

1 *F. Glance* *W. Miller* *House* BILL NO. *HB 401* *Introduced by* *Rep. Berndt* *Acting Lt. Governor* *Franklin Bishop*  
2 INTRODUCED BY *Rep. Berndt* *Acting Lt. Governor* *Franklin Bishop*  
3 *Bobbi Jo Rance* *Rep. D. Masolo* *Emergency* *Rep. Eye*  
4 A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING THE BOARD OF DENTAL HYGIENE; CREATING  
5 A SPECIAL REVENUE ACCOUNT FOR THE BOARD; DEFINING TERMS AND THE SCOPE OF DENTAL  
6 HYGIENE PRACTICE; PROVIDING FOR EXEMPTIONS, EXCEPTIONS, AN OFFICIAL SEAL, AND SUBPOENA  
7 POWER; ESTABLISHING LICENSURE PROCEDURES; ALLOWING AFFILIATION WITH NATIONAL  
8 ASSOCIATIONS; ALLOWING THE ADMISSION TO PRACTICE OF DENTAL HYGIENISTS FROM OTHER  
9 STATES; SETTING GROUNDS FOR DISCIPLINARY ACTIONS, PROCEDURES FOR INVESTIGATIONS, AND  
10 PENALTIES FOR UNLICENSED PRACTICE; AMENDING SECTIONS 2-15-1842, 37-4-103, 37-4-302, AND  
11 37-4-408, MCA; AND REPEALING SECTIONS 37-4-401, 37-4-402, 37-4-403, 37-4-404, 37-4-405,  
12 37-4-406, AND 37-4-407, MCA."

13

## 14 STATEMENT OF INTENT

15 A statement of intent is required for this bill because it grants rulemaking authority to the board of  
16 dental hygiene. The bill authorizes the board to make rules regarding the scope of the practice of dental  
17 hygiene; the examination, licensure, and renewal of licensure of applicants; minimum educational standards  
18 for licensure in the practice of dental hygiene; setting fees; requirements and criteria for continuing  
19 education; revocation, suspension, or denial of a license; the conduct of hearings and investigations on  
20 complaints against licensees or in matters relating to the practice of dental hygiene; the administration of  
21 oaths and the hearing of testimony on matters within the board's jurisdiction; the maintenance of records  
22 of licensees; and the appointment of dental hygiene examiners for licensing exams.

23

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

25

26 Section 1. Section 2-15-1842, MCA, is amended to read:

27 "2-15-1842. **Board of dentistry.** (1) There is a board of dentistry.

28 (2) (a) The board consists of five dentists, one of whom shall serve as a nonvoting member, one  
29 denturist, ~~one dental hygienist~~, and two public members, one of whom must be a senior citizen. All  
30 members are appointed by the governor with the consent of the senate. Each licensed member ~~shall~~ must

1 be licensed to practice as a dentist, or denturist, or dental hygienist in this state, ~~shall~~ must have actively  
2 practiced in this state for at least 5 continuous years immediately before ~~his~~ the member's appointment,  
3 ~~except as provided in subsection (2)(b), and shall~~ must be actively engaged in practice while serving on the  
4 board. Each member ~~shall~~ must be a resident of this state.

5 ~~(b) The provision in subsection (2)(a) requiring a licensed member to have actively practiced in this~~  
6 ~~state for at least 5 continuous years immediately before his appointment does not apply to the first~~  
7 ~~denturist appointed to the board.~~

8 (3) Each member shall serve for a term of 5 years. Each dentist appointed to the board for a  
9 statutory 5-year term shall serve the first year of the term as a nonvoting member of the board. The  
10 governor may remove a member only for neglect or cause.

11 (4) The governor shall fill any vacancy within 30 days.

12 (5) The board is allocated to the department for administrative purposes only as prescribed in  
13 2-15-121."

14

15 **NEW SECTION. Section 2. Board of dental hygiene.** (1) There is a board of dental hygiene.

16 (2) The board consists of three dental hygienists, one dentist who employs a dental hygienist, and  
17 one public member. All members are appointed by the governor with the consent of the senate. Each  
18 licensed member must:

19 (a) be licensed to practice as a dental hygienist or a dentist in this state;

20 (b) have actively practiced as a dental hygienist or a dentist in this state for at least 5 continuous  
21 years immediately before the appointment; and

22 (c) be actively engaged in practice while serving on the board.

