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DEPARTMENT OF LABOR AND INDUSTRY

NOTICE OF PROPOSED RULEMAKING

MAR NOTICE NO. 2025-117.1

Summary

Establishing rules for the contingent litigation fund

Hearing Date and Time

Friday, May 30, 2025, at 9:00 a.m.

Virtual Hearing Information

A public hearing will be held via remote conferencing to consider the proposed changes to the rule listed in this notice. There will be no in-person hearing. Interested parties may access the remote conferencing platform in the following ways:

Join Zoom Meeting: <https://mt-gov.zoom.us/j/84790797927>

Meeting ID: 847 9079 7927; Password: 921022

Dial by Telephone: +1 646 558 8656

Meeting ID: 847 9079 7927; Password: 921022

Comments

Concerned persons may present their data, views, or arguments at the hearing. Written data, views, or arguments may also be submitted at dli.mt.gov/rules or P.O. Box 1728, Helena, Montana 59624. Comments must be received by Friday, June 6, 2025, at 5:00 p.m.

Accommodations

The agency will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. Requests must be made by Friday, May 23, 2025, at 5:00 p.m.

Contact

Department of Labor and Industry
(406) 444-5466
laborlegal@mt.gov
Montana Relay: 711

Rulemaking Actions

ADOPT

The rule proposed to be adopted is as follows:

NEW RULE 1 CONTINGENT LITIGATION FUND

- (1) [House Bill 227, Section 1 (2025)] requires licensees to pay a fee into the contingent litigation fund if licensed by a covered board or program.
 - (a) A list of covered boards and programs will be published by the department on its website annually by June 30, and is applicable to licensees beginning July 1 of the same year.
 - (b) Licensees of covered boards and programs shall pay a fee of \$5 on initial application or renewal, as applicable, in the covered year.
- (2) Money in the contingent litigation fund will be distributed as follows:
 - (a) By March 31 of each year, all eligible expenses will be identified.
 - (i) If the fund contains sufficient money to cover all eligible expenses, transfers to the applicable board or program will be made.
 - (ii) If the fund does not contain sufficient money to cover all eligible expenses, money will first be allocated to any board whose operations may be suspended pursuant to 37-1-101, MCA, without recovery. If multiple boards are subject to suspension, money will be allocated on a pro rated basis between them. Any additional money in the fund will be allocated among the remaining boards and programs on a pro rated basis.

- (b) By June 30 of each year, eligible expenses not previously covered will be identified.
 - (i) If the fund contains sufficient money to cover all eligible expenses, transfers to the applicable board or program will be made. If there is any remaining money in the fund, it will be transferred to pay previous expenses on a pro rated basis.
 - (ii) If the fund does not contain sufficient money to cover all eligible expenses, money will first be allocated to any board whose operations may be suspended pursuant to 37-1-101, MCA, without recovery. If multiple boards are subject to suspension, money will be allocated on a pro rated basis between them. Any additional money in the fund will be allocated among the remaining boards and programs on a pro rated basis.
- (3) As used in this rule, the following definitions apply:
 - (a) “Eligible expenses” means attorney fees and costs accrued during the current fiscal year by a board or program listed under (1) for which recovery is permitted under [House Bill 227, Section 1 (2025)].
 - (b) “Previous expenses” means attorney fees and costs accrued during the previous fiscal year by a board or program listed under (1) during that fiscal year for which recovery is permitted under [House Bill 227, Section 1 (2025)].

Authorizing statute(s): [House Bill 227, Section 1 (2025)]

Implementing statute(s): [House Bill 227, Section 1 (2025)]

Reasonable Necessity Statement

House Bill 227, Section 1 (2025) established the contingent litigation fund for the purpose of funding litigation costs in excess of \$15,000 for boards with three-year average revenue of less than \$200,000. The purpose of this funding mechanism is to ensure that boards need not choose between a disciplinary matter and continued operations. See 37-1-101(9), MCA. Which boards and programs are covered by the fund may change slightly on an annual basis based on the average revenues. The department proposes to publish a list on its website of these boards and programs on an annual basis. Because the parameters for inclusion and exclusion are statutorily set, rulemaking for this purpose is not required.

The statute vested authority to define distribution parameters with the department. In addition, whether the fee for the contingent litigation fund is charged is dependent on the fund

balance on March 31 of each calendar year. As such, the rule proposes a two-part cost recovery system. By March 31 of each year, eligible expenses will be identified and recovered to the applicable licensing board or program. This ensures that the fees for the fund are not turned off if there are charges which need to be paid by the fund. By the close of each fiscal year, additional eligible expenses will be recovered by a board or program as feasible. This is intended to ease the administrative burden of the fund by preventing recovery across multiple fiscal years to the extent possible. Where the fund holds insufficient money to recover for the boards and programs all eligible expenses, the money will be distributed on a pro rated basis. However, if a board is subject to shutdown pursuant to 37-1-101(9), MCA, if funds are not recovered, that board will take priority in money recovery so that operations may continue.

The boards and programs initially included in the contingent litigation fund include licensees of the boards of alternative health care, architects and landscape architects, athletic trainers, chiropractors, clinical laboratory science practitioners, massage therapy, nursing home administrators, occupational therapy practice, optometry, physical therapy examiners, psychologists, professional engineers and professional land surveyors, radiologic technologists, respiratory care practitioners, speech-language pathologists and audiologists, and veterinary medicine, and the licensing programs of construction blasters, crane operators, fire protection, hearing aid dispensers, pediatric complex care assistants, real property managers, sanitarians, and genetic counselors.

Fiscal Impact

The department proposes the fee for the fund be set at \$5 for each license application and renewal of a licensee or license application to a covered board or program. The number of licensees impacted by this fee will vary year to year as the inclusion of boards and programs varies. However, as of the time of this publication, it is estimated that approximately 31,000 licensees will be subject to the fee, for an annual cumulative cost of \$155,000.

Small Business Impact

The department expects the direct small business impact, if any, to be minimal. The purpose of the contingent litigation fund is to protect smaller volume licensing boards and programs against unexpected litigation expenses relating to disciplinary matters. While the licensees of boards and programs identified in the statement of reasonable necessity will be required to pay a \$5 fee, this is not expected to cause a significant impact to business. Moreover, by insuring against unexpected litigation expenses resulting from discipline, the fee further guards against the possibility that significant fee increases would arise resulting from such cases.

Bill Sponsor Notification

The primary bill sponsor was contacted by electronic mail on April 1, 2025.

Interested Persons

The agency maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the agency. Persons wishing to have their name added to the list may sign up at dli.mt.gov/rules or by sending a letter to P.O. Box 1728, Helena, Montana 59624 and indicating the program or programs about which they wish to receive notices.

Rule Reviewer

Quinlan L. O'Connor

Approval

Sarah Swanson, Commissioner