

**SANITARIANS BOARD LAWS
AS OF THE 2019 LEGISLATIVE SESSION**

**TITLE 37, CHAPTER 40
SANITARIANS**

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CHAPTER 40 SANITARIANS

Chapter Cross-References

Publicly employed sanitarians to cooperate concerning water quality, 75-5-106.
Cooperation of sanitarians with reviewing authority, 76-4-106.
Cooperative agreements between sanitarians and Department of Livestock, 81-22-305.

Chapter Administrative Rules

Title 24, chapter 216, ARM Board of Sanitarians.

Chapter Law Review Articles

Municipal Solid Waste Management: The States Must Pick Up Where Congress Left Off, Thompson, 23 Akron L. Rev. 587 (1990).

Part 1 General

37-40-101. Definitions. Unless the context requires otherwise, as used in this chapter, the following definitions apply:

- (1) "Board" means the board of sanitarians provided for in 2-15-1751.
 - (2) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.
 - (3) "Practice the profession of sanitarian" means:
 - (a) giving advice on or enforcing compliance with state and local regulations applicable to local government jurisdictions and programs concerning food service, food processing, public accommodations, trailer courts, campgrounds, day-care centers, schools, swimming pools and spas, air pollution, solid and hazardous waste collection and disposal, sewage treatment and disposal, vector control, underground storage tanks, drinking water, land subdivision, and milk sanitation;
 - (b) cooperating with government agencies on matters of public and environmental health, including epidemiological investigations and emergency response to investigations; and
 - (c) providing educational and training programs in environmental standards and public health.
 - (4) "Registered sanitarian" means a sanitarian licensed under this chapter.
 - (5) "Sanitarian", within the meaning and intent of this chapter, shall mean a person who, by reason of the person's special knowledge of the physical, biological, and chemical sciences and the principles and methods of public health acquired by professional education and practical experience through inspectional, educational, or enforcement duties, is qualified to practice the profession of sanitarian.
 - (6) "Sanitarian-in-training" means a person who meets the minimum educational qualifications required for a sanitarian's license and who works under the supervision of a licensed sanitarian. Sanitarians-in-training may, with board approval, work in a public health agency for a period not to exceed 1 year and be considered exempt from the licensing and registration requirements of 37-40-301.
- History:** En. 69-3410 by Sec. 1, Ch. 314, L. 1974; R.C.M. 1947, 69-3410(1) thru (5); amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 1, Ch. 545, L. 1991; amd. Sec. 141, Ch. 483, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 483 in definition of department substituted reference to department of labor and industry for reference to department of commerce and substituted "part 17" for "part 18"; and made minor changes in style. Amendment effective July 1, 2001.

1991 Amendment: In definition of practice of profession of sanitarian substituted present language (see 1991 Session Law for text) for "planning, inspectional, educational, or enforcement duties

in the field of environmental sanitation"; and inserted definition of sanitarian-in-training. Amendment effective July 1, 1991.

1981 Amendment: Substituted "department of commerce" for "department of professional and occupational licensing" in (2); changed internal references to the department and the board.

Administrative Rules

ARM 24.216.506 Sanitarian-in-training.

37-40-102. Exemptions. Persons exempt from the requirements of this chapter are:

(1) any person teaching, lecturing, or engaging in research in environmental sanitation, but only insofar as the activities are performed as part of an academic position in a college or university;

(2) any person who is a registered professional engineer or engineer intern;

(3) any public health officer employed pursuant to 50-2-116;

(4) any person employed by a federal governmental agency, but only at times that the person is carrying out the functions of the employment;

(5) a state employee unless expressly required by statute, regulation, or position description to be registered as a sanitarian; or

(6) any person not employed by a governmental entity or not under contract with a governmental entity for the performance of an official regulatory function.

History: En. 69-3410 by Sec. 1, Ch. 314, L. 1974; R.C.M. 1947, 69-3410(6); amd. Sec. 2, Ch. 545, L. 1991; amd. Sec. 14, Ch. 108, L. 1995; amd. Sec. 1397, Ch. 56, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1995 Amendment — Phrase Change: Section 14, Ch. 108, L. 1995, directed the Code Commissioner to change references in the MCA to engineer-in-training to engineer intern. In this section, the Code Commissioner has made the change in (2).

1991 Amendment: In introductory clause, after "chapter", deleted "unless practicing the profession of sanitarian"; in (2), after "is a", deleted "sanitary engineer, public health engineer"; inserted (5) exempting a state employee unless required to be registered as a sanitarian; and inserted (6) exempting a person not employed by or under contract with a governmental entity. Amendment effective July 1, 1991.