23 (3) The public member may not be involved in dental health by education, profession, blood relation,  
24 marriage, or financial interest. The dental hygienists may not hold a degree in dentistry or be involved in  
25 a dental practice by blood relation or marriage.

26 (4) Each member shall serve a term of 5 years. The governor may remove a member only for  
27 neglect or cause.

28 (5) The governor shall fill any vacancy within 30 days.

29 (6) The board is allocated to the department for administrative purposes only as prescribed in  
30 2-15-121.

(7) The dental hygienists shall serve an initial term of 3, 4, and 5 years, respectively. The dentist shall serve an initial term of 1 year. The public member shall serve an initial term of 2 years.

(8) A board member may not serve more than two consecutive terms.

**NEW SECTION.** **Section 3. Special revenue account.** (1) There is a state special revenue account established for meeting the expenses of the board, the proper administration of [sections 7 through 24], and educational purposes considered appropriate by the board.

(2) Subject to 37-1-134, all fees collected by the department on behalf of the board and all costs recovered under the provisions of [section 20] must be deposited in the state special revenue account.

**Section 4.** Section 37-4-103, MCA, is amended to read:

"37-4-103. **Exemptions -- restriction.** (1) A dental laboratory or dental technician is not practicing dentistry under this chapter when engaged in the construction, making, alteration, or repairing of bridges, crowns, dentures, or other prosthetic appliances, surgical appliances, or orthodontic appliances if the casts, models, or impressions on which the work is constructed have been made by a regularly licensed and practicing dentist and the crowns, bridges, dentures, prosthetic appliances, surgical appliances, or orthodontic appliances are returned to the dentist on whose order the work was constructed.

(2) Section 37-4-101(2) and part 5 of this chapter do not apply to a legally qualified physician or surgeon or to a dental surgeon of the United States army, navy, public health service, or ~~veterans' bureau~~ department of veterans affairs or to a legal practitioner of another state making a clinical demonstration before a dental society, convention, or association of dentists or to a licensed dental hygienist performing an act authorized under ~~37-4-401 or 37-4-405~~ [section 8].

(3) Nothing in this This chapter prevents does not prevent a bona fide faculty member of a school, college, or department of a university recognized and approved by the board from performing dental procedures necessary to ~~his~~ teaching functions. Nothing in this This chapter prevents does not prevent students from performing dental procedures under the supervision of a bona fide instructor of a school, college, or department of a university recognized and approved by the board, provided such the dental procedures are a part of the assigned teaching curriculum.

(4) This chapter does not prohibit or require a license with respect to the practice of denturistry under the conditions and limitations defined by Title 37, chapter 29. None of the regulations contained in

1 this chapter apply to a person engaged in the lawful practice of dentistry.

2 (5) This chapter may not be construed to undermine the practice of dental hygiene as provided for  
3 in [sections 7 through 24]."

5 **Section 5.** Section 37-4-302, MCA, is amended to read:

6 ~~"37-4-302. Recognition of dental schools and dental hygiene schools. In determining what~~  
7 ~~constitutes a recognized dental college, the board shall must be guided by the standards, canons, and~~  
8 ~~practices required for recognition by the commission on dental accreditation. In determining what~~  
9 ~~constitutes a recognized dental hygiene school, the board shall recognize only those dental hygiene schools~~  
10 ~~accredited by the commission on dental accreditation or its successor as designated by the United States~~  
11 ~~department of education or the council on post secondary accreditation, or both."~~

12

13 **Section 6.** Section 37-4-408, MCA, is amended to read:

14 **"37-4-408. Auxiliary personnel -- employment, duties, and limitations.** (1) A dental auxiliary is a  
15 person other than a licensed dental hygienist employed by a licensed dentist. The board may, within the  
16 limitations of this chapter, adopt rules that define the qualifications and outline the tasks of any unlicensed  
17 auxiliary personnel to be employed by a licensed dentist in ~~his the dentist's~~ office, except that ~~nothing in~~  
18 this section may not be construed to allow the board ~~by rule to provide for delegation by a licensed dentist~~  
19 ~~to any such to delegate to auxiliary personnel by rule any of the duties prohibited to dental hygienists under~~  
20 ~~37-4-401 or a prophylaxis [section 10] or any of the duties described as the practice of dental hygiene in~~  
21 ~~[section 8].~~

22 (2) The following duties may be performed by a dental auxiliary:

23 (a) exposing of dental radiographs after meeting the board of dentistry requirements for education  
24 and training; and

25 (b) application of fluoride to the exposed surfaces of teeth.

