

## HOUSE BILL NO. 296

INTRODUCED BY R. MARSHALL

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO PROFESSIONAL AND OCCUPATIONAL LICENSING; REVISING LAWS RELATED TO LICENSING INJUNCTIONS AND PENALTIES; REMOVING REDUNDANT PROVISIONS; AMENDING CONFLICTING PROVISIONS; AMENDING SECTIONS 37-1-136, 37-10-301, 37-11-301, 37-26-401, AND 37-54-201, MCA; AND REPEALING SECTIONS 37-1-411 AND 37-1-412, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 37-1-136, MCA, is amended to read:

**"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~~ must 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)~~(3) An action may not be taken against a person who is in compliance with Title 16, chapter 12,

1 part 5.

2 ~~(5)(4)~~ Rules adopted under subsection (1) must provide for the provision of public notice as required  
3 by 37-1-311."  
4

5 **Section 2.** Section 37-10-301, MCA, is amended to read:

6 **"37-10-301. License required for practice -- unlawful acts --injunction.** ~~(1)~~A person may not:

7 ~~(a)(1)~~ practice optometry in this state unless that person has first obtained a license;

8 ~~(b)(2)~~ sell, barter, or offer to sell or barter a license issued by the department;

9 ~~(c)(3)~~ purchase or procure by barter a license with intent to use the license as evidence of the  
10 holder's qualification to practice optometry;

11 ~~(d)(4)~~ materially alter with fraudulent intent a license;

12 ~~(e)(5)~~ use or attempt to use a license that has been purchased, fraudulently issued, counterfeited, or  
13 materially altered as a valid license;

14 ~~(f)(6)~~ practice optometry under a false or assumed name;

15 ~~(g)(7)~~ willfully make a materially false statement in an application for a license;

16 ~~(h)(8)~~ advertise by displaying a sign or by otherwise claiming to be an optometrist without having at  
17 the time a valid license;

18 ~~(i)(9)~~ replace or duplicate ophthalmic lenses with or without a prescription or to dispense ophthalmic  
19 lenses from prescriptions without having at the time a valid license as an optometrist. However, this subsection  
20 ~~(1)(i)(9)~~ does not prevent an optical mechanic from:

21 ~~(i)(a)~~ doing the merely mechanical work on an ophthalmic lens that is ordered on a prescription  
22 signed by a registered optometrist and is dispensed only by the optometrist or a person employed by the  
23 optometrist and who does so in the office of and under the direct personal supervision of an optometrist; or

24 ~~(ii)(b)~~ replacing or duplicating an existing lens for glasses;

25 ~~(j)(10)~~ take or make measurements for the purpose of fitting or adapting ophthalmic lenses to the  
26 human eye without having at the time a valid license. A person who takes or makes measurements or uses  
27 mechanical devices for this purpose or who, in the sale of spectacles, eyeglasses, or lenses, uses in the testing  
28 of the eyes lenses other than the lenses actually sold is practicing optometry. However, this section does not

1 apply to the prescriptions of qualified optometrists when sent to a recognized optical laboratory.

2 (k)(11) measure, fit, or adapt a lens to direct, contiguous contact to the human eyeball without having  
3 at the time a valid license as an optometrist.

4 (2) ~~When the board has reasonable cause to believe that a person is violating this section or a rule~~  
5 ~~issued under this chapter, the board may, in addition to other remedies provided in this chapter, bring an action~~  
6 ~~for injunctive relief in district court in the county where the violation occurs to enjoin the person from engaging in~~  
7 ~~or continuing the violation. The department may employ legal counsel to prosecute these actions. In these~~  
8 ~~actions and on notice and hearing, an order or judgment may be entered awarding a temporary restraining~~  
9 ~~order or final injunction as considered proper by the judge of the district court in the county where the violation~~  
10 ~~occurred."~~

11  
12 **Section 3.** Section 37-11-301, MCA, is amended to read:

13 **"37-11-301. License required for physical therapist and physical therapist assistant --**  
14 **unauthorized representation as licensed therapist.** (1) A person may not practice or purport to practice  
15 physical therapy without first obtaining a license under the provisions of this chapter.

