

BEFORE THE BOARD OF PLUMBERS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of)
ARM 24.180.301 definitions,)
24.180.505 journeyman must work in)
the employ of master, 24.180.507)
master plumbers registration of)
business name, and the adoption of)
NEW RULE I nonroutine applications)
and NEW RULE II unprofessional)
conduct)

NOTICE OF PUBLIC HEARING ON
PROPOSED AMENDMENT AND
ADOPTION

TO: All Concerned Persons

1. On April 2, 2012, at 10:00 a.m., a public hearing will be held in room 439, 301 South Park Avenue, Helena, Montana, to consider the proposed amendment and adoption of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Plumbers (board) no later than 5:00 p.m., on March 26, 2012, to advise us of the nature of the accommodation that you need. Please contact Jason Steffins, Board of Plumbers, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2329; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2309; e-mail dlibsdlu@mt.gov.

3. The rules proposed to be amended provide as follows, stricken matter interlined, new matter underlined:

24.180.301 DEFINITIONS (1) and (2) remain the same.

(3) "Installation of plumbing and drainage systems" means, but is not limited to, the measuring, laying-out, cutting, fitting, soldering, and gluing of pipe and/or the installation of fixtures and equipment for the purpose of connecting potable water or sewage.

(4) "Installation of water conditioner service" means installation of a device that requires connection to the water piping only and the installation of the drain to an acceptable indirect waste receptor as required by the plumbing code, as adopted by the state of Montana, and as required by Title 37, chapter 69, MCA. This exemption does not apply to connections to any public water supply or to commercial installations.

(5) "Master plumber of record" means a licensed master plumber who is designated as the "master plumber of record" for a plumbing business under ARM 24.180.507.

~~(5)~~ (6) "Minor work" means installation of an appliance that requires connection to the water piping only and the installation of the drain to an acceptable indirect waste receptor as required by the plumbing code, as adopted by the state of Montana, and as required by Title 37, chapter 69, MCA. The installation must be performed by an agent of, or the dealer from whom the appliance was purchased.

~~(6)~~ (7) "Manufactured house" means a structure, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width or 40 body feet or more in length, or, when erected ~~on-site~~ on-site, is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein, except that such term shall include any structure which meets all the requirements of this section, except the size requirements.

(8) "Plumbing business" means any person or entity that advertises, bids, contracts for, or performs work in the field of plumbing.

(7) remains the same, but is renumbered (9).

AUTH: 37-69-202, ~~37-69-401~~, MCA

IMP: 37-69-102, 37-69-305, 37-69-306, 37-69-323, ~~37-69-401~~, MCA

REASON: The question of who may own a plumbing business has been a recurring issue for the board over the past several years. In interpreting the specific board statutes, the board has determined that the law does not require a plumbing business to be owned by a master plumber. However, a master plumber may obtain plumbing permits and supervise the plumbing for only one plumbing business, which is the master plumber's "own" business. Because the legislature did not clearly require a master plumber to possessively and independently "own" each plumbing business, the board understands that one's "own" plumbing business may be the plumbing business the master plumber is associated with or employed by.

The board determined it is reasonably necessary to amend this rule and ARM 24.180.505 and 24.180.507 to more clearly establish who may use the master plumber's license for the purposes of obtaining permits and performing and supervising plumbing work under the authority of that license. The amendments are also consistent with the way business entities are commonly transferred and owned, as ownership may be divided among several nonlicensees who manage the business, without being directly involved in performing or supervising plumbing work. The plumbing work may, according to law, be overseen by the master plumber who is no more than an employee of the plumbing business.

The board also intends that the proposed amendments will clarify the duties of the master plumber of record, with respect to the plumbing business. In the past, the plumbing business and master plumber of record have often been unsure just who was authorized to obtain permits and to contract or bid for plumbing work. In addition, the proposed changes will add clarity to the process of and responsibility for updating the board's records regarding relationships between master plumbers of record and plumbing businesses.

Authority and implementation cites are being amended to accurately reflect all statutes implemented through the rule and provide the complete sources of the board's rulemaking authority.

24.180.505 JOURNEYMAN MUST WORK IN THE EMPLOY OF MASTER

(1) Unless otherwise permitted by the board, a ~~licensed~~ journeyman plumber may perform work only in the employ of and under the supervision of a full-time licensed master plumber of record.

(2) The board recognizes that in certain instances to require a journeyman plumber to be in the employ of a master plumber of record, may work a hardship, and in certain instances, the reason for requiring a master plumber of record may not exist. These instances may include ~~journeymen~~ journeyman plumbers who are employed by a government entity and a majority of whose work ~~which~~ may be considered plumbing, ~~is does not involved in the~~ involve initial installation, but rather, ~~only in making and doing~~ certain minor kinds of maintenance to previously installed and existing plumbing.