26 (3) The performance of intraoral tasks by all dental auxiliaries, as permitted by board rules, must  
27 be under the direct supervision of the licensed dentist employing the personnel.

28 (4) For the purposes of this section, "direct supervision" means that intraoral tasks performed by  
29 a dental auxiliary may be provided only with the intent and knowledge of the dentist and only while the  
30 dentist is on the premises."

1           **NEW SECTION. Section 7. Definitions.** As used in [sections 7 through 24], unless the context  
2    requires otherwise, the following definitions apply:

3           (1) "Board" means the board of dental hygiene established in [section 2].

4           (2) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

5           (3) "Direct supervision" means that treatment by a dental hygienist is provided with the intent and  
6    knowledge of the supervising dentist and may be performed only while the dentist is on the premises.

7           (4) "General supervision" means that treatment by a dental hygienist is provided with the intent and  
8    knowledge of the supervising dentist who is licensed and residing in the state of Montana, but the  
9    supervising dentist need not be on the premises.

10          (5) "Nonsurgical periodontal therapy" means therapeutic treatment of gingival inflammation,  
11    periodontal inflammation, or damaged periodontal structures. The term may include periodontal examination  
12    and assessment, scaling, root planing, subgingival curettage, and the use of sulcular and topical  
13    medications, sonic and ultrasonic devices, and other methods to improve the periodontal health of the  
14    patient.

15          (6) "Prophylaxis" means a routine preventive and therapeutic treatment performed on transitional  
16    dentition or permanent dentition that may include:

17           (a) periodontal examination and assessment; and

18           (b) scaling and polishing procedures on the teeth of dental patients in normal or good periodontal  
19    health in order to remove coronal plaque, calculus, and stains. Scaling and polishing are performed on the  
20    anatomic or clinical crowns and into very shallow, healthy sulci.

21

22          **NEW SECTION. Section 8. Dental hygiene -- scope of practice.** (1) A licensed dental hygienist,  
23    with the permission of the supervising dentist, may practice under the general supervision of a licensed  
24    dentist in the office of a licensed and actively practicing dentist, in a public or private institution, under a  
25    board of health, or in a public clinic. However, the dental hygienist may give instruction in oral hygiene and  
26    perform dental screenings without the supervision of a licensed dentist in a public or private institution, in  
27    a hospital, in an extended care facility, under a board of health, or in a public clinic.

28          (2) The licensed dental hygienist may perform dental hygiene services that are educational,  
29    therapeutic, prophylactic, or preventive in nature. These services include procedures that the dental  
30    hygienist was trained and qualified to perform in an accredited school of dental hygiene, including but not

1 limited to:

2 (a) evaluating vital signs and medical history;

3 (b) intraoral screening to identify indications of oral abnormalities;

4 (c) exposing of and dental hygiene interpretation of dental radiographs;

5 (d) prophylaxis;

6 (e) applying preventive and therapeutic agents;

7 (f) intraoral use of high-speed handpieces for amalgam margination or the removal of orthodontic

8 adhesives;

9 (g) intraoral use of abrasive air polishing devices;

10 (h) enamel etching and application of pit and fissure sealants;

11 (i) periodontal probing, examination, and assessment;

12 (j) nonsurgical periodontal therapy;

13 (k) amalgam polishing;

14 (l) nutritional counseling; and

15 (m) administration of public health dental hygiene programs.

16 (3) The board shall authorize the administration of local anesthetic agents by a licensed dental  
17 hygienist certified by the board to administer the agents only under the direct supervision of a licensed  
18 dentist.

19

20 **NEW SECTION. Section 9. Exemptions -- restriction.** (1) [Sections 7 through 24] do not apply to  
21 a licensed dentist, physician, or surgeon.

