

HOUSE BILL 412

Introduced by Strizich, et al.

1/28	Introduced
1/28	Referred to Judiciary
1/28	First Reading
2/05	Hearing
2/06	Tabled in Committee
2/18	Tabled in Committee

1 *HOUSE* BILL NO. *412*
 2 INTRODUCED BY *Wynne* *Deer* *Timberley* *B. B. Bunker*
 3 BY REQUEST OF THE BOARD OF CRIME CONTROL *Dawell*
 4 *Garman*

5 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING LICENSING
 6 SANCTIONS FOR PROFESSIONALLY LICENSED INDIVIDUALS WHO ARE
 7 CONVICTED OF OFFENSES INVOLVING DANGEROUS DRUGS; REQUIRING
 8 NOTIFICATION OF LICENSING AUTHORITIES UPON CONVICTION OF
 9 DRUG-RELATED OFFENSES; PROVIDING FOR REINSTATEMENT UNDER
 10 CERTAIN CONDITIONS; AMENDING SECTIONS 20-4-110, 37-1-136,
 11 37-61-301, 37-61-302, 37-61-303, AND 37-61-309, MCA; AND
 12 PROVIDING AN APPLICABILITY DATE."

13
 14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

15 NEW SECTION. **Section 1.** Definitions. As used in
 16 [sections 1 and 2], the following definitions apply:

- 17 (1) "Conviction" or "convicted" means a conviction as
 18 defined in 45-2-101.
- 19 (2) "Dangerous drug" means a dangerous drug as defined
 20 in 50-32-101.
- 21 (3) "License" means any authorization to conduct a
 22 licensed occupation, including any permit, registration, or
 23 certification.
- 24 (4) "Licensed individual" means an individual who is
 25 licensed by the state to practice a profession or to engage

1 in a trade in this state.

2 (5) "Licensed occupation" means an occupation,
 3 profession, business, trade, or other commercial activity
 4 that requires for its lawful conduct the issuance to an
 5 individual of any license, permit, registration,
 6 certification, or other form of authorization by any
 7 department, agency, board, bureau, or other entity of state
 8 government.

9 (6) (a) "Licensing authority" means any department,
 10 agency, board, bureau, or other entity of state government
 11 that issues to individuals any license, permit,
 12 registration, certification, or other form of authorization
 13 to conduct a licensed occupation.

14 (b) In the case of attorney licensing, licensing
 15 authority means the state supreme court.

16 NEW SECTION. **Section 2.** Drug conviction --

17 notification to licensing authority required -- penalties.

18 (1) A licensed individual who is convicted of an offense
 19 involving dangerous drugs, as specified in Title 45, chapter
 20 9, or convicted under the laws of the United States or any
 21 other state of a criminal offense involving the manufacture,
 22 distribution, sale, or possession of a dangerous drug shall
 23 notify the appropriate licensing authority of the conviction
 24 within 10 days following conviction.

25 (2) Upon being notified of a conviction of a licensed



-2- INTRODUCED BILL
 HB 412

1 individual, the appropriate licensing authority shall
2 suspend or revoke the license of the individual, as follows:

3 (a) upon the first conviction, the licensed individual
4 must have his license suspended for a period of not less
5 than 3 months; however, in the case of a first conviction
6 for a misdemeanor, the licensing authority has the
7 discretion to impose whatever lesser sanction it considers
8 appropriate; and

9 (b) upon the second or subsequent conviction, the
10 individual must have his license revoked.

11 (3) The failure of a licensed individual to notify the
12 appropriate licensing authority of a conviction as required
13 in subsection (1) does not restrict the licensing
14 authority's power to suspend or revoke; however, a failure
15 to notify must be considered grounds for revocation in those
16 instances in which suspension is otherwise the appropriate
17 sanction.

18 (4) A licensed individual sanctioned under subsection
19 (2) or (3) may be entitled to reinstatement of his license
20 upon successful completion of a drug abuse treatment and
21 education program approved by the licensing authority.

22 (5) The suspension and revocation sanctions prescribed
23 in this section are intended as minimum sanctions, and
24 nothing in this section prohibits a licensing authority from
25 establishing and implementing additional or more stringent

1 sanctions for criminal offenses and other conduct involving
2 the unlawful manufacture, distribution, sale, or possession
3 of a dangerous drug.