Part 2 Board of Sanitarians

Part Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Open meetings, Title 2, ch. 3, part 2.

Meeting defined, 2-3-202.

Allocation of boards for administrative purposes, 2-15-121.

Quasi-judicial boards, 2-15-124.

Board established, 2-15-1751.

Duties of Department, Director, and boards, Title 37, ch. 1, part 1.

Disrupting meeting as disorderly conduct, 45-8-101.

Part Administrative Rules

Title 24, chapter 216, subchapter 1, ARM Organizational rules.

Title 24, chapter 216, subchapter 2, ARM Procedural rules.

Title 24, chapter 216, subchapter 4, ARM General rules.

37-40-201. Presiding officer — meetings. The board shall appoint one of its members presiding officer. The board shall meet at least once a year and at other times as agreed upon.

History: En. 69-3414 by Sec. 5, Ch. 314, L. 1974; amd. Sec. 16, Ch. 453, L. 1977; R.C.M. 1947, 69-3414(2); amd. Sec. 3, Ch. 545, L. 1991; amd. Sec. 20, Ch. 230, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 230 in second sentence substituted "once a year" for "four times annually"; and made minor changes in style. Amendment effective October 1, 1999.

1991 Amendment: In second sentence increased required meetings from one to four annually and deleted former last sentence prohibiting more than four meetings a year. Amendment effective July 1, 1991.

Administrative Rules

ARM 24.216.401 Board meetings.

37-40-202. Compensation — expenses. Members of the board shall receive compensation and travel expenses as provided for in 37-1-133.

History: En. 69-3414 by Sec. 5, Ch. 314, L. 1974; amd. Sec. 16, Ch. 453, L. 1977; R.C.M. 1947, 69-3414(1); amd. Sec. 27, Ch. 474, L. 1981.

Compiler's Comments

1981 Amendment: Substituted section (see 1981 Session Law) for "Members of the board shall receive compensation of \$25 a day plus travel expenses, as provided for in 2-18-501 through 2-18-503, as amended, while engaged in business of the board".

Board Compensation and Travel Expenses — Preamble: The preamble of SB 463 (Ch. 474, L. 1981), which provided for uniform compensation and travel expenses for Board members, is located in the compiler's comments under 37-1-133.

37-40-203. Rulemaking power. (1) The board may adopt rules, consistent with the purposes of this chapter, as it considers necessary.

(2) The board's rulemaking and hearing functions must be in accordance with the Montana Administrative Procedure Act. The board shall adopt rules:

(a) establishing standards of professional conduct in order to maintain a high standard of integrity, dignity, and competency in the profession of sanitarian, including competency in specific fields of sanitation;

(b) governing the conduct of matters before the board;

(c) governing educational equivalency requirements, as provided in 37-40-302, for registration of sanitarians; and

(d) defining qualifications for sanitarian-in-training status for issuance of the initial permit.

History: En. 69-3418 by Sec. 9, Ch. 314, L. 1974; R.C.M. 1947, 69-3418(1), (3); amd. Sec. 4, Ch. 545, L. 1991; amd. Sec. 98, Ch. 429, L. 1995; amd. Sec. 40, Ch. 492, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 492 in (2)(d), after "issuance of the initial", deleted "annual". Amendment effective July 1, 1997.

Preamble: The preamble attached to Ch. 492, L. 1997, provided: "WHEREAS, the Legislature finds that delays in licensing board responses to complaints of misconduct by licensees and unlicensed practice that result in frustration on behalf of the public, licensees, and boards is caused by a lack of personnel to assist with compliance issues; and

WHEREAS, licensing boards collect and accumulate sufficient funds from the fees charged to licensees to meet the cost of compliance and enforcement personnel, but these same boards often lack the authority to expend the funds that they collect; and

WHEREAS, the delayed processing and the accumulating complaint backlog have a deleterious effect on the productivity and reputation of the licensees; and

WHEREAS, the Legislature finds that certain licensing boards need to be granted temporary spending authority to address the delayed processing and accumulated complaint backlog; and

WHEREAS, a uniformly flexible approach to license renewal scheduling would also reduce frustration on the part of licensees and the public that they serve; and

WHEREAS, inflexible examination dates for license applicants in the plumbing and electrical fields have caused undue hardship with no discernable [sic] public benefit; and

WHEREAS, the Committee on Business and Labor desires to alleviate these and other related problems by appropriating funds for certain professional and occupational boards that need additional compliance specialists, by allowing the Department of Commerce [now Department of Labor and Industry] to establish license renewal dates by rule, and by allowing electrical and plumbing apprentices to take the examination required for licensure before the apprenticeships expire."