22 (2) [Sections 7 through 24] may not be construed to undermine the practice of dentistry as  
23 provided for in Title 37, chapter 4.

24 (3) [Sections 7 through 24] do not apply to:

25 (a) a legally qualified physician or surgeon;

26 (b) a dental surgeon or dental hygienist of the United States army, navy, public health service, or  
27 department of veterans affairs; or

28 (c) a licensed practitioner of another state making a clinical demonstration before a dental hygiene  
29 society, convention, or association of dental hygienists.

30 (4) [Sections 7 through 24] do not prevent a bona fide faculty member of a school, college, or

1 department of a university recognized and approved by the board from performing dental procedures  
2 necessary to teaching functions. [Section 8] does not prevent students from performing dental procedures  
3 under the supervision of a bona fide instructor of a school, college, or department of a university recognized  
4 and approved by the board, provided the dental procedures are a part of the assigned teaching curriculum.

5

6 **NEW SECTION. Section 10. Exceptions.** The board may not authorize a dental hygienist to  
7 perform any of the following procedures:

8 (1) diagnosis or treatment planning;

9 (2) placing and carving restorations that are not temporary in nature;

10 (3) surgical procedures on hard and soft tissues;

11 (4) restorative, prosthetic, orthodontic, and other procedures that require the knowledge and skill  
12 of a dentist; or

13 (5) prescribing drugs or medications or authorizing work.

14

15 **NEW SECTION. Section 11. Official seal -- organization -- subpoena power.** (1) The board is  
16 required to have an official seal of its own design and shall employ the seal to authenticate its acts and  
17 records when required.

18 (2) The board shall annually choose from its members a president, vice president, and a  
19 secretary-treasurer, who serve at the pleasure of the board.

20 (3) Any member of the board has the power to administer oaths and affirmations, and the board  
21 has the power to hear testimony and subpoena witnesses for all matters relating the duties imposed upon  
22 it by law.

23

24 **NEW SECTION. Section 12. Meetings -- notice -- quorum -- records.** (1) The board shall meet at  
25 least once each year at the call of the president and secretary-treasurer. The department shall give 5 days'  
26 notice to board members of the time and place of the meeting of the board.

27 (2) A meeting held for the purpose of examining candidates for a license to practice dental hygiene  
28 may not exceed 6 days.

29 (3) Three members of the board constitute a quorum for the transaction of business. The board's  
30 proceedings are open to public inspection in cases of public interest.

1                   (4) Money collected by the department under [sections 7 through 24] must be deposited in the  
2 account established in [section 3] for the use of the board, subject to 37-1-134.

3                   (5) The department shall keep a complete record of meetings and proceedings of the board and shall  
4 keep a complete account of money received and disbursements made by the department.

5

6                   **NEW SECTION. Section 13. Compensation and expenses of board members -- disbursement of**  
7 **excess funds.** (1) Out of the funds derived from fees collected under [sections 7 through 24], each  
8 member of the board shall receive compensation and travel expenses as provided for in 37-1-133.

9                   (2) Money collected in excess of that required for expenses and salaries must be deposited into the  
10 state special revenue account established in [section 3].

11

12                   **NEW SECTION. Section 14. Affiliation with national association authorized -- delegates.** The board  
13 may affiliate with the national association as an active member, pay regular annual dues to the association,  
14 and send delegates to the meetings of the association.

15

16                   **NEW SECTION. Section 15. Rulemaking.** The board may adopt, amend, or repeal rules necessary  
17 for the implementation, continuation, and enforcement of [sections 7 through 24] in accordance with the  
18 Montana Administrative Procedure Act. Rules adopted under this section may include but are not limited  
19 to the following subjects:

20                   (1) the scope of the practice of dental hygiene;  
21                   (2) the examination, licensure, and renewal of licensure;  
22                   (3) minimum educational standards for licensure in the practice of dental hygiene;  
23                   (4) requirements and criteria for continuing competency;  
24                   (5) revocation, suspension, or denial of a license and the conduct of hearings and investigations  
25 on complaints against licensees or in matters relating to the practice of dental hygiene;  
26                   (6) the administration of oaths and the hearing of testimony on matters within the board's  
27 jurisdiction;  
28                   (7) the maintenance of records of licensees;  
29                   (8) setting fees; and  
30                   (9) the appointment of dental hygiene examiners for licensing exams.