(3) ~~Therefore, it is the intent of this rule to require all~~ All licensed journeyman plumbers ~~to shall~~ work only in the employ of a licensed master plumber of record, unless ~~such journeymen should feel that they are entitled to~~ the board grants an exemption from this requirement. ~~If this be the case, such~~ To be exempted from this requirement, a journeyman plumber must file with the board a written application for ~~such~~ exemption. That application must state by whom the journeyman plumber is employed, and it must state in detail the kind and amount of ~~that work he~~ the journeyman plumber is doing, ~~as such employee and~~ especially those areas which ~~may be involved in doing~~ involve the field of plumbing work.

(4) The board, upon review of the application, shall determine whether the type of employment and work thereunder shall require employment by a master plumber of record and may thereafter, in its discretion, grant or deny the application and define the scope of the exemption, including, but not limited to, any and all terms and conditions the board deems necessary or appropriate under the circumstances.

(5) A journeyman plumber license does not authorize the journeyman plumber to obtain a permit or to engage in or advertise as a plumbing business.

AUTH: 37-69-202, MCA

IMP: 37-69-304, 37-69-306, MCA

REASON: The amendments regarding master plumbers of record are explained in the reason following ARM 24.180.301. The board is also amending this rule to clarify the board's authority to grant exemptions authorizing journeyman plumbers to work other than in the employ of a master plumber of record. These changes will address a current misconception that the board may only grant or deny requests. These amendments will specify that the board may also grant exemptions with specific terms or conditions attached, as are appropriate under the circumstances.

Implementation cites are being amended to accurately reflect all statutes implemented through the rule.

24.180.507 MASTER PLUMBERS OF RECORD - REGISTRATION OF BUSINESS NAME (1) At the time of application for licensure as a master plumber or at the time of renewal of the master's license, the applicant or licensee shall designate on the application if he intends to engage in the business of a whether the master plumber is designated as a master plumber of record under his own name, or under an assumed name doing business as a sole proprietor and shall state the name of the plumbing business for which the master plumber will be so designated. The designation made on an application or renewal must be received by the board before the designation is effective.

~~(2) If such master intends to affiliate with a partner, firm or corporation as master plumber of record, he shall so designate the name of the firm, partnership or corporation.~~

~~(3) If at any subsequent time he should change his status as designated above, he shall immediately notify the board in writing by certified mail to that effect at least ten days prior to the change. Until receiving such notice, the board will consider him to be engaged in business in his prior designated status.~~

~~(4) A master license shall be affiliated with only one plumbing business as master plumber of record, to be listed on the annual renewal form, and may not affiliate with a second plumbing business as master plumber of record, without terminating the first through written notice to the board office.~~

(2) A master plumber must notify the board in writing whenever a master plumber is:

(a) designated as the master plumber of record; or

(b) terminated as the master plumber of record.

(3) If a new master plumber of record is designated for a plumbing business that already has a master plumber of record, the effect is a termination of the prior master plumber of record designation.

(4) No change of status will be lawful until the board receives actual notice in writing of the status change, regardless of whether the change is a designation as a master plumber of record, a termination as a master plumber of record, or both.

(5) A master plumber shall be the master plumber of record for only one plumbing business at any one point in time, and shall not assume or perform the duties or obligations of a master plumber of record for any other plumbing business, without first providing the notice required by this rule.

~~(5) (6) A master plumber of record shall be responsible for supervising all plumbing work performed by the plumbing business with for which the master is affiliated plumber of record is designated and for ensuring shall ensure that all plumbing work is performed by licensed plumber employees where a license is required done in compliance with all applicable standards, rules, codes, and statutes, including, but not limited to, licensing laws and building codes.~~

~~(6) The licensed master plumber in any joint venture or other business entity-type arrangements shall be responsible for all plumbing work performed and for supervision of all plumbing employees.~~

~~(7) Prior to any individual or entity bidding and contracting for work in the field of plumbing, the individual must first obtain a master plumber's license in the state of Montana.~~

(7) A master plumber of record designation is required at all times that a plumbing business engages in any of the following:

- (a) advertising services in the field of plumbing;
- (b) bidding or contracting for work in the field of plumbing; and
- (c) applying for or obtaining a plumbing permit, or any part or renewal of a plumbing permit.

~~(8) A master plumber license authorizes the individual's firm to obtain plumbing permits for doing plumbing work under the individual's license. A journeyman plumber's license does not authorize the individual to obtain a plumbing permit or to engage in or advertise as a plumbing business.~~

AUTH: 37-69-202, MCA

IMP: 37-69-305, 37-69-306, 37-69-323, MCA

4. The proposed new rules provide as follows:

NEW RULE I NONROUTINE APPLICATIONS (1) Applications for licensure that disclose any of the following circumstances are nonroutine and must be reviewed and approved by the board before the license may be issued:

- (a) the applicant has ever been convicted of a felony;
- (b) the applicant has pled guilty or no contest to or been convicted of two or more misdemeanors, other than minor traffic violations within the past five years, regardless of whether an appeal is pending and regardless of whether the sentence was suspended or deferred;
- (c) any of the applicant's occupational or professional licenses have been disciplined or an application for a license was denied in any state or jurisdiction; or
- (d) any substantive irregularity deemed by department staff to warrant board review and approval prior to issuance of the license.