1995 Amendment: Chapter 429 deleted former (2)(d) that read: "(d) prescribing requirements for continuing education to be met by registered sanitarians in order to maintain their professional knowledge and competence and as a condition to continuing in the practice of the profession of sanitarian"; and made minor changes in style.

Severability: Section 131, Ch. 429, L. 1995, was a severability clause.

Saving Clause: Section 132, Ch. 429, L. 1995, was a saving clause.

Applicability: Section 133, Ch. 429, L. 1995, provided: "[This act] applies to licenses applied for, complaints submitted, and proceedings begun after [the effective date of this section]." Effective October 1, 1995.

1991 Amendment: At end of (1) substituted "the purposes of this chapter, as it considers necessary" for "this chapter for its administration"; in (2) inserted last clause mandating rules; and inserted (2)(a) through (2)(e) requiring adoption of rules governing professional conduct, Board procedure, educational equivalency requirements, continuing education, and qualifications for training status. Amendment effective July 1, 1991.

1991 Statement of Intent: The statement of intent attached to Ch. 545, L. 1991, provided: "A statement of intent is required for this bill because [sections 4 and 6] [37-40-203 and 37-40-302] grant rulemaking authority to the board of sanitarians. It is the intent of the legislature that the board of sanitarians adopt rules:

(1) establishing standards of professional conduct in order to maintain the integrity, dignity, and competency of the profession;

(2) governing the conduct of matters before the board including meetings, recordkeeping, rulemaking, hearings, and other matters;

(3) establishing educational equivalency requirements to determine qualifications for licensure;

(4) establishing procedures and passing scores for examinations for applicants for licensure;

(5) establishing requirements for continuing education to maintain professional knowledge and competence as a condition of continued licensure;

(6) defining qualifications for sanitarian-in-training status and issuance of a permit;

(7) establishing a schedule of nonrefundable fees to cover costs incurred in regulation of the profession; and

(8) defining unprofessional conduct as a basis for disciplinary action."

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

Administrative Rules

Title 24, chapter 216, ARM Board of Sanitarians.

Part 3 Licensing

Part Cross-References

Licensing to follow contested case procedure, 2-4-631.

Duty of Department to administer and grade examinations, 37-1-101.

Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.

Licensing boards to establish fees commensurate with costs, 37-1-134.

Licensing investigation and review — record access, 37-1-135.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-40-301. License required. A person may not practice or offer to practice the profession of sanitarian as defined in this chapter or hold out to the public in any manner that the person is a licensed sanitarian unless the person is licensed and registered under the provisions of this chapter.

History: En. 69-3411 by Sec. 2, Ch. 314, L. 1974; R.C.M. 1947, 69-3411; amd. Sec. 5, Ch. 545, L. 1991; amd. Sec. 1398, Ch. 56, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1991 Amendment: Near beginning, after "practice", inserted "or offer to practice", after "sanitarian" inserted "as defined in this chapter", before the second "sanitarian" inserted "licensed", and after the second "licensed" inserted "and registered"; and made minor changes in style. Amendment effective July 1, 1991.

Administrative Rules

ARM 24.216.501 Applications.

37-40-302. Application — examination — certificate. (1) A person wishing to practice the profession of sanitarian may apply to the department for registration on a form furnished by the department.

(2) An applicant must have a minimum of a bachelor's degree in environmental health or its equivalent from an accredited university or college.

(3) If the applicant meets the board's standards and passes the examination prescribed by the board, the department shall issue a certificate of registration.

(4) A holder of a current certificate is entitled to append to the holder's name the initials "R.S."

History: En. 69-3415 by Sec. 6, Ch. 314, L. 1974; R.C.M. 1947, 69-3415; amd. Sec. 4, Ch. 149, L. 1981; amd. Sec. 6, Ch. 545, L. 1991; amd. Sec. 1, Ch. 16, L. 1993; amd. Sec. 1, Ch. 196, L. 2003; amd. Sec. 94, Ch. 467, L. 2005.

Compiler's Comments

2005 Amendment: Chapter 467 in (1) at end after "form" substituted "furnished by the department" for "prescribed by the board"; in (2) at end after "college" deleted "and shall pass an examination given at a time and place set by the board. The board shall establish procedures for examination and determination of passing scores by rule"; and made minor changes in style. Amendment effective July 1, 2005.

2003 Amendment: Chapter 196 in (2) near middle of first sentence substituted "an examination" for "a written examination"; at end of (3) deleted "upon payment of the required fee"; and made minor changes in style. Amendment effective October 1, 2003.