1           **NEW SECTION.** **Section 16. Recognition of dental hygiene schools.** In determining what  
2 constitutes a recognized dental hygiene school, the board shall recognize only those dental hygiene schools  
3 accredited by the commission on dental accreditation or its successor as designated by the United States  
4 department of education or the council on postsecondary accreditation, or both.

5

6           **NEW SECTION.** **Section 17. License -- examination -- issuance of certificate.** (1) The department  
7 may issue licenses for the practice of dental hygiene to qualified applicants to be known as registered dental  
8 hygienists.

9           (2) A person may not engage in the practice of dental hygiene or practice as a dental hygienist in  
10 this state until the person has been issued a license by the department.

11           (3) In order to be licensed, applicants for licensure are required to successfully complete all of the  
12 following:

13           (a) a written examination. The board may accept, in satisfaction of this examination, successful  
14 completion of an examination by the national board of dental examiners.

15           (b) a practical or clinical examination. The board may accept, in satisfaction of this examination,  
16 successful completion of an examination by a regional testing service.

17           (c) a dental hygiene jurisprudence examination.

18           (4) Except for those who qualify under [section 19], applicants for licensure shall submit an  
19 application that must include:

20           (a) certification of successful completion of the national board written examination;

21           (b) certification of successful completion of a regional board practical examination;

22           (c) two affidavits of good moral character;

23           (d) a certificate of graduation from an accredited dental hygiene school;

24           (e) an examination fee;

25           (f) a licensure fee;

26           (g) a recent photograph of the applicant; and

27           (h) when applicable, copies of all other state licenses that are held by the applicant.

28           (5) Applications must be submitted no less than 20 days prior to the dental hygiene jurisprudence  
29 examination provided for in subsection (3)(c). Applicants may not take the dental hygiene jurisprudence  
30 examination without first having submitted a complete application, as required in subsection (4), and

1 having completed and passed the other examinations required in this section. An applicant who fails to pass  
2 the dental hygiene jurisprudence examination the first time may, if otherwise qualified, take a subsequent  
3 examination upon payment of a fee.

4 (6) All examination results are accepted for a period of time set by board rule.

5 (7) An applicant who successfully passes the examination provided for in subsection (3)(c) must  
6 be granted a license as a dental hygienist and must receive a certificate signed by the members of the  
7 board.

8 (8) The licensee shall display the annual registration certificate for the current year in a conspicuous  
9 manner in the dental hygienist's place of business.

10

11 **NEW SECTION. Section 18. Annual renewal fee -- default -- active, inactive status -- continuing**  
12 **education -- revocation of license -- local fees prohibited.** (1) A licensed dental hygienist shall annually pay  
13 a renewal fee to the board. The renewal must be for either active or inactive status.

14 (2) Payment of the annual renewal fee must be made prior to March 1 of each year, and a license  
15 renewal must be issued by the department. A reasonable late fee is required if the annual renewal fee is  
16 not paid before March 1.

17 (3) The board may adopt rules governing requirements for demonstrating continued competency  
18 for license renewal.

19 (4) (a) The board may reclassify an active status license to inactive status if a licensee notifies the  
20 board that the licensee has discontinued the actual practice of dental hygiene.

21 (b) An individual who wishes to maintain a Montana license but does not reside or practice in  
22 Montana must be licensed in the inactive status.

23 (c) Application to convert an inactive status license to an active status license must be made in  
24 accordance with rules of the board. The application to convert to active status must accompany the  
25 submission of the renewal fee prescribed for the license. The board may require the applicant to provide  
26 satisfactory evidence of competence if more than 1 year has passed since the license was inactivated.

27 (5) In case of default in payment of the renewal fee by any licensee, the board shall revoke the  
28 license.

29 (a) The board shall give the licensee 30 days' notice of its proposed revocation action. The notice  
30 must be sent by certified mail to the last-known address of the licensee and must contain a statement of

1 the time and place of the meeting at which the revocation will be considered.

2 (b) The payment of the renewal fee on or before the time set for revocation, with a reasonable late  
3 fee set by the board, excuses the default.