16 (2) A person who is not licensed under this chapter as a physical therapist or physical therapist  
17 assistant, whose license has been suspended or revoked, or whose license has lapsed and has not been  
18 revived ~~and who uses~~ may not use the words or letters "L.P.T.", "Licensed Physical Therapist", "P.T.", "Physical  
19 Therapist", "R.P.T.", "Registered Physical Therapist", "D.P.T.", "Doctor of Physical Therapy", "P.T.A.", "Physical  
20 Therapist Assistant", "L.P.T.A.", "Licensed Physical Therapist Assistant", "R.P.T.A.", "Registered Physical  
21 Therapist Assistant", or any other letters, words, or insignia, orally or in writing or in print or by sign, directly or  
22 by implication, indicating or implying that the person is a licensed physical therapist or physical therapist  
23 assistant ~~or who in any way, orally or in writing or in print or by sign, directly or by implication, purports to be a~~  
24 ~~physical therapist or physical therapist assistant is guilty of a misdemeanor.~~

25 (3) A person who is not licensed as a physical therapist assistant in accordance with this chapter  
26 may not assist a physical therapist in the practice of physical therapy."

27  
28 **Section 4.** Section 37-26-401, MCA, is amended to read:

1           **"37-26-401. License required -- titles restricted -- enjoining unlawful practice.** (1) Except as  
2 provided in 37-26-302, a person may not practice naturopathy without a valid and current license issued by the  
3 board as provided in this chapter.

4           (2)       (a) A naturopathic physician licensed under this chapter may use the prefix "Dr." or "doctor" as  
5 a title.

6           (b)       Only a naturopathic physician licensed under this chapter may use any of the following titles or  
7 terms:

8           (i)       "doctor of naturopathy", "doctor of naturopathic medicine", "naturopath", "naturopathic  
9 physician", and the abbreviation "N.D." when used to imply any of these titles; or

10          (ii)       "naturopathic medicine", "naturopathic health care", "naturopathic", and "naturopathy".

11          (c)       The titles and terms in subsection (2)(b) identify naturopathic physicians and are restricted to  
12 describing and identifying licensed practitioners and their practice. A person who uses these titles and terms to  
13 represent the person or the person's practice to the public without being licensed pursuant to this chapter is in  
14 violation of this chapter.

15          (3) ~~—— A violation of this chapter may be enjoined by the district court on petition by the board.~~"

16  
17          **Section 5.** Section 37-54-201, MCA, is amended to read:

18          **"37-54-201. Real estate appraiser license -- scope and display of license.** (1) ~~Upon~~On proof that  
19 an applicant meets the qualifications set out in 37-54-202, the board shall issue to the applicant a real estate  
20 appraiser license.

21          (2)       The term "licensed real estate appraiser" may not be used to describe a firm, partnership,  
22 corporation, group, or anyone other than an individual licensee. However, a licensed real estate appraiser may  
23 engage in real estate appraisal as a professional corporation.

24          (3)       This chapter does not preclude a person who is not a licensed or certified real estate appraiser  
25 from appraising real property for transactions not related to a federal agency or project for compensation if the  
26 person does not purport to be a licensed or certified real estate appraiser. ~~A person who purports that the~~  
27 ~~person or the person's company is licensed under this section or certified under 37-54-302 and 37-54-303~~  
28 ~~without possessing the applicable license or certificate is guilty of a misdemeanor.~~

1 (4) This section does not:

2 (a) prohibit a person who is licensed to practice in this state under any law from engaging in the  
3 practice for which the person is licensed;

4           (b)       apply to public officials in the conduct of their official duties that are not governed by the rules  
5       established by the federal financial institutions examination council agencies.

(5) A licensed or certified real estate appraiser is subject to restrictions on the scope of practice, depending on the value and complexity of the federally related transaction or transactions pursuant to rules established by the federal financial institutions examination council agencies, and the restrictions must remain current with any changes in those rules.

10           (6)       A licensed real estate appraiser shall conspicuously display the license in the appraiser's  
11   principal place of business."

13           NEW SECTION. **Section 6. Repealer.** The following sections of the Montana Code Annotated are  
14   repealed:

15 37-1-411. Practice without license -- investigation of complaint -- injunction -- penalties.

16     37-1-412.     Violation of injunction -- penalty.

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