

Requests for Active Supervision

Based on the enactment of Montana’s active supervision laws, the Department of Labor & Industry expects to receive requests from the public that the Commissioner engage in active supervision over board matters. This memo sets forth the process to be taken in the event of such request.

Mont. Code Ann. § 37-1-121(1)(d) requires the Commissioner of Labor to exercise supervision over the boards regulated under Title 37. The Commissioner is authorized “to approve or disapprove any board action identified by the department as restraining or potentially restraining competition in trade or commerce.” The Commissioner is to determine if the action “is made or taken pursuant to a clearly articulated state policy and if the restraint or potential restraint of trade is reasonable and necessary to protect the public health, safety, or welfare.”

As such, where the department determines that active supervision over board action is necessary, the process of active supervision by the Commissioner is to begin. The active supervision process is set forth at Mont. Code Ann. § 37-1-122.

Any member of the public seeking active supervision may address the request to the Legal Services Division, Department of Labor & Industry, P.O. Box 1728; Helena, MT 59624. The request must be in writing and signed by the requester.

The request must, at minimum, include the following:

1. The Board proposed to be subject to supervision
2. The action or actions of the Board proposed to be subject to supervision
3. A brief explanation of the reasons active supervision is believed to be necessary
4. All documentation supporting the request—text of statutes, administrative rules, or board minutes need not be submitted, though reference to these documents can be made

Without submission of all of the above, the request may be denied. All requests for active supervision, including attachments thereto, are considered public documents, and will be released upon request.

Please note that the submission of a request for supervision operates to waive, as to the Commissioner and the Commissioner’s designee, any right to privacy in any and all information held by the Department pertaining to you which might otherwise exist.

Upon receipt of a request for active supervision, counsel for the Department will review the request to determine if active supervision is necessary. The Department will notify the requester in writing, typically within 30 days, whether the request will result in supervision. If supervision is necessary, the matter will be transmitted to the Commissioner for further action pursuant to Mont. Code Ann. § 39-71-122. The Department’s determination is not subject to appeal.