4 (c) A license revoked for nonpayment of the renewal fee may be reinstated within 5 years of  
5 revocation if:

6 (i) renewal fees are paid for each year that they were unpaid, plus a late penalty for each year;  
7 (ii) the applicant produces evidence, satisfactory to the board, of good standing with the dental  
8 hygiene regulatory agencies of any jurisdiction in which the applicant has engaged in the active practice  
9 of dental hygiene since the last payment of a renewal fee under [sections 7 through 24]; and

10 (iii) the applicant produces evidence, satisfactory to the board, of good character and competence.

11 (6) A dental hygienist shall give the board notice of any change in name, address, or status within  
12 30 days of the change.

13 (7) A unit of local government of any type may not impose a license fee on a dental hygienist  
14 licensed under [sections 7 through 24].

15  
16 **NEW SECTION. Section 19. Admission of dental hygienists from other states.** (1) A dental  
17 hygienist may be granted a license to practice dental hygiene in this state if the applicant:

18 (a) has been lawfully licensed to practice in another state or territory that maintains a standard for  
19 the practice of dental hygiene that, in the opinion of the board, is equivalent to the standard maintained  
20 in this state;

21 (b) has been lawfully and continuously engaged in the practice of dental hygiene for a period of  
22 at least 500 hours during the 1-year period immediately before filing an application to practice in this state;

23 (c) deposits in person with the department an attested certificate from the examining board of each  
24 state or territory in which the applicant is registered or licensed, certifying to the fact of the applicant's  
25 registration and license and of being a person of good moral character and of professional competence;

26 (d) deposits in person with the department evidence of graduation from a school of dental hygiene  
27 accredited by the commission on dental accreditation or its successor as recognized by the United States  
28 department of education or the council on postsecondary accreditation, or both; and

29 (2) pays a fee prescribed by the board.

30

1           **NEW SECTION. Section 20. Grounds for disciplinary proceedings -- range of sanctions -- recovery**  
2    **of costs.** (1) The board may censure, prescribe probation, suspend or revoke a license issued under  
3    [sections 7 through 24] for any of the following causes:

4               (a) physical or mental incompetence;  
5               (b) malpractice;  
6               (c) unprofessional conduct, as defined by rule of the board; or  
7               (d) violation of any of the provisions of [sections 7 through 24] or rules or orders of the board.

8               (2) The board may, following a final determination resulting in any disciplinary action taken by the  
9    board under subsection (1), recover from the disciplined party all reasonable costs of any proceeding  
10   incurred for the purposes of that disciplinary action. The costs recovered must be deposited in the state  
11   special revenue account established in [section 3].

12

13           **NEW SECTION. Section 21. Procedure for investigation -- sanctions.** (1) Upon receipt of a  
14    complaint or upon its own motion, the board shall determine whether the matter alleged warrants  
15    investigation and may cause an investigation to be made. If the board finds preliminary cause for imposing  
16    the sanctions listed in [section 20], it may do so in accordance with the provisions of the Montana  
17    Administrative Procedure Act. If the board finds that the evidence obtained does not justify the imposition  
18    of sanctions, it shall notify the licensee concerned and the complaining party and may not take further  
19    action.

20               (2) If the board finds that the evidence obtained does not warrant suspension or revocation of a  
21    license but does warrant other sanctions, it may either:

22               (a) issue a public or private decree of censure; or  
23               (b) impose a probation with terms and conditions appropriately adapted under the circumstances  
24    of the particular case.

25               (3) The licensee is entitled to an opportunity for a contested case hearing before a sanction of  
26    censure or probation becomes effective, to the same extent that an opportunity for hearing is afforded prior  
27    to suspension or revocation.

28               (4) In addition to its authority to impose sanctions, the board may deny an application for a license  
29    for any of the following reasons:

30               (a) failure to meet the relevant requirements of [sections 7 through 24];

- (b) making any untrue or fraudulent statement in support of the application; or
- (c) any of the grounds set forth in [section 20] for suspension or revocation of a license.

