1) implement the training and experience requirements of 37-72-302;
- (2) prescribe the amount of the fees provided for in 37-72-301, 37-72-304, and 37-72-305, which must be nonrefundable, in an amount commensurate with the cost of administering this chapter, and deposited in the state special revenue fund for the use of the department;
- (3) regulate the use of explosives and grant variances under the provisions of 37-72-201, except that, unless the department is making an investigation under 37-72-203(2), the department does not have the power under this chapter to make inspections into construction blasting and may not adopt rules providing for inspections related to construction blasting or for inspectors to carry out inspections related to construction blasting;
- (4) provide for the form of the license and pocket card provided for in 37-72-307; and
- (5) provide for the conduct of the business of the department under this chapter and govern department proceedings under 37-72-203.

History: En. Sec. 10, Ch. 402, L. 1985; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 121, Ch. 467, L. 2005.

**37-72-203. Revocation, suspension, or refusal to renew license -- grounds -- procedure.** (1) The department may reprimand or revoke, suspend, or refuse to renew the license of a person found guilty of:

- (a) fraud or deceit in obtaining a license;
- (b) gross negligence, incompetency, or misconduct in the practice of construction blasting;
- (c) a felony involving the use of explosives; or
- (d) violation of the rules of the department.

(2) A person may make charges under subsection (1) against a licensee. The charges must be made by affidavit, subscribed and sworn to by the person making them, and filed with the department. The charges must be investigated by the department. Unless the department, after investigation, dismisses the charges as unfounded or trivial, it shall within 6 months after the date on which the charges were made give notice by mail to the licensee of its intent to reprimand him or to revoke, suspend, or refuse to renew his license. The notice must contain those matters required by the Montana Administrative Procedure Act.

(3) The department may require a licensee to take a written or oral examination, or both, in a proceeding to reprimand or to revoke, suspend, or refuse to renew a license.

History: En. Sec. 11, Ch. 402, L. 1985; amd. Sec. 64, Ch. 613, L. 1989.

### Part 3

### Licensing

**37-72-301. General qualifications.** A person making initial application to the department for a license as a construction blaster shall:

- (1) pay an application fee to the department; and

(2) furnish proof under oath, on a form provided by the department, that he:  
(a) is at least 18 years old;  
(b) is of good moral character;  
(c) has not been convicted of a felony or misdemeanor involving the use of explosives;  
(d) is not addicted to narcotic drugs or intemperate in the use of alcohol; and  
(e) has satisfied the requirements for training and experience in construction blasting established by 37-72-302 and the rules of the department.

History: En. Sec. 2, Ch. 402, L. 1985; amd. Sec. 64, Ch. 613, L. 1989.

**37-72-302. Training and experience requirements.** (1) A person applying for licensure as a construction blaster shall furnish proof, under oath, on a form provided by the department, that the person has:

(a) successfully completed a training program in construction blasting that has been recognized by the explosives or construction industry and approved by the department; and  
(b) at least 2 years of experience in construction blasting and because of that experience is familiar with the practical aspects of construction blasting.

(2) A training program may not be approved by the department unless the program offers comprehensive instruction in types of explosives, methods and purposes of their use, and safety and storage. The department shall by rule adopt a list of approved training programs.

History: En. Sec. 3, Ch. 402, L. 1985; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 1, Ch. 100, L. 1997.

**37-72-303. Repealed.** Sec. 127, Ch. 467, L. 2005.

History: En. Sec. 4, Ch. 402, L. 1985; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 22, Ch. 196, L. 2003.

**37-72-304. Issuance of license.** The department shall issue a license to each person who meets the requirements for licensure as prescribed in this chapter. The license must include the dates of issuance and expiration and a serial number.

History: En. Sec. 5, Ch. 402, L. 1985; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 23, Ch. 196, L. 2003.

**37-72-305. Licensure of persons licensed by other jurisdictions.** Upon receipt of an application and application fee, the department shall issue a license to any person fulfilling the requirements of 37-72-301(2)(a) through (2)(d) who holds a certificate, license, or permit, issued by another state or any agency of the United States, allowing the person to supervise or engage in the practice of construction blasting if the department finds that the certificate, license, or permit was issued upon the satisfactory completion of requirements substantially equivalent to the requirements of 37-72-301 and 37-72-302.

History: En. Sec. 6, Ch. 402, L. 1985; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 24, Ch. 196, L. 2003; amd. Sec. 122, Ch. 467, L. 2005.

**37-72-306. Repealed.** Sec. 127, Ch. 467, L. 2005.

History: En. Sec. 7, Ch. 402, L. 1985; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 52, Ch. 492, L. 1997; amd. Sec. 59, Ch. 271, L. 2003.

**37-72-307. License -- form -- pocket card.** (1) The department shall prescribe the form

of license.

(2) The department shall annually prepare and deliver a pocket card certifying that the person whose name appears on the card is a licensed construction blaster and stating the period for which fees have been paid.

History: En. Sec. 8, Ch. 402, L. 1985; amd. Sec. 64, Ch. 613, L. 1989.