4 **Section 3.** Section 20-4-110, MCA, is amended to read:

5 "20-4-110. Suspension, revocation, and denial of
6 certificate -- appeals. (1) The board of public education
7 may suspend or revoke the teacher or specialist certificate
8 of any person for any of the following reasons:

9 (a) making any statement of material fact in the
10 application for a certificate which the applicant knows to
11 be false;

12 (b) any reason that would have required or authorized
13 the denial of the teacher or specialist certificate to the
14 person if it had been known at the time the certificate was
15 issued;

16 (c) incompetency;

17 (d) gross neglect of duty;

18 (e) conviction of, entry of a guilty verdict, a plea of
19 guilty, or a plea of no contest to a criminal offense
20 involving moral turpitude in this state or any other state
21 or country;

22 (f) immoral conduct related to the teaching profession;

23 (g) substantial and material nonperformance of the
24 employment contract between the teacher or specialist and
25 the trustees of a district without good cause or the written

1 consent of the trustees; or

2 (h) denial, revocation, suspension, or surrender of a
3 teacher or specialist certificate in another state for any
4 reason constituting grounds for similar action in this
5 state.

6 (2) The board may initiate proceedings under this
7 section if a request for the suspension or revocation of the
8 teacher or specialist certificate of any person is made to
9 it by:

10 (a) the trustees of a district as to a teacher or
11 specialist employed by that district within the 12 months
12 immediately preceding receipt of the request by the board of
13 public education; or

14 (b) the superintendent of public instruction.

15 (3) (a) If the employment relationship between a school
16 district and a teacher or specialist is terminated or not
17 renewed because the trustees have reason to believe that the
18 teacher or specialist engaged in conduct described in
19 subsection (1)(e) or (1)(f), the trustees shall make a
20 written report to the superintendent of public instruction
21 describing the circumstances of the termination or
22 nonrenewal of the employment relationship.

23 (b) The superintendent shall review the report and may
24 conduct further investigation. If he is satisfied that
25 sufficient grounds exist, he may request action by the board

1 of public education under subsection (2)(b). The request
2 must be brought within 1 year after discovery of the events
3 that gave rise to the report.

4 (c) The trustees and the superintendent shall ensure
5 the confidentiality of the report.

6 (d) The trustees and the superintendent and their
7 agents and employees are immune from suit for actions taken
8 in good faith under this section with respect to the report.

9 (4) The Except for suspension or revocation under
10 [section 2], the board shall give a 30-day written
11 notification to any person when the board intends to
12 consider the suspension or revocation of his certificate.
13 The board shall conduct an investigation of the reasons for
14 the suspension or revocation charge and then, if the
15 investigation warrants further action, conduct a hearing in
16 the manner provided by board policies. At the hearing the
17 board shall afford the person an opportunity to defend
18 himself and his qualifications against the charge.

19 (5) After a hearing, the board may suspend or revoke
20 the person's teacher or specialist certificate, except that
21 in the case of a first violation under subsection (1)(g),
22 the maximum penalty is a 2-year suspension of the person's
23 certificate.

24 (6) Whenever the superintendent of public instruction
25 denies the issuance or the renewal of a teacher or

1 specialist certificate, the applicant may appeal the denial
2 to the board of public education. The board shall hear the
3 appeal in the same manner provided in this section for
4 suspension or revocation and in accordance with the policies
5 of the board. The decision of the board shall be final."

6 NEW SECTION. Section 4. Drug-related offenses --
7 suspension or revocation of license. The commissioner shall
8 suspend or revoke any license granted under the provisions
9 of this code to an individual convicted of a drug-related
10 offense, as required by [section 2].

11 **Section 5.** Section 37-61-301, MCA, is amended to read:

12 "37-61-301. Disbarment. (1) The supreme court of the
13 state shall have exclusive jurisdiction to remove or suspend
14 attorneys and counselors at law.