**NEW SECTION. Section 22. Practicing dental hygiene without license -- penalty.** (1) A person who practices dental hygiene or who does a procedure of dental hygiene without having first secured a license to practice dental hygiene from the department entitling the person to practice in this state, or an employer who requires unlicensed practice as a condition of employment, is guilty of a misdemeanor and upon conviction in a district court may be fined an amount not less than \$500 or more than \$1,000 or be confined for a period not exceeding 6 months in the county jail.

(2) Fines imposed and collected under [sections 7 through 24], except those paid to a justice's court, must be paid into the treasury of the county in which the suits, actions, or proceedings are commenced. Money paid into the treasury over and above the amount necessary to reimburse the county for expense incurred by the county in a suit, action, or proceeding brought under [sections 7 through 24] must be deposited before July 1 of each year into the state special revenue account established in [section 3] for the use of the board, subject to 37-1-101(6).

**NEW SECTION. Section 23. Acts constituting misdemeanors.** A person, company, or association is guilty of a misdemeanor and may be punished upon conviction with a fine in an amount not less than \$50 or more than \$200 or by confinement for not more than 6 months in the county jail, or both, if the person, company, or association:

(1) sells or barters or offers to sell or barter a diploma or document conferring or purporting to confer any dental hygiene degree or any certificate or transcript made or purporting to be made pursuant to the laws regulating the license and regulation of dental hygienists;

(2) purchases or procures by barter a diploma, certificate, or transcript with the intention of using the document as evidence of the holder's qualification to practice dental hygiene;

(3) alters with fraudulent intent in a material regard any diploma, certificate, or transcript;

(4) uses or attempts to use a diploma, certificate, or transcript that has been purchased, fraudulently issued, counterfeited, or materially altered, either as a license or color of license to practice dental hygiene or in order to procure registration as a dental hygienist;

(5) practices dental hygiene under a false or assumed name; or

(6) in an affidavit required of an applicant for examination, license, or registration under [sections 7 through 24], willfully makes a false statement in a material regard.

3

**4                    NEW SECTION. Section 24. Duty of county attorney -- jurisdiction of justices' courts -- injunction.**

5 (1) The county attorney of the county in which an offense is alleged to have occurred shall prosecute  
6 complaints made under [sections 7 through 24], both in the justice's court where the complaint is made  
7 and also in the district court, either on the complaint or on information or indictment filed against a person  
8 under [sections 7 through 24]. [Sections 7 through 24] do not prevent the prosecution of a person for  
9 violation of [sections 7 through 24] on the information of the county attorney directly.

10 (2) If a person engages in the practice of dental hygiene without possessing a valid license or  
11 violates [sections 7 through 24], the attorney general, a county attorney, or the board may maintain an  
12 action in the name of this state to enjoin the person from engaging in the practice of dental hygiene or from  
13 otherwise violating [sections 7 through 24]. The injunction does not relieve criminal prosecution, but the  
14 remedy by injunction is in addition to the liability of the offender to criminal prosecution.

15

16        NEW SECTION. **Section 25. Repealer.** Sections 37-4-401, 37-4-402, 37-4-403, 37-4-404,  
17        37-4-405, 37-4-406, and 37-4-407, MCA, are repealed.

18

19        **NEW SECTION.** **Section 26. Codification instruction.** (1) [Section 2] is intended to be codified  
20    as an integral part of Title 2, chapter 15, part 18, and the provisions of Title 2, chapter 15, part 18, apply  
21    to [section 2].

22 (2) [Sections 3 and 7 through 24] are intended to be codified as an integral part of Title 37, and  
23 the provisions of Title 37 apply to [sections 3 and 7 through 24].

24

-END-



## STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0401, as introducedDESCRIPTION OF PROPOSED LEGISLATION:

An act establishing the Board of Dental Hygiene; creating a special revenue account for the board; defining terms and the scope of dental hygiene practice; providing for exemptions, exceptions, an official seal, and subpoena power; establishing licensure procedures; allowing affiliation with national associations; allowing the admission to practice of dental hygienists from other states; setting grounds for disciplinary actions, procedures for investigations, and penalties for unlicensed practice.