1993 Amendment: Chapter 16 in (2), in first sentence after "examination", deleted "and an oral interview"; and made minor changes in style.

1991 Amendment: In (2), near end of first sentence before "examination", inserted "a written" and after "examination" inserted "and an oral interview" and inserted last sentence concerning procedures and passing scores for the examination; and made minor change in style. Amendment effective July 1, 1991.

1991 Statement of Intent: The statement of intent attached to Ch. 545, L. 1991, provided: "A statement of intent is required for this bill because [sections 4 and 6] [37-40-203 and 37-40-302] grant rulemaking authority to the board of sanitarians. It is the intent of the legislature that the board of sanitarians adopt rules:

(1) establishing standards of professional conduct in order to maintain the integrity, dignity, and competency of the profession;

(2) governing the conduct of matters before the board including meetings, recordkeeping, rulemaking, hearings, and other matters;

(3) establishing educational equivalency requirements to determine qualifications for licensure;

(4) establishing procedures and passing scores for examinations for applicants for licensure;

(5) establishing requirements for continuing education to maintain professional knowledge and competence as a condition of continued licensure;

(6) defining qualifications for sanitarian-in-training status and issuance of a permit;

(7) establishing a schedule of nonrefundable fees to cover costs incurred in regulation of the profession; and

(8) defining unprofessional conduct as a basis for disciplinary action."

1981 Amendment: Substituted "possess a minimum of a bachelor's degree in environmental health or its equivalent from an accredited university or college" for "meet minimum standards set by the board" in (2); deleted "but not to exceed 1 year past the date of issuance of the probationary certificate described in subsection (3) below" at the end of (2); deleted (3) allowing for issuance of probationary certificate on application and payment of fee.

Administrative Rules

ARM 24.216.501 Applications.

ARM 24.216.502 Minimum standards for licensure.

ARM 24.216.503 Examination.

37-40-303. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. 69-3419 by Sec. 10, Ch. 314, L. 1974; R.C.M. 1947, 69-3419; amd. Sec. 5, Ch. 149, L. 1981; amd. Sec. 63, Ch. 345, L. 1981; amd. Sec. 7, Ch. 545, L. 1991.

37-40-304. Repealed. Sec. 127, Ch. 467, L. 2005.

History: En. 69-3416 by Sec. 7, Ch. 314, L. 1974; amd. Sec. 12, Ch. 533, L. 1977; R.C.M. 1947, 69-3416; amd. Sec. 6, Ch. 149, L. 1981; amd. Sec. 64, Ch. 345, L. 1981; amd. Sec. 8, Ch. 545, L. 1991; amd. Sec. 99, Ch. 429, L. 1995; amd. Sec. 41, Ch. 492, L. 1997; amd. Sec. 42, Ch. 271, L. 2003.

37-40-305. Repealed. Sec. 127, Ch. 467, L. 2005.

History: En. 69-3417 by Sec. 8, Ch. 314, L. 1974; R.C.M. 1947, 69-3417; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 9, Ch. 545, L. 1991.

37-40-306. Repealed. Sec. 12, Ch. 545, L. 1991.

History: En. 69-3421 by Sec. 12, Ch. 314, L. 1974; R.C.M. 1947, 69-3421.

37-40-307. Repealed. Sec. 12, Ch. 545, L. 1991.

History: En. 69-3422 by Sec. 13, Ch. 314, L. 1974; R.C.M. 1947, 69-3422; amd. Sec. 17, Ch. 22, L. 1979; amd. Sec. 7, Ch. 149, L. 1981.

37-40-308 through 37-40-310 reserved.

37-40-311. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. 69-3418 by Sec. 9, Ch. 314, L. 1974; R.C.M. 1947, 69-3418(2); amd. Sec. 8, Ch. 149, L. 1981; amd. Sec. 10, Ch. 545, L. 1991.

37-40-312. Penalty. (1) A person who offers the person's services as a sanitarian or uses, assumes, or advertises in any way any title or description tending to convey the impression that the person is a registered sanitarian who does not hold the license specified by this chapter is guilty of a misdemeanor and is punishable by a fine not to exceed \$500 or by imprisonment for not longer than 6 months, or both.

(2) The board may enforce the provisions of this chapter by injunction or any other appropriate proceeding.

History: En. 69-3420 by Sec. 11, Ch. 314, L. 1974; R.C.M. 1947, 69-3420; amd. Sec. 11, Ch. 545, L. 1991; amd. Sec. 1399, Ch. 56, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1991 Amendment: In (1), before "sanitarian", inserted "registered"; and inserted (2) concerning enforcement of the chapter. Amendment effective July 1, 1991.