AUTH: 37-1-131, 37-69-202, MCA

IMP: 37-1-101, 37-1-131, MCA

REASON: Per statute, the department is responsible for processing routine license applications as defined by the board. Although the board has previously relied on the department's definitions for routine and nonroutine applications in ARM 24.101.402, this new rule will provide staff further clarification and guidance from the board on differentiating between routine and nonroutine applications.

NEW RULE II UNPROFESSIONAL CONDUCT (1) The following conduct is deemed by the board to be unprofessional conduct:

- (a) failing to timely correct violations of the Montana State Building Code, which is provided for in Title 50, chapter 60, MCA. Whether a violation has been timely corrected must be determined in light of the seriousness of the violation and all other factors deemed relevant by the board;
- (b) being adjudicated under Title 39, MCA, by the court or agency having jurisdiction as having violated any workers' compensation, unemployment insurance, or independent contractor law in Montana, while working in the field of plumbing;

- (c) failing to comply with the continuing education requirements set forth in ARM Title 24, chapter 180;
 - (d) violating any requirement found in Title 37, chapters 1 or 69, MCA, or ARM Title 24, chapters 101 or 180;
 - (e) being found guilty or admitting to sufficient facts in relation to, or pleading guilty or *nolo contendere* to a crime in any jurisdiction, whether felony or misdemeanor, regardless of adjudication or sentence, that relates to the practice of plumbing or the ability to safely and effectively practice plumbing, including, but not limited to, violations of any state or federal laws or regulations regarding plumbing;
 - (f) aiding or abetting a person to engage in conduct amounting to unprofessional conduct;
 - (g) failing to respond to the board or the department within 30 days of the date when a correspondence has been mailed to the current address of the licensee on file with the board;
 - (h) allowing false or misleading advertising in relation to the licensee's business as it relates to the field of plumbing; and
 - (i) engaging in a commercial activity that conflicts with responsibility to clients or to other licensees or apprentices.
- (2) Upon a finding of unprofessional conduct as defined in (1), determined in accordance with the Montana Administrative Procedure Act, the board may impose sanctions, including, but not limited to, those allowed pursuant to 37-1-136 and 37-1-312, MCA; any additional cost or expense incurred by a licensee as a result of a sanction is the burden of the licensee. As additional forms of sanction, and without limiting the availability of any other sanction allowed by law, the board may:
- (a) require a specific ratio among the different types of licensees who are in the employment of a disciplined licensee;
 - (b) require a specific ratio among the different types of licensees among whom a disciplined licensee is allowed to work;
 - (c) require supervision or additional inspections; and
 - (d) limit the licensee's scope of practice.

AUTH: 37-1-131, 37-1-136, 37-1-319, 37-69-202, MCA
IMP: 37-1-131, 37-1-316, 37-1-319, MCA

REASON: The board determined it is reasonably necessary to adopt this new rule to specify those grounds of unprofessional conduct and forms of licensee discipline in addition to those found in statute. This new rule is needed to assist the board in safeguarding the public's health, safety, and welfare by making the disciplinary powers of the board more clearly applicable to conduct that is, in the opinion of the board, unprofessional and a threat to the public.

5. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Plumbers, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2309, or by e-mail to dlibsdpplu@mt.gov, and must be received no later than 5:00 p.m., April 10, 2012.

6. An electronic copy of this Notice of Public Hearing is available through the department and board's web site on the World Wide Web at www.plumber.mt.gov. The department strives to make the electronic copy of this notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems, and that technical difficulties in accessing or posting to the e-mail address do not excuse late submission of comments.

7. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this board. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies the person wishes to receive notices regarding all board administrative rulemaking proceedings or other administrative proceedings. The request must indicate whether e-mail or standard mail is preferred. Such written request may be sent or delivered to the Board of Plumbers, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to the office at (406) 841-2309; e-mailed to dlibsdlu@mt.gov; or made by completing a request form at any rules hearing held by the agency.

8. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

9. Tyler Moss, attorney, has been designated to preside over and conduct this hearing.

BOARD OF PLUMBERS
TIM REGAN, PRESIDING OFFICER

/s/ DARCEE L. MOE
Darcee L. Moe
Alternate Rule Reviewer

/s/ KEITH KELLY
Keith Kelly, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State February 27, 2012