ASSUMPTIONS:

1. The new five-member Board of Dental Hygienists will hold three one-day meetings in FY96 to implement the organization. In FY97 the board will have two one-day meetings.
2. Board members will receive per diem of \$50 per day and will be reimbursed for travel expenses at the state approved rates.
3. Other operating expenses, not including bureau overhead and department indirect, are \$3,100 in FY96 and \$2,410 in FY97. Bureau overhead and department indirect will be \$6,706 in FY96 and \$4,890 in FY97.
4. Annual renewals will consist of 281 active and 144 inactive licenses, and it is projected that there will be 35 new licenses per year with 24 of them being credential.
5. Current fees will be decreased. Application and examination fees will be \$45, a decrease of \$30; license fees will go from \$35 to \$20, and active and in-active license renewals will decrease from \$100 to \$30.
6. \$12,000 from the reserve fund will be used by the new board for start up.
7. The Board of Dentistry's budget request in the Executive Budget recommendation will decrease by \$3,005 in FY96 and \$2,476 in FY97, for the per diem and travel of one dental hygienist board member and associated operating costs.
8. Board of Dentistry revenue will be reduced by \$47,475 each year of the biennium. The Board of Dentistry may have to consider raising fees or reducing the operating budget to compensate for the reduction in revenue.

FISCAL IMPACT:Board of Dental Hygienists:

	<u>FY96</u>	<u>FY97</u>
	<u>Difference</u>	<u>Difference</u>
<u>Expenditures:</u>		
FTE	0.00	0.00
Personal Services	750	500
Operating Expenses	<u>11,306</u>	<u>8,300</u>
Total	<u>12,056</u>	<u>8,800</u>
<u>Funding:</u>		
Reserve Fund	12,000	8,800
<u>Revenue:</u>		
Dental Hygienists (02)	0	15,520
<u>Net Impact:</u>	(56)	6,720

(Continued on page 2)

*Dave Lewis 7-895*  
 DAVE LEWIS, BUDGET DIRECTOR DATE  
 Office of Budget and Program Planning

*Shelli Anderson 7-995*  
 SHELLI ANDERSON, PRIMARY SPONSOR DATE

Fiscal Note for HB0401, as introduced

*HB401*

## Board of Dentistry:

	FY96 <u>Difference</u>	FY97 <u>Difference</u>
<u>Expenditures:</u>		
FTE	0.00	0.00
Personal Services	(250)	(250)
Operating Expenses	<u>(2,755)</u>	<u>(2,226)</u>
Total	<u>(3,005)</u>	<u>(2,476)</u>
<u>Revenue:</u>		
Dentistry (02)	(47,475)	(47,475)

## DEDICATION OF REVENUE:

a) Are there persons or entities that benefit from this dedicated revenue that do not pay? (Please explain)  
No. Dental Hygienists licensing fees support all costs of regulating Board activities. The general public, which utilizes the services of those who offer Dental Hygiene services, benefit indirectly.

b) What special information or other advantages exist as a result of using a state special revenue fund that could not be obtained if the revenue were allocated to the general fund?  
Problems which arise in regard to dental hygienists can be mitigated by resources funded directly by fees from those regulated rather than resources from the general fund.

c) Is the source of revenue relevant to current use of the funds and adequate to fund the program/activity that is intended?  Yes  No (if no, explain)  
d) Does the need for this state special revenue provision still exist?  Yes  No (Explain)  
The bill creates a state special revenue account which licenses and regulates dental hygienists. Establishing state special revenue accounts is consistent with other legislative mandates creating regulatory boards.

e) Does the dedicated revenue affect the legislature's ability to scrutinize budgets, control expenditures, or establish priorities for state spending? (Please explain)  
No. The legislature establishes spending authority for each biennium for dedicated revenue. The legislature also sets priorities when it considers executive budget priorities. The legislative code committee provides oversight for the process of setting fees by rule to cover costs.

f) Does the dedicated revenue fulfill a continuing, legislatively recognized need? (Please explain)  
Yes, provided the legislature continues to mandate the regulation and licensing of dental hygienists.

g) How does the dedicated revenue provision result in accounting/auditing efficiencies or inefficiencies in your agency? (Please explain. Also, if the program/activity were general funded, could you adequately account for the program/activity?)  
The account maintains solvency by raising or lowering fees to keep funds commensurate with costs. If activities were general funded, its possible that the boards would not maintain revenue necessary to support their programs. This greatly contributes to both accounting and auditing efficiency.