



Economic Affairs Interim Committee

61st Montana Legislature

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Memo

To: The Medical Impairment Subcommittee
From: Pat Murdo, staff
Re: Proposal to Require Automatic Revocation of License In Certain Felony Cases

All licensees governed by boards are subject to sanctions for unprofessional conduct, which is described under 37-1-316, MCA. A proposed bill, drafted for discussion purposes, would require a board to automatically order revocation of a license upon notification that subsection (1) of 37-1-316 has been violated. That subsection reads:

37-1-316. Unprofessional conduct. *The following is unprofessional conduct for a licensee or license applicant governed by this part:*

(1) conviction, including conviction following a plea of nolo contendere, of a crime relating to or committed during the course of the person's practice or involving violence, use or sale of drugs, fraud, deceit, or theft, whether or not an appeal is pending;...

Among the issues to be considered:

- **Due process.** The proposed amendment to the statute would state that an automatic revocation of a license based upon a conviction does not allow for a hearing. The rationale is that a person would have had an opportunity for a hearing in court.
- **Equal protection.**
 - The unprofessional conduct statute in 37-1-316, MCA, applies to all licensees of boards. A separate statute, 37-1-410, MCA, is similar and applies to licensees that do not have boards. The only health care license not governed by a board that would be exempt under the proposed bill draft is for licensed addiction counselors. If that group, which does not have an impairment assistance option, is to be included, then 37-1-410, MCA, would also need to be amended.
 - All persons licensed by a board would be covered by the proposed draft changes, not just medical professionals. There are 9 licenses that specifically state within their governing chapter that a board may sanction a license for a felony committed in relation to their profession. Only 2 health care-related groups separately reference felonies. These are hearing aid dispensers and nutritionists. The rest are: outfitters/guides, real estate brokers/salespersons and time share salespeople; private investigators, attorneys, engineers and land surveyors, and construction blasters. These separate references are unnecessary because the unprofessional conduct statute covers these professions. But it is informative that when these professions became licensed, the reasons for sanctions included conviction of felonies in the relevant field of practice.
- **Workability.** The boards would have to be notified by a court, which adds to a court's workload. Currently, the only way that a board may receive notice is during the renewal process, when the licensee is responsible for saying whether they have had a felony conviction. Boards license out-of-state practitioners, and there is no guarantee that an out-

of-state court would notify the board of a licensee's conviction or guilty plea. There also is no guarantee that a licensee would admit to a felony during license renewal.

- **Employment Law.** - Employers fear being sued for providing too much information about a dismissed employee's situation. The "innocent until proven guilty" principle means information usually is not shared about an employee's impairment problem.

For further reference as to description by specific licensing board sanctions:

- **Hearing Aid Dispensers:**

37-16-411 - (2) *A licensee or license applicant may be sanctioned as provided in 37-1-312 for any of the following causes: ... (a) being convicted of a felony, subject to chapter 1, part 2, of this title. The record of the conviction or a certified copy from the clerk of the court for the district where the conviction occurred or certification by the judge of the court is conclusive evidence of the conviction, except that if the person has been pardoned by a governor or the president of the United States, the conviction does not constitute grounds for imposing sanctions.*

- **Nutritionists:**

37-25-308 - *Grounds for revocation, suspension, or refusal to renew license. The board may impose a fine or probationary conditions, suspend or revoke a license, or deny or refuse to renew a license if the licensee or applicant has: ... (3) been convicted of a crime of moral turpitude or a felony related to the practice of dietetics-nutrition;...*

- **Outfitters/Guides:**

37-47-341. *Grounds for denial, suspension, or revocation of license. A license or right to apply for and hold a license issued under this part may be denied, suspended, or revoked or other disciplinary conditions may be applied upon any of the following grounds: ... (4) having pleaded guilty to or been adjudged by a court guilty of a felony, including a case in which the sentence is suspended or imposition of the sentence is deferred, unless civil rights have been restored pursuant to law.*

- **Real Estate Brokers/Salespersons:**

37-51-321 (1) *The board may on its own motion and shall on the sworn complaint in writing of a person investigate the actions of a real estate broker or a real estate salesperson, subject to 37-1-101 and 37-1-121, and may revoke or suspend a license issued under this chapter when the broker or salesperson has been found guilty by a majority of the board of any of the following practices:*

(t) conviction of a felony;

- **Timeshare Sales Brokers/Salespersons:**

37-53-302. *Denial, suspension, or revocation of license or application. The board may by an order deny, suspend, or revoke a timeshare salesperson's license or application for license if the board finds that the order is in the public interest and that the applicant or licensee: (3) has been convicted of a felony unless the provisions of Title 37, chapter 1, part 2, are met; (4) is permanently or temporarily enjoined by a court from engaging in or continuing any conduct or practice involving an aspect of the timeshare business;*

- **Private Investigators, Private Security and Fire Entities, and Process Servers:**

37-60-303. *License or registration qualifications. (1) Except as provided in subsection (7)(a), an applicant for licensure under this chapter or an applicant for registration as a process server under this chapter is subject to the provisions of this section and shall submit evidence under oath that the applicant:*

(c) has not been convicted in any jurisdiction of any felony or any crime involving moral turpitude or illegal use or possession of a dangerous weapon, for which a full pardon or similar relief has not been granted;

- **Attorneys:**

37-61-301 (2) *An attorney may be removed or suspended for any of the following causes arising after admission to practice: ... (a) conviction of a felony or misdemeanor involving moral turpitude, in which case the record of conviction is conclusive evidence;*

- **Engineers and Land Surveyors:**

37-67-331 (1) *The board may reprimand a licensee or revoke, suspend, or refuse to renew the license of a licensee found responsible for: (c) a felony;*

- **Construction Blasters:**

37-72-203 (1) *The department may reprimand or revoke, suspend, or refuse to renew the license of a person found guilty of: (c) a felony involving the use of explosives;...*