



AN ACT PROVIDING THAT A BOARD REGULATING A PROFESSION OR OCCUPATION MAY NOT ENFORCE STANDARDS AND RULES IN A MANNER THAT DISCRIMINATES AGAINST ANY PERSON LICENSED BY THE BOARD WITH REGARD TO HOW THE STANDARDS AND RULES ARE APPLIED TO OTHER PERSONS LICENSED BY THE BOARD OR IN A MANNER THAT RESTRAINS TRADE OR COMPETITION EXCEPT WHEN NECESSARY FOR PUBLIC HEALTH AND SAFETY; AND AMENDING SECTION 37-1-131, MCA.

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

**Section 1.** Section 37-1-131, MCA, is amended to read:

**"37-1-131. Duties of boards -- quorum required.** (1) A quorum of each board within the department shall:

(a) (i) set and enforce standards and adopt and enforce rules governing the licensing, certification, registration, and conduct of the members of the particular profession or occupation within the board's jurisdiction; and

(ii) apply the standards and rules referred to in subsection (1)(a)(i) in a manner that does not discriminate against any person licensed by the board with regard to how the standards and rules are applied to other persons licensed by the board and that does not restrain trade or competition unless necessary to protect public health and safety;

(b) sit in judgment in hearings for the suspension, revocation, or denial of a license of an actual or potential member of the particular profession or occupation within the board's jurisdiction. The hearings must be conducted by a hearings examiner when required under 37-1-121.

(c) suspend, revoke, or deny a license of a person who the board determines, after a hearing as provided in subsection (1)(b), is guilty of knowingly defrauding, abusing, or aiding in the defrauding or abusing of the workers' compensation system in violation of the provisions of Title 39, chapter 71;

(d) pay to the department the board's pro rata share of the assessed costs of the department under

37-1-101(6);

(e) consult with the department before the board initiates a program expansion, under existing legislation, to determine if the board has adequate money and appropriation authority to fully pay all costs associated with the proposed program expansion. The board may not expand a program if the board does not have adequate money and appropriation authority available.

(2) A board, board panel, or subcommittee convened to conduct board business must have a majority of its members, which constitutes a quorum, present to conduct business.

(3) A board that requires continuing education or continued state, regional, or national certification for licensees shall require licensees reactivating an expired license to submit proof of meeting the requirements of this subsection for the renewal cycle.

(4) The board or the department program may:

(a) establish the qualifications of applicants to take the licensure examination;

(b) determine the standards, content, type, and method of examination required for licensure or reinstatement of a license, the acceptable level of performance for each examination, and the standards and limitations for reexamination if an applicant fails an examination;

(c) examine applicants for licensure at reasonable places and times as determined by the board or enter into contracts with third-party testing agencies to administer examinations; and

(d) require continuing education for licensure, as provided in 37-1-306, or require continued state, regional, or national certification for licensure. Except as provided in subsection (3), if the board or department requires continuing education or continued state, regional, or national certification for continued licensure, the board or department may not audit or require proof of continuing education or continued state, regional, or national certification requirements as a precondition for renewing the license, certification, or registration. The board or department may conduct random audits after the lapsed date of up to 50% of all licensees with renewed licenses for documentary verification of the continuing education requirement.

(5) A board may, at the board's discretion, request the applicant to make a personal appearance before the board for nonroutine license applications as defined by the board.

(6) A board shall adopt rules governing the provision of public notice as required by 37-1-311."

- END -

I hereby certify that the within bill,  
SB 0165, originated in the Senate.

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Secretary of the Senate

\_\_\_\_\_  
President of the Senate

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2011.

\_\_\_\_\_  
Speaker of the House

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2011.

SENATE BILL NO. 165

INTRODUCED BY J. BALLYEAT, OLSON, STEINBEISSER, WINDY BOY, HUTTON, BRENDEN, KEANE,  
C. SMITH, VANCE, BERRY, JACKSON, WITTICH, HINKLE, STEWART-PEREGOY, ARTHUN, MOORE,  
SHOCKLEY, BUTTREY, GIBSON, ESSMANN, JONES

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