15 (2) An attorney and counselor may be removed or
16 suspended for any of the following causes arising after his
17 admission to practice:

18 (a) his conviction of a felony or misdemeanor involving
19 moral turpitude, in which case the record of conviction is
20 conclusive evidence;

21 (b) willful disobedience or violation of an order of
22 the court requiring him to do or forbear an act connected
23 with or in the course of his profession which he ought in
24 good faith to do or forbear and any violation of the oath
25 taken by him or of his duties as such attorney and

1 counselor;

2 (c) corruptly or willfully and without authority
3 appearing as attorney for a party to an action or
4 proceeding;

5 (d) lending his name to be used as attorney and
6 counselor by another person who is not an attorney and
7 counselor;

8 (e) being guilty of deceit, malpractice, crime, or
9 misdemeanor involving moral turpitude;

10 (f) his conviction of a drug-related offense, as
11 provided in [section 2], in which case the record of
12 conviction is conclusive evidence."

13 **Section 6.** Section 37-61-302, MCA, is amended to read:

14 "37-61-302. Record of conviction. In case of the
15 conviction of an attorney and counselor of a felony or
16 misdemeanor involving moral turpitude or a drug-related
17 offense, as provided in [section 2], the clerk of the court
18 in which such conviction is had shall, within 30 days
19 thereafter, transmit to the supreme court a certified copy
20 of the record of conviction."

21 **Section 7.** Section 37-61-303, MCA, is amended to read:

22 "37-61-303. Proceedings required on receipt of record
23 of conviction. The proceedings to remove or suspend an
24 attorney and counselor under 37-61-301(2)(a) and (2)(f) must
25 be taken by the court on the receipt of a certified copy of

1 the record of conviction. The proceedings under the
 2 ~~subsections (2)(b), (2)(c), or (2)(d)~~ of 37-61-301(2)(b)
 3 through (2)(e) may be taken by the court for the matters
 4 within its knowledge or may be taken upon the information of
 5 another."

6 **Section 8.** Section 37-61-309, MCA, is amended to read:

7 "37-61-309. Judgment. Upon conviction, in cases arising
 8 under 37-61-301(2)(a) and (2)(f), the judgment of the court
 9 must be that the name of the party be stricken from the roll
 10 of attorneys and counselors of the court and that he be
 11 precluded from practicing as such attorney or counselor in
 12 all the courts of this state. Upon conviction in cases under
 13 ~~the other subsections of that section~~ 37-61-301(2)(b)
 14 through (2)(e), the judgment of the court may be, according
 15 to the gravity of the offense charged, deprivation of the
 16 right to practice as attorney or counselor in the courts of
 17 this state permanently or for a limited period."

18 **Section 9.** Section 37-1-136, MCA, is amended to read:

19 "37-1-136. Disciplinary authority of boards --
 20 injunctions. (1) Each licensing board allocated to the
 21 department has the authority, in addition to any other
 22 penalty or disciplinary action provided by law, to adopt
 23 rules specifying grounds for disciplinary action and rules
 24 providing for:

25 (a) revocation of a license;

1 (b) suspension of its judgment of revocation on terms
 2 and conditions determined by the board;

3 (c) suspension of the right to practice for a period
 4 not exceeding 1 year;

5 (d) placing a licensee on probation;

6 (e) reprimand or censure of a licensee; or

7 (f) suspension or revocation of a license as required
 8 by [section 2]; or

9 (f)(g) taking any other action in relation to
 10 disciplining a licensee as the board in its discretion
 11 considers proper.

12 (2) Any disciplinary action by a board shall be
 13 conducted as a contested case hearing under the provisions
 14 of the Montana Administrative Procedure Act.

15 (3) Notwithstanding any other provision of law, a board
 16 may maintain an action to enjoin a person from engaging in
 17 the practice of the occupation or profession regulated by
 18 the board until a license to practice is procured. A person
 19 who has been enjoined and who violates the injunction is
 20 punishable for contempt of court."

21 NEW SECTION. Section 10. Codification instruction. (1)
 22 [Sections 1 and 2] are intended to be codified as an
 23 integral part of Title 37, chapter 1, part 2, and the
 24 provisions of Title 37, chapter 1, part 2, apply to
 25 [sections 1 and 2].

1 (2) [Section 4] is intended to be codified as an
2 integral part of Title 33, chapter 1, part 3, and the
3 provisions of Title 33, chapter 1, part 3, apply to [section
4 4].

5 NEW SECTION. Section 11. Applicability. [This act]
6 applies to criminal offenses committed on or after October
7 1, 1991.

-End-